

A place to call home: increasing housing security and supply for all Victorians

Submission to the Inquiry into the rental and
housing affordability crisis in Victoria

July 2023

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Acknowledgement of Country

Justice Connect acknowledges the Wurundjeri and Boon Wurrung peoples of the Kulin Nation, and the Gadigal peoples of the Eora Nation as the Traditional Owners of the land on which we meet and work. We acknowledge that sovereignty was never ceded and pay our respects to Elders past and present.



1. Executive summary and six recommendations

Rising housing affordability and availability pressures, and the cost of living crisis, are causing more Victorians to be placed at risk of homelessness. Through the integrated and digital legal supports of Justice Connect's Homeless Law (**Justice Connect**), we have seen this growing need and the compounding, cumulative impact it has on Victorians' legal and life issues. Since COVID-19 started, Justice Connect's seen a 124% increase in new help-seeker enquiries, along with a 33% increase in intensive client casework in the last 12 months.

The *Parliamentary Inquiry into the rental and housing affordability crisis in Victoria* (**Inquiry**) presents an important opportunity to focus on the intersection between rising housing insecurity and legal need, and the priority issues that are beneficial to be addressed as part of any effective and lasting solutions to prevent and end homelessness in our community.

In this submission, Justice Connect draws on over 20 years of frontline service delivery as Victoria's specialist free legal service for people experiencing or at risk of homelessness. In addressing the Inquiry's Terms of Reference,¹ we examine the changing nature and scale of housing insecurity across Victoria, including in the context of the COVID-19 pandemic's continuing and compounding impact. We also share client stories and quotes to highlight the heavy personal, health and financial costs that are currently being experienced by renters, and to emphasise the importance of access to integrated and digital legal supports in increasing housing security and supply for all Victorians.

Social housing works (part 2) and stopping homelessness before it starts (part 3) for all Victorians

Despite moving to a 'COVID-19 recovery phase', the cumulative impact of the pandemic is still being felt, particularly by the most at-risk Victorians. Housing insecurity continues to rise in Victoria, and this is being exacerbated by record rent increases, which are locking out many Victorians and their families from securing safe and sustainable homes.

Although there has been welcome progress in rental laws through Victoria's recent reform process, the private rental market remains volatile and unaffordable for many Victorians. In a recent survey, no private rental properties in Victoria were affordable for a single person on JobSeeker and only 7 (0.04%) properties were affordable for a person receiving Centrelink parenting payments.² This acute lack of affordable private rentals places further strain on Victoria's already under resourced social housing system.³ In this context, an adequate supply of public and community housing with supports is vital to provide long-term, affordable and secure homes for many vulnerable Victorians.

To ensure that evictions into homelessness are a last resort and to make renting safer for Victorians, we need fairer laws, policies, practices, and procedural safeguards. We also need stronger protections and equal rights for all public and community housing renters.

More Victorians would also be able to better understand and enforce their housing-related legal rights and options if the increased availability of early intervention, prevention-focussed integrated and digital legal supports is prioritised. This includes Justice Connect's Women's Homelessness Prevention Project (**WHPP**), which keeps Victorian women and children safely housed. Since it commenced in 2014, the WHPP's intensive combination of legal and social work assistance has holistically prevented homelessness for 1,255 women and children, saving the government and the wider-community over \$8.2 million.⁴ Another impactful opportunity is presented by digital tools,

¹ Parliament of Victoria, *Terms of reference for the Inquiry into the rental and housing affordability crisis in Victoria* (24 May 2023) (**Terms of Reference**) available at: <https://new.parliament.vic.gov.au/49f311/contentassets/8a961367ea4041778b8c705a9a343364/terms-of-reference-attachments/terms-of-reference---rental-and-housing-affordability-crisis-in-victoria.pdf>.

² Anglicare Australia, *Anglicare Australia Rental Affordability Snapshot* (2022) (**Anglicare Snapshot**), available at: <https://www.anglicarevic.org.au/wp-content/uploads/2022/04/Victorian-Rental-Affordability-Snapshot-2022.pdf#:~:text=Of%20the%2018%2C934%20private%20rentals%20advertised%20across%20Victoria%3A,least%20one%20household%20type%20living%20on%20minimum%20wage>.

³ See, e.g. Parliament of Victoria, Legislative Council – Legal and Social Issues Committee, *Inquiry into the Public Housing Renewal Program* (June 2018) (**Inquiry into the Public Housing Renewal Program**), available at: https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Public_Housing_Renewal_Program/LSIC_58-11_PHRP_Text_WEB.pdf.

⁴ 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), available at: https://www.ahuri.edu.au/_data/assets/pdf_file/0007/2032/AHURI_Final_Report_No218_The-cost-of-homelessness-and-the-net-benefit-of-homelessness-programs-a-national-study.pdf.



including Dear Landlord, which is an innovative, online self-help tool that supports Victorian renters to avoid eviction for falling behind in rent. Since COVID-19 commenced in 2020, over 84,000 renters have used Dear Landlord to avoid eviction. Significantly, 36% of users accessed Dear Landlord to create a payment plan proactively before even receiving an eviction notice, which shows the power of co-designed digital tools to intervene earlier in achieving secure housing.

Six recommendations to increase housing security and supply across Victoria

Throughout this submission, Justice Connect shares stories and direct quotes from 26 former clients, and makes six recommendations to increase housing security and supply in our community. Justice Connect's recommendations draw on evidence from providing specialised, multi-channel, multi-intensity supports to Victorians facing housing insecurity, as well as our leadership and engagement across the community and legal sectors.

SIX RECOMMENDATIONS TO INCREASE HOUSING SECURITY AND SUPPLY FOR ALL VICTORIANS

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

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

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

2. Better VCAT-related procedural safeguards to ensure housing security

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

- a. Creating an internal appeal mechanism for decisions made in the VCAT Residential Tenancies List through amendments to the *Victorian Civil and Administrative Tribunal Act 1998* (Vic).
- b. Giving VCAT jurisdiction to consider the human rights compatibility of eviction decisions by public and community housing rental provider under the *Charter of Human Rights and Responsibilities Act* (Vic).

3. Fairer laws to make evictions into homelessness a last resort

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

- a. Introducing a requirement in the *Residential Tenancies Act 1997* (Vic) that compliance orders are to be worded as specifically as possible, and are 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.
- b. Amending section 368(3) of the *Residential Tenancies Act 1997* (Vic) and Regulation 92 of the *Residential Tenancies Regulations 2021* (Vic) to rename the 'Notice to Leave' form to better explain that the requirement to leave is initially only of a temporary nature (of 24 hours or until a future VCAT hearing).
- c. Amending section 91ZM of the *Residential Tenancies Act 1997* (Vic) to include that possession order applications must be made within 30 days of the expiry of the Notice to Vacate.
- d. Amending section 330A of the *Residential Tenancies Act 1997* (Vic) to clarify that a compliance order can be made as an alternative to a possession order, where it is reasonable and proportionate in the circumstances.
- e. Amending sections 91ZZS, 91ZZU, 124ZX, 142ZZ, 206AZM, 206AZO and 207ZN of the *Residential Tenancies Act 1997* (Vic) to remove the 30-day time limit, or in the alternative, amending all of these sections to clarify that the time limit only applies to challenges made pre-emptively and not those made at VCAT hearings.
- f. Amending section 91ZZO of the *Residential Tenancies Act 1997* (Vic) and Regulation 37 of the *Residential Tenancies Regulations 2021* (Vic) to update the content and form of the Notice to Vacate, including changing the term 'Notice to Vacate' and providing information about legal rights and details of legal assistance services within the notices.

4. Safer renting for victim-survivors of family violence

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

- a. Clarifying and amending section 91V of the *Residential Tenancies Act 1997* (Vic) to ensure that victim-survivors are protected by family violence provisions, even where a perpetrator is not a party to the tenancy agreement.
- b. Providing more training, support and guidance to VCAT, so that the safety of victim-survivors is prioritised in tenancies affected by family violence, including:
 - Further training for VCAT members and staff on family violence, how it presents, and its impacts on renters who are victim-survivors and their tenancies.
 - Increasing funding to staff additional dedicated VCAT family violence support roles.
 - Adopting a consistent, best practice approach to the use of family violence victim-survivor's information and evidence in the context of VCAT tenancy proceedings.
- c. Improving education for rental providers and real estate agents, building an understanding of alternatives to eviction for renters experiencing challenging circumstances, particularly family violence victim-survivors, and appropriate pathways for renters to seek legal, financial, social, and other supports.
- d. Increasing education and access to specialised information for renters experiencing or at risk of family violence and family violence service providers, about rental rights and options.

5. Stronger protections and equal rights for all public and community housing renters

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

- a. Supporting all public and community housing providers to develop fair, consistent, best-practice and publicly available policies, which take into account renters' human and legal rights.
- b. Implementing resources, staff training, access to renter support services and supply of appropriate public and community housing stock to embed these policies.
- c. Ensuring that community housing providers are recognised as public authorities for the purposes of the *Charter of Human Rights and Responsibilities Act 2006* (Vic).
- d. Creating an independent appeals and complaints body to oversee complaints from all public and community housing renters.
- e. Extending the reach and number of intensive housing-support services, including programs with dedicated health and social work professionals and those closely integrated with specialised legal services.

6.

Increase the availability of early intervention, prevention-focussed integrated and digital legal supports

Preventative, integrated legal services are key to ensuring that all Victorians, particularly community members with complex needs, can avoid homelessness. Justice Connect recommends:

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

To provide better access to early intervention information and to customised, proactive supports, which keep more people safely housed across Victoria, Justice Connect recommends:

- c. Prioritising and resourcing the development and ongoing operation of digital tools, which empower more renters to understand their rights and options and take preventative steps to avoid eviction.
- d. Reintroducing ongoing rent relief grants and increasing ongoing financial brokerage programs for those most at risk of homelessness, including women and children facing family violence, people who have experienced prison, and people who have slept rough.



About Justice Connect

In the face of rising unmet legal needs, Justice Connect designs and delivers high-impact interventions that increase access to legal support and progress social justice. Justice Connect believes in a fair and just world, where people and communities are supported to engage with and fully participate in our legal and social systems, and avoid the negative impacts on their well-being or organisational health that flow from unresolved legal problems. We lead innovative solutions to help to close the 'justice gap', including:

- brokering strategic, efficient use of pro bono lawyers and barristers—53,000 hours last year, equating to \$20.5 million of pro bono legal help.
- delivering holistic, integrated legal services to clients experiencing significant disadvantage through strategic partnerships, including by embedding staff at community agencies and health justice partnerships to engage with the hardest-to-reach clients.
- leading access to justice innovation through innovative digital solutions, including Dear Landlord, our award-winning free digital, self-help tool that support Victorians in private rentals to stay safely housed.
- amplifying and extending the impact of our work through strategic engagement to help drive systems-level change.

Justice Connect's Homeless Law

Justice Connect's Homeless Law (**Justice Connect**) is Victoria's specialist free legal service for people experiencing or at risk of homelessness. Justice Connect works to prevent and end homelessness by increasing access to integrated and digital legal support and advocating for better laws and policies. Justice Connect provides targeted, intensive legal representation to Victorians experiencing homelessness, particularly our priority cohorts including women with an experience of violence, people in an existing prison, and people sleeping rough. Since 2001, Justice Connect has been outreach-based and client-centred, and from 2010, we have added staff social workers, allowing us to holistically address clients' legal and non-legal needs.

In 2021-2022, Justice Connect:

- Provided an integrated combination of specialised legal representation and social work support to Victorians who are experiencing or at risk of homelessness through 649 new client files;
- Delivered 27,773 hours of free legal work for Justice Connect clients by 650 pro bono lawyers from our partner law firms delivered, with our legal clinics continuing to run remotely throughout the pandemic.
- Strategically prioritised our impactful and innovative work with three key cohorts facing housing insecurity: women and their children, particularly in the context of family violence, people in prison, and rough sleepers;
- Deepened our partnerships with cross-sector allies, including through co-locations and embedded partnerships with community-based health and homelessness services, including cohealth, Launch Housing and Sacred Heart Mission – Journey to Social Inclusion and GreenLight; and
- Collaboratively advocated for the ongoing, 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 2021-22, Justice Connect has also directly prevented 170 clients and their families from being evicted into homelessness. This work has never been more impactful than in the context of COVID-19, and based on Australian Housing and Urban Research Institute findings, equates to government and community-wide cost savings of approximately \$5 million.

In addition to our integrated model of service delivery, which focuses on early intervention and prevention of legal issues before they escalate to crisis point, Justice Connect scales its reach using innovative digital tools, including Dear Landlord, our award-winning, online self-help tool for Victorian renters. For Victorians facing multiple complexities, access to integrated, wrap-around legal services is vital. However, for some Victorians, self-help tools and resources can help to intervene earlier in preventing evictions into homelessness. Last year Dear Landlord helped 36,770 new users (up by 21% from 2020-21) who were facing eviction.



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 work of secondees, **Jenny Pang (Herbert Smith Freehills)** and **Zach Moon (MinterEllison)**, during their time with Justice Connect. We also acknowledge our colleagues in the community and legal assistance sectors for consultations in relation to this submission.

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

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2. Social housing works: prioritising more suitable and safe homes with support

Housing insecurity continues to rise in Victoria, with record rent increases during our community's housing and cost of living crises placing more Victorian households at risk of homelessness.⁵ Through Justice Connect's integrated and digital legal support, we have also seen the ongoing, cumulative impact of the COVID-19 pandemic, including the increased legal, housing, financial, physical, and mental health, and social needs of Victorian renters. These compounding pressures further entrench existing disadvantages experienced by vulnerable cohorts, including women and children facing family violence, and people who have slept rough.

Increasing rents have made the private rental market unaffordable and inaccessible for most low-income families. Homes Victoria reports that the Melbourne Rent Index increased by 14.6% in the twelve months to March 2023, the highest annual increase since reporting began in 2000.⁶ Despite significant progress in rental laws and policies through recent reforms, the tenancy system still leaves Victorians at risk of eviction at a time when record rent increases are pushing low-income families out of the private rental market. According to Anglicare Victoria's recent rental affordability snapshot, of the 18,934 properties available for rent in March 2022, only 7 – which is less than 0.04% throughout Victoria – were affordable for a person receiving Centrelink parenting payments. Not a single property was affordable for a person receiving Centrelink JobSeeker.⁷

Families without housing are unable to enter the rental market and those in housing are unable to afford the increasing rents. This is consistent with data from Justice Connect's intensive legal and social work services, including through our Women's Homelessness Prevention Project (WHPP), and our award-winning free digital, self-help tool for Victorian renters, Dear Landlord. Rent arrears, often connected to an experience of family violence, remains the most common reason Victorians face eviction from private rentals, as seen through Sara's⁸ story below.

Culturally diverse, family violence victim-survivor and baby safely transition into community housing in COVID-19 through legal and social work supports

Sara is a culturally diverse single-mother of a baby, who is a family violence victim-survivor with diagnosed anxiety, post-traumatic stress disorder and physical health issues. Sara arrived in Australia on a spousal bridging visa, had no access to any income and was completely financially reliant on her ex-husband. When Sara first spoke with Justice Connect's Women's Homelessness Prevention Project, her ex-husband, who is also the father of her baby, had been removed from their private rental home due to family violence during COVID-19. Sara's ex-husband had also given notice of intention to terminate the rental agreement. Sara was not on the rental agreement and had no family or friends to turn to.

Justice Connect's lawyers advised Sara about her legal rights and options, and collaborated closely with the Justice Connect social worker and Sara's intensive support team, focusing on Sara and her baby staying safely housed while trying to secure a new property. The lawyers extensively negotiated with the rental provider, which successfully led to Sara being able to stay in the property until she secured alternative housing. As part of this, the WHPP social worker leveraged financial brokerage to cover her rental arrears, which was critical given Sara's financial hardship. The social worker also facilitated brokerage towards a packing service, which significantly reduced the burden on Sara when she was vacating the property.

Due to this wrap-around legal and social work assistance, Sara was able to obtain a stable, long-term community housing property, avoiding a period of homelessness. The WHPP social worker provided further tailored supports to Sara, so that she could get settled in her new home. Sara is now also receiving a Centrelink income, and this vital financial and housing security has ensured that she can prioritise the wellbeing of herself and her baby in the COVID-19 recovery phase.

⁵ See for example, Domain, December 2022 Rental Report, available at: https://www.domain.com.au/research/rental-report/december-2022/?utm_medium=email&utm_source=domain&utm_campaign=%5B2023%2F01%2F12%5D%20PR_Domain_RentReport_12Jan2023

⁶ Department of Families Fairness and Housing, Rental Report statistics, March quarter 2023, available at: <https://www.dffh.vic.gov.au/publications/rental-report#:~:text=The%20Melbourne%20Rent%20Index%20%28MRI%29%20increased%20by%205.2,since%20this%20Rental%20Report%20series%20began%20in%202000.>

⁷ Anglicare Snapshot (n 2).

⁸ All client names have been de-identified in this submission.



In this context, social (public and community) housing that is timely, safe and appropriate must form part of any measures to address housing instability. Despite the introduction of the Victorian Government's 'Big Housing Build' program, Victoria continues to have an acute shortage of social housing,⁹ with more people on the waiting list for social housing than at any time in at least the last 5 years.¹⁰ This acute shortage of social housing, along with family violence, remains the primary cause of homelessness in Victoria.¹¹ In Justice Connect's experience, a shortage of social housing:

- deters victim-survivors from leaving violent relationships;
- places victim-survivors at risk of – and pushes them into – homelessness; and
- makes perpetrators more isolated in some instances, which increases the risk of further violence.¹²

To prevent the range of damaging consequences triggered by homelessness, increased public and community housing with support must be at the centre of the Victorian government's response to the current housing crisis.¹³

2.1 Increased public and community housing that is fit for purpose

A right to safe, secure and affordable housing is more than just a human right, it enables people to fully participate in, and contribute to, society.¹⁴ It is essential to a fair and inclusive Victoria, including directly supporting people who have specific or complex needs to have an adequate standard of living. For this reason, calling for increased public and community housing with wrap-around support has underpinned all of Justice Connect's recent direct and collective submissions in relation to preventing and ending homelessness.¹⁵

The need for an immediate increase in public and community housing that is fit for purpose has never been more evident. The combined impact of an increasingly competitive private rental market, and the ongoing scarcity of public and community housing stock in Victoria, are forcing many low-income individuals and families to rely on unaffordable private rental properties in trying to avoid homelessness. In an environment where rents are increasing at record rates, we see more low-income families paying larger portions of their income to remain housed. Coupled with rising costs of living, this is unsustainable. Unaffordable private rentals place low-income renters on the brink of eviction and present a real risk of homelessness for Victorians living on or below the poverty line.

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. A strong and well-resourced social housing sector is needed to address housing insecurity in Victoria.

Falling behind in rent remains the most common reason our clients find themselves on the brink of homelessness. As we have seen during and after COVID-19, all it takes is for one thing to go wrong – the kids getting sick, or the car breaking down – for Victorians to fall behind in rent. Jennifer's story below highlights the stress and anxiety that comes when facing eviction for falling behind in rent, as well as the importance of integrated legal and social work services for tenancy sustainment.

⁹ See, e.g. Australian Government Productivity Commission's Report on Government Services 2023 (January 2023), available at <https://www.pc.gov.au/ongoing/report-on-government-services/2023/housing-and-homelessness/housing>; Inquiry into the Public Housing Renewal Program (n 3).

¹⁰ On 30 June 2022, there were 54,857 applicants on the social housing waitlist, up from 38,185 in 2018: Australian Government Productivity Commission's Report on Government Services 2023 (n 9).

¹¹ See AIHW Specialist homelessness services annual report 2021–22, available at:

<https://www.aihw.gov.au/reports/homelessness-services/specialist-homelessness-services-annual-report/contents/about>.

¹² See *Joint submission on family violence, housing and homelessness endorsed by 129 organisations* (May 2015), available at: <https://justiceconnect.org.au/wp-content/uploads/2018/08/Joint-submission-affordable-housing-and-family-violence-May-2015.pdf>; and Centre for Innovative Justice, *Opportunities for Early Intervention: Bringing perpetrators of family violence into view* (Report, March 2015) 50, available at: <https://cij.org.au/cms/wp-content/uploads/2018/08/opportunities-for-early-intervention.pdf>.

¹³ Term of Reference 2.

¹⁴ Muir, K., Martin, C., Liu, E., Kaleveld, L., Flatau, P., Etuk, L., and Pawson, H. 2018. *Amplify Insights: Housing Affordability & Homelessness*. Centre for Social Impact, UNSW Sydney, 30.

¹⁵ See, e.g. Justice Connect, *Making social housing count for all Victorians: Submission on the Social Housing Regulatory Review* (September 2021) available at: <https://justiceconnect.org.au/wp-content/uploads/2021/09/Justice-Connect-Submission-to-the-Social-Housing-Regulatory-Review-September-2021.pdf>.



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

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

Jennifer contacted Justice Connect after receiving a notice to vacate for arrears. Through Justice Connect's social worker, Jennifer received \$900 in rental brokerage, which her lawyers then used as part of their negotiations for an affordable payment plan. Through this wrap-around advocacy, the rental provider withdrew the eviction proceedings, avoiding the stress and inconvenience of attending VCAT.

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

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

Social housing means that all Australians are entitled to a roof over their head and a safe place to live. Without adequate social housing, more and more Australians will be at risk of chronic rental stress and eviction.

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

As part of the Victorian Housing Peaks alliance and the Everybody's Home campaign,¹⁶ Justice Connect and seven other peak bodies across housing, homelessness, community service and legal assistance sectors have consistently advocated for an increase in public and community housing.

A recent Australia-wide report published by AHURI identifies that an additional 730,000 social housing properties are required over the next 20 years across Australia, with 165,000 of those properties required in Victoria, to meet the needs of vulnerable Australians and ensure that everyone has the most basic right to a roof over their heads.¹⁷

During a previous consultation, Justice Connect client Marie,¹⁸ who identifies as Aboriginal, expressed relief for herself and her kids at being offered social housing after 10 years on the waiting list:

¹⁶ See www.everybodyshome.com.au.

¹⁷ Julie Lawson et al, AHURI, *Social housing as infrastructure: rationale, prioritisation and investment pathway* (Final Report, June 2019), available at: <https://www.ahuri.edu.au/sites/default/files/migration/documents/AHURI-Final-Report-315-Social-housing-as-infrastructure-rationale-prioritisation-and-investment-pathway.pdf>.

¹⁸ See PILCH Homeless Persons' Legal Clinic, *"We Can't Go Private ..."* *Inquiry into the Adequacy and Future Directions of Public Housing in Victoria* (2010), available at: <https://apo.org.au/sites/default/files/resource-files/2010-11/apo-nid23137.pdf>. Justice Connect was formerly the PILCH Homeless Persons' Legal Clinic.



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

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

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

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

Justice Connect commends the Victorian government’s ‘Big Housing Build’¹⁹ project, along with the government’s recent Commonwealth Games-related social housing investment.²⁰ However, given the unprecedented housing and cost of living crisis, continued increase in demand for affordable housing, the growing social housing waiting list, and rising rents that are locking out more people from the private rental market, we need a pipeline of 6000 new public and community housing properties with specialist support each year for the next decade.

2.2 Suitable and safe housing with support for people with complex vulnerabilities

To achieve the best outcomes for disadvantaged Victorians, social housing not only needs to meet demand but must also be secure, suitable and safe. Social housing properties must be designed or modified to meet the needs of renters with complex vulnerabilities. This includes access points for mobility impairments, security features to protect those with heightened anxiety or at risk of recurring family violence, accommodation for support animals and energy efficiency. New social housing supply should also be appropriately located, so it is connected to transport, education, jobs and services, ensuring that renters can access support and integrate within their local area. The availability of appropriate and stable social housing will create inclusive communities, offering renters healthy environments where they can have vital stability and helping them to build fulfilling lives for themselves and their families.²¹

Managing integrated housing to prevent exacerbation of vulnerabilities

To prevent negative stigmatisation, the Victorian Government needs to ensure that social housing is thoughtfully designed. Best practice social housing design indicates that mixed-tenure sites that integrate social housing and private rentals side-by-side, and the different types of housing should be indistinguishable, with layouts including communal and green spaces accessible to all renters. Properties designed this way are more successful in achieving a socially cohesive neighbourhood than other mixed-housing models.²²

¹⁹ Premier Daniel Andrews, ‘Building New Homes To Fight Homelessness’ (Media Release, 17 October 2018), available at: <https://www.premier.vic.gov.au/building-new-homes-fight-homelessness>.

²⁰ See for example Victorian Council of Social Service, *Statement on the Commonwealth Games* (July 18 2023), available at: <https://vcoss.org.au/housing-and-homelessness/2023/07/games-legacy-a-win-for-victoria/>.

²¹ Term of Reference 7.

²² See for example. Marion Roberts, ‘Sharing Space: Urban Design and Social Mixing in Mixed Income New Communities’ (2007) 8(2) *Planning Theory & Practice* 183.



Culturally diverse public housing renter and family violence victim-survivor targeted by private renters and placed further at-risk

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

After Nicole's neighbours alleged that she was making loud noises throughout the night, Department of Fairness, Families and Housing - Homes Victoria (DFFH) issued her with a breach of duty notice, before lodging a VCAT application for a compliance order. Nicole then connected with the Justice Connect lawyers and social worker, who negotiated with Homes Victoria based on Nicole's human rights, and represented her at VCAT. Despite Justice Connect's advocacy, VCAT made a compliance order against Nicole.

Unfortunately, Nicole's neighbours continued to target her, and after they made more complaints, DFFH gave her a notice to vacate for alleged breach of compliance order. Although Justice Connect's lawyers again represented Nicole, VCAT granted a possession order against her, placing her at significant risk of further hardship and mental health issues. Through ongoing holistic advocacy, Justice Connect's lawyers and social worker secured a 30-day postponement of the warrant, as well as a priority transfer to a safe new public housing property without an intervening period of homelessness.

Independent specialist support for renters with complex needs

Independent support services are critical to ensuring that social housing renters have the necessary support to sustain their tenancies and avoid homelessness.²³ Independent specialist support must be accessible and flexible, safe and comfortable, permanent and consistent, and purposefully designed to promote renters' empowerment and to foster renter independence. Independent advocates are needed to provide support, assist renters to understand their rental rights and obligations and to help resolve disputes.

Intensive housing assistance programs 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. Trauma-informed, wrap-around support is necessary to address the underlying causes of housing instability and to prevent evictions into homelessness. These services are not only highly beneficial but are also cost-effective: empirical evidence shows that Government saves money when supporting community members who have complex needs to maintain housing.²⁴ 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.

²³ Parsell, C, Petersen, M, Moutou, O, Culhane, D, Lucio, E & Dick, A 2018, *Brisbane Common Ground Evaluation: Final Report*, 36, available at: <https://issr.uq.edu.au/files/4003/BrisbaneCommonGroundFinalReport.pdf>.

²⁴ See for example, Ibid; and The McKell Institute, 'How Government investment in housing can boost the economy' (May 2019), available at: <https://mckellinstitute.org.au/research/articles/how-government-investment-in-housing-can-boost-the-economy/>.



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

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

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

3. Stopping homelessness before it starts: increasing housing security for all Victorians

We know from over 20 years delivering specialised, integrated and digital legal services that we need strong and fair laws to prevent and end homelessness for Victorians. As all Victorians grapple with the current housing and cost of living crises and the compounding, cumulative impact of COVID-19, it has never been more important for us to focus on intervening earlier to stop homelessness before it starts.

The extensive reforms to the *Residential Tenancy Act 1997* (Vic) (**RTA**)²⁵ have been a significant positive step to creating safer, better and fairer tenancy laws for all Victorians. However, more needs to be done. Under the existing legal frameworks, it remains too easy to evict someone into homelessness, particularly in the context of Victorians who have complex or specific needs. In addition to the need for more social housing with supports, an effective strategy to sustainably address rising housing insecurity in Victoria must include:

- Fairer rental laws and dispute resolutions processes for Victorian renters (Part 3.1);
- Safer renting for family violence victim-survivors (Part 3.2);
- Stronger protections and equal rights for all public and community housing renters (Part 3.3); and
- Increase availability of early intervention, prevention-focussed integrated & digital legal supports (Part 3.4)

3.1 Fairer rental laws and dispute resolutions processes for Victorian renters

Internal appeals for VCAT's residential tenancy decisions

For many renters, the prospect of commencing legal action is confronting and difficult. Appealing a decision to the Supreme Court of Victoria²⁶, even with specialist legal support, is simply not an option that many renters will pursue. As Mabel's story below demonstrates, without a process for internal re-hearing, vulnerable renters do not have an affordable and accessible right to appeal of a Victorian Civil & Administrative Tribunal (**VCAT**) decision that impacts their tenancy. An avenue for appeal of this nature has significant potential to reduce arbitrary evictions into homelessness.

An internal appeals mechanism at VCAT would also ensure that the quality of VCAT decision-making is monitored and maintained. Consistent and accurate decision-making is essential to build public confidence in VCAT as an institution. Given the ongoing implementation of significant reforms to Victoria's tenancy system, it is a critical time to introduce an internal appeals mechanism for VCAT tenancy matters to reduce the risk of incorrect evictions and to foster trust and confidence in VCAT decisions.²⁷

Creating an internal appeal mechanism at VCAT through amendments to the *Victorian Civil & Administrative Tribunal Act 1998* (Vic) (**VCAT Act**) would also align Victoria with most other Australian jurisdictions, where civil tribunals have built-in internal appeals.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**).

²⁵ *Residential Tenancies Amendment Act 2018* (Vic) (**RT Amendment Act**), commenced on 29 March 2021 – see for more detail, <https://www.consumer.vic.gov.au/housing/renting/2021-victorian-rental-laws-changes#:~:text=The%20Residential%20Tenancies%20Amendment%20Act,the%20Residential%20Tenancies%20Act%201997>.

²⁶ Currently decisions of VCAT members in the Residential Tenancies List can only be appealed on questions of law to the Supreme Court of Victoria: *Victorian Civil and Administrative Tribunal Act 1998* (Vic) s 148.

²⁷ Term of Reference 4.

²⁸ For example, in the Australian Capital Territory, the *ACT Civil and Administrative Tribunal Act 2008* provides that decisions made by a member of the ACT Civil and Administrative Tribunal (**ACAT**) can be internally appealed on either a question of fact or law.



Client 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, DFFH had obtained a compliance order from VCAT. Mabel had not known about the VCAT hearing due to issues with receiving her mail. After advising Mabel about her tenancy rights, Justice Connect assisted her to apply for a review, and obtained a copy of DFFH's application to VCAT.

At the VCAT review hearing, DFFH 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.

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

The *Charter of Human Rights and Responsibilities Act 2006 (Vic)* (**Charter**) provides important protections for renters of public and community housing. Justice Connect regularly uses the Charter to advocate for the protection of the rights of all social housing renters. However, more resourced and robust accountability mechanisms are required to hold public authorities to account for a failure to consider Charter rights in decision-making.

A number of Supreme Court of Victoria decisions have limited the accessibility of these remedies for social housing renters. VCAT now has limited authority to consider Charter compliance, meaning a social housing renter must go to the Supreme Court to review the Charter compatibility and lawfulness of a decision. Further restricting the available options, if a renter wanted to challenge the decision of a social housing provider, they have limited timeframes to make an application.²⁹ As Jacqueline's story below shows, these limitations present significant barriers to renters being able to fully exercise their rights under the Charter.

²⁹ 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.



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 several years. She had previously obtained an intervention order against one of her children due to persistent family violence but, in a recent incident, Jacqueline's child had attended her property and caused significant damage. Jacqueline had hidden in the bathroom and called police during the incident.

When Jacqueline's Community Housing Provider (**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 rental provider 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 rental provider 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.

Supreme Court proceedings 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 prohibitive factors.

It is our strong view that VCAT must have jurisdiction to consider the human rights compatibility of eviction decisions by all social housing rental providers under the Charter. As discussed below, the Charter encourages consideration of a renter's individual circumstances and allows these considerations to be balanced against the competing obligations of social housing providers. Decisions made in accordance with the Charter are better decisions. Legislative amendments to give VCAT jurisdiction to consider Charter compliance in eviction proceedings brought by social housing providers³⁰ would work towards reducing the harmful consequences of housing insecurity.

Recommendation 2: Better VCAT-related procedural safeguards to ensure housing security

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

- a. Creating an internal appeal mechanism for decisions made in the VCAT Residential Tenancies List through amendments to the *Victorian Civil and Administrative Tribunal Act 1998* (Vic).
- b. Giving VCAT jurisdiction to consider the human rights compatibility of eviction decisions by public and community housing rental provider under the *Charter of Human Rights and Responsibilities Act* (Vic).

³⁰ For more detailed submissions on the legislative amendments required to give effect to this recommendation, see Justice Connect, *Charting a Stronger Course: Homeless Law submission to the eight year Charter review* (16 June 2015) (**Charting a Stronger Course**) 7, available at: <https://justiceconnect.org.au/wp-content/uploads/2018/08/Charting-a-Stronger-Course-June-2015.pdf>. 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'.



Improved operation of compliance order provisions

Despite welcoming Victoria's residential tenancy reforms, the current operation of the compliance order provisions continues to disproportionately affect Victorians who have vulnerable circumstances. A rental provider can apply for a compliance order if they have issued a breach notice³¹ and the breach notice is not complied with or not remedied within the specified timeframe.³² 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,³³ and having a VCAT possession order application made against them.³⁴ The ability of renters to defend an application for a possession order based on a breach of a compliance order is limited.³⁵

For many Victorians with complex or specific needs, these provisions leave them at a heightened risk of eviction based on alleged breaches. Improvements to the compliance order regime would provide greater clarity to both rental providers and renters, while also limiting unnecessary evictions into homelessness.

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. DFFH 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 DFFH. 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 and a transfer to another public housing property was secured for Connie and her children. Connie has expressed her immense relief that she and her children have avoided homelessness and are now able to focus on their futures.

The risks of broad and indefinite compliance orders

Victoria's current laws allow indefinite and broadly worded compliance orders, which create housing insecurity for at-risk renters. It is common for compliance orders 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 in Amanda's story below.

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.

³¹ RTA s 208.

³² RTA s 209.

³³ RTA ss 91ZO(1), 142ZG(1), 206AW(1), 207ZA, 307(1), 317ZA.

³⁴ RTA s 322(1), see also RTA ss 323, 324, 324A for rooming house residents, caravan park residents and site renters.

³⁵ See Justice Connect, *There's No Place Like Home: Submission on the Security of Tenure Issues Paper* (December 2015) 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 through a community-based homelessness service, DFFH 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 DFFH, 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 wrap-around 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.

Provide further clarity on when compliance orders can be made as a reasonable and proportionate alternative to a possession order

The introduction of a reasonable and proportionate test, which requires VCAT to consider if it is reasonable and proportionate to make a possession order, has had a positive impact on Victorian renters. From a practice-based perspective, since being introduced, the reasonable and proportionate test has directly gone towards addressing the longstanding power imbalance between renters and rental providers in Victoria's tenancy system.

In Justice Connect's frontline experience, there are many circumstances where a compliance order would be a reasonable and proportionate outcome. Section 330A of the *Residential Tenancies Act 1997* (Vic) (**RTA**) requires the VCAT member to *consider whether any other order or course of action is reasonably available instead of making a possession order*, which would include making a compliance order as an alternative to a possession order in most circumstances. However, the current drafting of the RTA does not provide a clear power for compliance orders to be granted as a reasonable and proportionate alternative to a possession order.³⁶

Section 332A of the RTA allows VCAT to dismiss an application for a possession order and instead make a compliance order 'under section 212', provided the application to VCAT was based on specified types of a Notice to Vacate. However, section 212 of the RTA only allows a compliance order to be made where a duty provision has been breached, which arguably limits the operation of section 332A of the RTA. Recent decisions suggest that VCAT does not have the authority to make compliance rather than possession orders where a duty provision has not been breached,³⁷ including eviction proceedings:

- where a Notice to Vacate is issued due to alleged threats and intimidation directed at the rental provider or their agent or employee (sections 91ZK, 142ZD, 206AS and 207Y of the RTA).

³⁶ See for example: *South Port Community Housing Group Inc v Ng (Residential Tenancies)* [2022] VCAT 614.

³⁷ Ibid.



- where a Notice to Vacate is issued for alleged dangerous conduct (sections 91ZJ, 142ZC, 206AR and 207X of the RTA).

As these provisions do not have a positive duty that was breached, it is arguable that VCAT does not have the power to make a compliance order as a reasonable and proportionate alternative to a possession order. While VCAT has found ways to work around these limitations, the reasoning is strained³⁸ and it is unclear how these matters can be adjudicated if they return to VCAT. This creates uncertainty for all parties.

To address this issue, Justice Connect recommends amending section 332A of the RTA to include cases where the conduct the Notice to Vacate is based on is less serious than others that are included, but for which the option to make compliance orders rather than possession orders is currently not expressly provided for, including:

- successive breaches (sections 91ZP, 142ZH, 206AX and 207ZB of the RTA); and
- disruption (sections 142ZE, 206AT and 207Z of the RTA).

To ensure this key protection remains available for at-risk Victorian renters, Justice Connect recommends amending the RTA to specifically clarify that a compliance order can be made as an alternative to a possession order, where it is reasonable and proportionate in the circumstances.

Amending possession order applications for unpaid rent to apply a time limit

Section 326 of the RTA specifies a time limit of not more than 30 days for a rental provider to make an application for a possession order following the service of a Notice to Vacate. Unlike other Notice to Vacate types, an application for a possession order based on a Notice to Vacate for unpaid rent is made under section 91ZM of the RTA, which does not include a time limit. In practice, this means that renters live with the possibility of a possession order application hanging over their heads indefinitely.

Clarifying the process and timeframe for challenging Notices to Vacate

A renter can generally bring a pre-emptive challenge to a Notice to Vacate 'on or before the hearing'.³⁹ However, the application must be brought no later than 30 days after the Notice to Vacate was given. Where a hearing is held more than 30 days after the Notice to Vacate was given, which often occurs, the appropriate process to challenge a Notice to Vacate 'on the hearing' is unclear.

In Justice Connect's experience, VCAT members have suggested that where renters have applied under these provisions and 30 days have passed, the renter request an extension of time under section 126 of the VCAT Act. In our view, this should not be necessary, including as it imposes a disproportionate burden on the renter to prove that no other party would be prejudiced by the extension. This is particularly inappropriate where the renter's challenge is made on the basis that the conduct alleged in the Notice to Vacate was caused by a person who has subjected them to violence (sections 91ZZU, 142ZZ, 206AZO and 207ZN of the RTA).⁴⁰

Amending the content and form of the Notice to Vacate

Justice Connect has a detailed history of advocating for a change to the terminology and content in the Notice to Vacate.⁴¹ It remains common for our clients to misunderstand the nature and effect of Notices to Vacate. This stops many Victorians from understanding or exercising their rental rights, causing stress and premature or unnecessary vacating of tenancies. A lack of understanding likely leads to consistently low renter attendance rates at VCAT, which cumulatively leads to an increased risk of homelessness.

³⁸ Ibid [53].

³⁹ See sections 91ZZS, 91ZZU and similar provisions: 142ZZ, 142ZX, 206AZM, 206AZO and 207ZN of the RTA.

⁴⁰ See particularly *South Port Community Housing Group Inc v Ng* (Residential Tenancies) [2022] VCAT 614 (3 June 2022) at [29] where VCAT held that granting an extension to the renter would be procedurally unfair to the applicant and declined to do so, despite the agreed fact that the person accused of assaulting the renter's neighbour had also used violence against the renter.

⁴¹ Justice Connect has extensively consulted with the Department of Justice and Community Safety – Consumer Affairs Victoria (DJCS) in relation to the implementation of the reforms, including regarding the content of the Residential Tenancies Regulations 2020 (Vic) (RT Regulations). Through an evidence-based submission Justice Connect, *Making Sure Renting is Safer and Fairer for Vulnerable Victorians: Submission on the Residential Tenancies Regulations 2020 (Vic) (RT Regulations Submission)* (December 2019). Justice Connect made fifteen key recommendations to DJCS, seeking to better safeguard housing security and to further break the links between homelessness, family violence and poverty. As part of this strategic engagement process, several Justice Connect's key recommendations were adopted and included for circulation in the proposed RT Regulations.



The term 'notice to vacate' should be replaced with something that more accurately reflects the legal status of the notice (e.g. 'request to vacate'). The Notice to Vacate should also include referral information about specialist legal help for renters to encourage them to engage with their rights and subsequent VCAT processes. Justice Connect also recommends other proposed measures,⁴² which would likely result in fewer renters prematurely vacating their properties and may result in more renters attending VCAT hearings.

These changes would increase the ability of renters to understand their options and to obtain legal support further upstream in the eviction process. This would lead to more Victorians, who are facing similar situations to Ari's story below, remaining in secure housing, and allow marginalised renters to focus on other aspects of their lives.⁴³

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

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

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

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

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

Building on longstanding client insights, Justice Connect also has evidence-based concerns about the current notice to leave form.⁴⁴ Section 368(3) of the RTA provides that a manager may give a person a notice to leave in relation to serious acts of violence, which must be in the prescribed form. Justice Connect's view is that the current language is misleading and should be clarified to explain that it is only a temporary suspension and to provide better information regarding renters' legal rights and options.

⁴² See full submissions on the content and prescribed forms in the RT Regulations Submission.

⁴³ Term of Reference 7.

⁴⁴ See RT Regulations Submission, Recommendation 6.



Recommendation 3: Fairer laws to make evictions into homelessness a last resort

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

- a. Introducing a requirement in the *Residential Tenancies Act 1997* (Vic) that compliance orders are to be worded as specifically as possible, and are 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.
- b. Amending section 368(3) of the *Residential Tenancies Act 1997* (Vic) and Regulation 92 of the *Residential Tenancies Regulations 2021* (Vic) to rename the 'Notice to Leave' form to better explain that the requirement to leave is initially only of a temporary nature (of 24 hours or until a future VCAT hearing).
- c. Amending section 91ZM of the *Residential Tenancies Act 1997* (Vic) to include that possession order applications must be made within 30 days of the expiry of the Notice to Vacate.
- d. Amending section 330A of the *Residential Tenancies Act 1997* (Vic) to clarify that a compliance order can be made as an alternative to a possession order, where it is reasonable and proportionate in the circumstances.
- e. Amending sections 91ZZS, 91ZZU, 124ZX, 142ZZ, 206AZM, 206AZO and 207ZN of the *Residential Tenancies Act 1997* (Vic) to remove the 30-day time limit, or in the alternative, amending all of these sections to clarify that the time limit only applies to challenges made pre-emptively and not those made at VCAT hearings.
- f. Amending section 91ZZO of the *Residential Tenancies Act 1997* (Vic) and Regulation 37 of the *Residential Tenancies Regulations 2021* (Vic) to update the content and form of the Notice to Vacate, including changing the term 'Notice to Vacate' and providing information about legal rights and details of legal assistance services within the notices.

3.2 Safer renting for family violence victim-survivors

Family violence remains one of the leading causes of homelessness in Victoria⁴⁵, along with the acute lack of affordable housing. Victoria's current housing and cost of living crises are disproportionately impacting women, including family violence victim-survivors. This is reflected in Justice Connect's service delivery data, with over 60% of both clients that receive integrated legal assistance, and help-seekers who access support through Dear Landlord, identifying as women. In nine years, Justice Connect's WHPP has kept 1,255 women and children safely housed through intensive, wrap-around legal and social work support, with 82% of these women having experienced family violence. Despite the recent improvements to the RTA, gaps in the tenancy legal framework need to be addressed so that family violence victim-survivors can better maintain and access safe housing.

Clarify and update key tenancy laws related to family violence

Victorian women and children need to be able to safely exit leases in all family violence circumstances. Section 91V of the RTA provides a family violence victim-survivor with the right to apply to the VCAT, seeking termination of a rental agreement where they have experienced family violence 'by another party to the rental agreement'. The

⁴⁵ See AIHW Specialist homelessness services annual report 2021–22, n 11.



application must be heard by VCAT within three days. When terminating an agreement under these provisions, VCAT has the power to determine the parties' liability for damage, unpaid rent and utilities under the terminated agreement, and to make orders about the bond. The family violence victim-survivor cannot be ordered to pay compensation to the rental provider for the early termination of the lease.

In contrast, where a family violence victim-survivor is not safe to stay in their home, but the perpetrator is not a party to the rental agreement, they must instead rely on section 91U of the RTA. An application under section 91U of the RTA provides a renter with the right to apply for termination of an agreement based on hardship. Under section 91U, a family violence victim-survivor can be ordered to pay compensation for early termination and there is no requirement for the application to be listed within a prescribed timeframe. Although a family violence victim-survivor can take steps to protect their bond, this involves a separate application, meaning victim-survivors can be financially impacted by prioritising their safety, and left waiting to finalise an unsafe tenancy. Reform is needed to address these gaps in the law and make renting safer for victim-survivors, as evidenced by Natasha's story below.

Family violence victim-survivor and her three children in regional Victoria are placed at further risk due to perpetrator not being on the rental agreement

Natasha is a single-mother with three children in regional Victoria, and a family violence victim-survivor. Natasha had just signed a new 12-month lease at her private rental property. Not long after signing the new lease Natasha was told that her ex-partner had been released from prison. Police advised Natasha that she should leave the property as the ex-partner knew the address and she and the children were not safe there. The family were immediately moved into a family violence refuge.

Because the ex-partner was not on the lease, Natasha could not use the family violence provisions under the RTA to terminate her tenancy and avoid incurring lease-breaking and other costs.

While in the family violence refuge, Natasha was experiencing the impact of the Victorian housing crisis, having applied for more than 50 properties in her regional area, without success.

The rental provider, through their real estate agent, made demands of Natasha, including that she return to the property to address concerns about cleaning or rubbish removal, despite the safety risks. Dependent on a positive reference from the rental provider and without the protections available under the family violence provisions, Natasha was placed in the position of weighing her safety against her ability to access new housing for herself and her children.

Justice Connect's integrated lawyers and social worker extensively advocated with the rental provider, which eventually led to Natasha terminating her lease early, not paying for any lease break fees or any other costs. She was able to secure new, safe private rental accommodation for her family. Although Natasha experienced a positive outcome, it was after a considerable period of uncertainty and stress which she would not have had to endure had she been able to terminate her lease at VCAT within three days, with the assurance she would not have to pay compensation.

Improve access to information for renters facing family violence

Early intervention is key in breaking the links between family violence, homelessness and financial insecurity. Justice Connect's client and service delivery evidence confirms that many tenancies can be saved if the underlying issues are addressed early. Access to information about rental rights and obligations can mean a family violence victim-survivor can make their home safer, avoid incurring housing debts they should not be liable for, and avoid homelessness. Co-designed, user-centred digital tools and resources can provide early access to customised legal help, practical information, financial aid, self-help resources and other proactive support to empower family violence victim-survivors to exercise their tenancy rights and prevent adverse housing outcomes. Importantly, these digital tools offer one-to-many support at scale, with significant potential to reach more renters across Victoria, including those in outer-metro, regional and rural areas.

To support and scale early intervention, Justice Connect recommends prioritising and resourcing the development and ongoing operation of digital tools, which empower more renters to understand their rights and options and take preventative steps to avoid eviction.

Better support and practices in VCAT for family violence matters

Enforcing legal rights through VCAT is a challenging and confronting experience for many family violence victim-survivors. To help improve accessibility and outcomes for renters facing family violence, better support and practices in VCAT need to be implemented. The Royal Commission into Family Violence⁴⁶ recommended that VCAT members receive training and education to ensure that they have adequate expertise in the *Family Violence Protection Act 2008* (Vic) and family violence matters. While much has improved since these recommendations, the complex nature of family violence necessitates an ongoing commitment to continuous education and training for VCAT members and wider staff. Further training will ensure VCAT's interactions with family violence victim-survivors are trauma-informed, and that VCAT's decisions consistently demonstrate an understanding of how family violence may present and impact on renters. The benefits of this approach are seen through the direct feedback below from a family violence support worker during a Justice Connect consultation process for our innovative, codesigned family violence tenancy digital tool, which will be launched in early 2024.

“VCAT can be very inconsistent with their orders – which can be very tricky to get your head around...VCAT cases are difficult and unlike any other forum. I can see why somebody would rather forfeit their rights than go the legal route.”

Family violence victim-survivors also often lack clarity on how their privacy and safety will be considered by VCAT, particularly in relation to the submissions of sensitive evidence. Applications under the family violence provisions of the RTA are only available to victim-survivors, necessitating the submission of evidence of the applicant's experience of violence. This is further evidenced by the below family violence victim-survivor feedback during a Justice Connect consultation about their experience of VCAT without specialised legal and non-legal support.

“I didn't know how much information to put – I didn't want to say too much, because I thought he [family violence perpetrator] was going to get a copy.”

As highlighted by the below feedback from a family violence support worker during a Justice Connect consultation, further consideration and guidance should be provided to victim-survivors to give clarity to how their privacy and safety will be prioritised by VCAT.

“I've spoken to many victim-survivors to use the tenancy laws and go to VCAT to change and end tenancies, but if the perpetrator is a party, there is a whole risk assessment and safety planning to be done there.”

Justice Connect recommends that VCAT adopt a best-practice approach to how party information is used, particularly when a party to a matter is a family violence victim-survivor. Any best practice approach must prioritise renters' safety, to ensure VCAT is an accessible jurisdiction for family violence victim-survivors.

Dedicated family violence staff at VCAT are essential to ensuring victim-survivors are adequately supported to navigate complex tenancy legal processes. VCAT family violence support staff provide invaluable practical and

⁴⁶ Royal Commission into Family Violence, Summary and Recommendations, Recommendation 120 (March 2016) available at: <http://rcfv.archive.royalcommission.vic.gov.au/MediaLibraries/RCFamilyViolence/Reports/Final/RCFV-Summary.pdf>.



empathetic support to victim-survivors, improving renters' access to family violence protections under the RTA. In our work with family violence victim-survivors, we regularly hear that VCAT application forms can be difficult to understand and support can be difficult to access. These challenges are exacerbated for those with low English-speaking or reading ability, low literacy or low digital skills, which risks compromising the safety of some of Victoria's most at-risk renters.

To address these barriers for victim-survivors, Justice Connect recommends increased funding to staff additional dedicated family violence roles are needed to ensure adequate support for all victim-survivors accessing VCAT. This is directly supported by the below family violence victim-survivor feedback during a Justice Connect consultation about their experience of VCAT without specialised legal and non-legal support.

"I was trying to get in contact with the [VCAT] family violence support lady, but she's only one lady, so it felt impossible to reach her."

Make renting safer and more financially sustainable through tailored education for rental providers and real estate agents

When Victorian renters face family violence and financial insecurity, being able to effectively communicate and negotiate with rental providers and real estate agents can be the difference between staying safely housed or being pushed into homelessness. Helping rental providers and real estate agents better understand renters' circumstances and the support available, will help to resolve more disputes in a mutually beneficial way, so more Victorians can avoid the crisis of eviction and stay safely housed.

To make renting safer and more financially sustainable for Victorians, Justice Connect recommends tailored education and training for rental providers and real estate agents, building an understanding of alternatives to eviction for renters experiencing challenging circumstances, particularly family violence victim-survivors, and appropriate pathways for renters to seek legal, financial, social, and other support.

Integrated legal help keeps women and children safely housed

Accessible and tailored legal services are a vital part of a multi-disciplinary response to preventing both homelessness and family violence.⁴⁷ Research indicates that many people experiencing homelessness first turn to non-legal services when they have a legal need,⁴⁸ and usually only seek help from one non-legal professional.⁴⁹ Holistic, integrated services are vital to ensure that both legal and non-legal needs can be collectively addressed.⁵⁰ This streamlined approach means that the needs that have contributed to, and resulted from, their interaction with the justice system are able to be dealt with concurrently, resulting in a more effective resolution.⁵¹

Since 2014, Justice Connect's WHPP has proven highly effective at keeping women and children safely housed through an intensive combination of legal and social work assistance, as seen in Steph's story below.

⁴⁷ Rhonda Phillips and Cameron Parsell, AHURI, *The role of assertive outreach in ending 'rough sleeping'* (Final Report No. 179, January 2012).

⁴⁸ Law & Justice Foundation of New South Wales, *No Home No Justice? The legal needs of homeless people in NSW* (Report, July 2005) 95 (**Law & Justice Foundation – No Home, No Justice**), 26.

⁴⁹ Law Council of Australia, *The Justice Project Final Report – Part 2, Legal Services* (Final Report, August 2018) 4 (**The Justice Project – Legal Services**), 74, available at: <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/People%20who%20are%20Homeless%20%28Part%201%29.pdf>.

⁵⁰ Law & Justice Foundation of New South Wales, *Legal Australia-Wide Survey – Legal Need in Australia* (August 2012) 20 (**Legal Australia-Wide Survey: Legal Need in Australia**), 26, available at: [http://www.lawfoundation.net.au/ljf/site/templates/LAW_AUS/\\$file/LAW_Survey_Australia.pdf](http://www.lawfoundation.net.au/ljf/site/templates/LAW_AUS/$file/LAW_Survey_Australia.pdf); The Justice Project – Legal Services (n 4949).

⁵¹ The Justice Project – Legal Services (n 4949) 78.



Integrated legal supports ensure single-mother and three children can safely avoid homelessness and address fines related to family violence

Steph is a single mother with three young children, who contacted Justice Connect facing eviction into homelessness from her private rental property during COVID-19. Steph's rental had become unsustainable due to a reduction in her income, and she was concerned about losing the care of her children if she entered into homelessness.

Justice Connect's lawyers advised Steph about her tenancy rights and options and connected her with specialised non-legal assistance from Justice Connect's integrated WHPP social worker. The social worker then offered her extensive assistance, including vital emotional support, along with making direct referrals on Steph's behalf with external services, and securing financial brokerage to cover food and other essential needs of Steph and her children. The rapport established in this engagement meant Steph felt able to share concerns she had about the behaviour of her current partner, and for the first time consider that behaviour in the context of family violence.

Through ongoing representation at VCAT, the Justice Connect WHPP lawyers successfully prevented Steph from being evicted into homelessness, which enabled the social worker to connect her with intensive outreach case management through a local service. This meant that Steph had appropriate wrap-around supports in place when she ultimately left the property for a safer and more sustainable, new rental. As part of this process, Justice Connect's social worker sourced extensive financial brokerage towards Steph's removal and storage costs, and advocated for her to receive further brokerage directly from an external service that provided funds for bond and rent-in-advance. The social worker's crucial housing and financial assistance also empowered Steph to continue the conversation she had started about family violence and take her first steps to engaging with ongoing family violence support.

Once Steph and her children were settled in their safe new property, she was also able to begin to address other pressing legal issues, which included an overwhelming number of fines connected to her experiences of family violence. Through integrated assistance from Justice Connect's social worker and lawyers, Steph has been able to address her fines by accessing Fines Victoria's Family Violence Scheme, ensuring that she can move forward with a clean slate.

The WHPP is the only service of its type in Victoria, and the WHPP's specialised, early-intervention model was cited by the Law Council of Australia's Justice Project Final Report as the best practice for successfully preventing and ending homelessness.⁵²

In nine years of the WHPP, we have:

- holistically prevented homelessness for 1,255 women and children through wrap-around legal, housing and social work support;
- of the women assisted, 82% have experienced family violence;
- successfully resolved 83% of legal matters, breaking the links between homelessness, family violence and financial insecurity.

Pitcher Partners prepared a pro bono report that cost the benefit of the WHPP to be 6.3 times the level of investment, suggesting a current cost saving to the government and the wider community of over \$8.2 million.⁵³ Justice Connect calls on the Government to adequately resource embedded, wrap-around legal support for women facing homelessness and family violence, not only for the cost savings but also for the health, well-being and social impacts on family violence victim-survivors and their children.

⁵² Ibid 24, 77-78, available at: <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/People%20who%20are%20Homeless%20%28Part%201%29.pdf>; Law Council of Australia, *The Justice Project Final Report - Part 1, People who are Homeless* (Final Report, August 2018) 4 (**The Justice Project – People who are homeless**), 33, available at: <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/People%20who%20are%20Homeless%20%28Part%201%29.pdf>.

⁵³ 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 (n 4).



Direct client insights about the benefits of WHPP include:

“It’s made a huge difference - I’ve got somewhere to live, otherwise I would’ve been out on the street...Three times the landlord took me to VCAT, and three times it was struck out. Justice Connect are fantastic, I would recommend them to anybody.”

“They really understand women’s homelessness – they really get it, and they’ll fight tooth and nail to make things happen.”

“Justice Connect’s the one organisation that made me start to have hope - once you have hope, then things change...they helped me get my family back on its feet, and now I’m not intimidated as a renter.”

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

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

- a. Clarifying and amending section 91V of the *Residential Tenancies Act 1997* (Vic) to ensure that victim-survivors are protected by family violence provisions, even where a perpetrator is not a party to the tenancy agreement.
- b. Providing more training, support and guidance to VCAT, so that the safety of victim-survivors is prioritised in tenancies affected by family violence, including:
 - Further training for VCAT members and staff on family violence, how it presents, and its impacts on renters who are victim-survivors and their tenancies.
 - Increasing funding to staff additional dedicated VCAT family violence support roles.
 - Adopting a consistent, best practice approach to the use of family violence victim-survivor’s information and evidence in the context of VCAT tenancy proceedings.
- c. Improving education for rental providers and real estate agents, building an understanding of alternatives to eviction for renters experiencing challenging circumstances, particularly family violence victim-survivors, and appropriate pathways for renters to seek legal, financial, social, and other supports.
- d. Increasing education and access to specialised information for renters experiencing or at risk of family violence and family violence service providers, about rental rights and options.

3.3 Stronger protection of rights and more support for public and community housing renters

In addition to strengthening laws to ensure greater housing security, stronger protections for social housing renters need to be established to reduce the risk of vulnerable Victorians being evicted into homelessness. Drawing on over 20 years of frontline service delivery as Victoria's specialist legal service for people facing homelessness, Justice Connect made detailed submissions on this priority area for law, policy and practice-based reform to the Victorian Government's independent Social Housing Regulation Review (SHRR).⁵⁴ We have also made collaborative submissions with the wider renters' assistance sector in relation to the SHRR, which should be seen as complementary to our direct contributions below.⁵⁵

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

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 in relation to eviction. Section 38 of the Charter makes it unlawful for a public authority 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 rental providers 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 rental provider has not properly considered, or acted compatibly with, the renter's rights under the Charter. The Charter provides a helpful framework for these negotiations 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 rental providers (including, for example, the safety or comfort of other renters and reliance on rent revenue); and
- encourages proper consideration of alternatives to eviction.⁵⁶

As seen through Jason's story below, Charter negotiations are often central to stopping homelessness before it starts for Victorian renters and their families.

⁵⁴ Justice Connect, *Making social housing count for all Victorians: Submission on the Social Housing Regulatory Review* (September 2021), n 15.

⁵⁵ Joint renters' assistance sector response, including Justice Connect, to the Interim Report of the Social Housing Regulation Review (February 2022), available at: <https://tenantsvic.org.au/articles/files/submissions/Joint-response-to-SHRR-interim-report-by-CLCs-Feb-2022.pdf>.

⁵⁶ Justice Connect, *Charting a Stronger Course* (n 3030303030).



Wrap-around, human rights-based based advocacy ensures stability for young father experiencing homelessness with mental health issues

Jason is a young man who had experienced several serious assaults at his public housing property. These incidents triggered his Post Traumatic Stress Disorder and pushed him into rough sleeping for over three months due to persistent panic attacks and safety concerns in his own home. While he was sleeping rough, Jason's mental health further deteriorated, and he faced substance dependence issues. This also stopped Jason from being able to regularly host his infant daughter.

When Jason first connected with Justice Connect, DFFH had recently applied to VCAT for a possession order based on alleged rental arrears. Jason had stopped paying his rent due to his traumatic experiences at the property and his deteriorating mental health. After advising Jason about his legal and human rights, Justice Connect's lawyers negotiated with DFFH to secure a temporary absence, including for his time in a rehabilitation facility for his substance dependence. This significantly reduced the rental arrears, and through Justice Connect's lawyers' continued representation, Jason avoided eviction back into homelessness.

During this time, Justice Connect's expert, integrated social worker provided targeted supports to Jason, helping him to overcome the barrier of his illiteracy and apply for a Centrelink Disability Support Pension, along with arranging tailored financial counselling. The Justice Connect social worker and lawyers provided ongoing housing advocacy assistance, including making a priority transfer application and extensively advocating with DFFH based on Jason's complex vulnerabilities, the applicable policies and the Charter. This holistic advocacy resulted in DFFH offering Jason the next available public housing property in his preferred location, allowing him to reunite with his daughter and prioritise his ongoing rehabilitation with local health supports.

However, for renters in community housing, the Charter does not clearly apply⁵⁷ 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 during COVID-19, her community 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, 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.

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

This uncertainty could be rectified by amending the Charter to clarify that community housing providers are public authorities for the purposes of the Charter. To facilitate this, Justice Connect recommends amending s 4 of the

⁵⁷ See *Durney v Unison Housing* [2019] VSC 6.



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.⁵⁸ In the alternative, regulations could be made prescribing a list of community housing providers as public authorities under the Charter.

Community housing providers are expressly recognised as public authorities in several 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'.⁵⁹ 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 of the Australian Capital Territory.⁶⁰

Better dispute resolution mechanisms for all social 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 previously acknowledged by the Victorian Government, confusion can discourage renters from pursuing disputes or add unnecessary time to resolve a dispute.⁶¹ 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.

Based on Justice Connect's experience, the existing accountability mechanisms are unnecessarily narrow. In particular, s 96(2) of the *Housing Act* states that complaints cannot be made to community housing providers or the Housing Registrar about matters that are capable of being referred to VCAT under the RTA. Given the broadness of the RTA, this is theoretically any dispute arising under a tenancy agreement or residency agreement.

It also 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 and disputes about entry to the property) this interpretation gives the Housing Registrar particularly limited jurisdiction to investigate complaints, and in our view, results in the Housing Registrar not performing its statutory complaints function under the *Housing Act*.

Samir's story below 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.

⁵⁸ See Michael Brett Young (n 3030) recommendations 12 and 13.

⁵⁹ *Human Rights Act 2019* (Qld) ss 9(1)(f), 10(3)(b)(vi).

⁶⁰ *Human Rights Act 2004* (ACT) ss 40(1)(g), 40A(3)(b)(vi).

⁶¹ 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**') 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 community housing provider (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 several weeks. When she first engaged with Justice Connect, Samir & 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.

Similarly, while the Housing Appeals office considers complaints on Charter grounds regarding the Department of Fairness, Families and Housing – Homes Victoria (**DFFH**), the Housing Registrar currently refuses to consider complaints on Charter grounds relating to community housing providers. 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 community housing providers.

To resolve these issues, Justice Connect recommends that the Victorian Government consider establishing a single independent complaint handling body to oversee complaints from all community and public housing renters.⁶² Justice Connect's view is that that this body must:

⁶² Justice Connect also collectively made this recommendation through our involvement in the joint renters' assistance sector response to the Interim Report of the Social Housing Regulation Review, n 55555555.



- be independent, including independent government departments that have responsibility for funding social housing;
- have the authority to make decisions that a renter can elect to bind the rental provider, similar to other external dispute resolution bodies, such as the Australian Financial Complaints Authority.
- be available to all public and community housing renters, as a single-entry point dispute resolution body;
- have jurisdiction to consider a wide range of disputes;
- have robust information-sharing mechanisms with the regulator; and
- be guided by a clear purpose, for example, to provide a 'fair, independent and effective dispute resolution service for renters and rental providers.

To ensure effectiveness, this body should take the form of either:

- a new entity, such as a Social Housing Ombudsman or Commissioner; or
- clarification that the Victorian Ombudsman's jurisdiction is expanded to include a broader social housing complaints handling function.

An independent complaints handling body 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.

Fair, consistent, best practice and publicly available policies for community housing providers

As discussed, public and community housing providers play a critical role in providing secure and sustainable housing for people who have complex or specific needs across Victoria. 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.⁶³ However, there remain inconsistencies in organisational housing practices and policies regarding renters' rights.⁶⁴

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

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

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 needs:

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

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

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

⁶³ See 'Victorian Housing Register', DFFH (Web Page, May 2023), available at: <https://services.dffh.vic.gov.au/victorian-housing-register>.

⁶⁴ Term of Reference 3.



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 public and community housing policies and support cannot be understated.

The Victorian Housing Registrar has published guidelines that aim to increase transparency and consistency of community housing policies.⁶⁵ In this context, the Housing Registrar needs to take further opportunities to strengthen accountability measures, including through consistent and transparent internal complaints procedures and more robust and prescriptive performance standards.

David's 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

David is an Aboriginal man, with three young daughters, who had been living in a community housing property. David 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 David first engaged with Justice Connect, his community housing provider (**CHP**) was trying to evict David 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 David and his children. If David 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 the pandemic in Victoria.

Although Justice Connect's lawyers emphasised that David'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 David 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, David eventually decided to voluntarily vacate his rental property. David'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 and after COVID-19.

Additional resources and training for public and community housing providers

Public and community housing providers need to be supported with adequate resources, staff training, access to renter support services and supply of housing stock to allow them to implement and embed clear, consistent and best-practice policies. Justice Connect recommends extending the reach and number of intensive housing-support services, including programs with dedicated social work and health professionals and those closely integrated with specialised legal services. As part of this, trauma-informed social housing options and support should be prioritised for family violence victim-survivors in Victoria.

⁶⁵ Victorian Housing Registrar, *Agency publication of key policies*, available at: <http://www.housingregistrar.vic.gov.au/files/assets/public/publications/guidance-notes/agency-publication-of-key-policies.pdf>



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.

Recommendation 5: Stronger protections and equal rights for all public and community housing renters

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

- a. Supporting all public and community housing providers to develop fair, consistent, best-practice and publicly available policies, which take into account renters' human and legal rights.
- b. Implementing resources, staff training, access to renter support services and supply of appropriate public and community housing stock to embed these policies.
- c. Ensuring that community housing providers are recognised as public authorities for the purposes of the *Charter of Human Rights and Responsibilities Act 2006* (Vic).
- d. Creating an independent appeals and complaints body to oversee complaints from all public and community housing renters.
- e. Extending the reach and number of intensive housing-support services, including programs with dedicated health and social work professionals and those closely integrated with specialised legal services.

3.4 More specialised, early intervention and prevention-focussed integrated and digital legal supports

Early intervention and prevention-focussed approaches are key to stopping homelessness before it starts for Victorians. Justice Connect's client and service delivery-based insights confirm that housing security for many community members can be addressed if the underlying issues are addressed early through specialised legal and non-legal supports.

People facing housing insecurity often experience complex personal, health and financial circumstances, which require more intensive and multi-disciplinary support. For this reason, Justice Connect delivers prevention-focussed, holistic legal services for specific cohorts who are at higher risk of homelessness, such as our Women's Homelessness Prevention Project, which keeps Victorian women and children safely housed.

Co-designed, user-centred digital tools and resources can also provide early access to customised legal help, practical information, financial aid, self-help resources and other proactive supports to prevent evictions and improve housing security. Importantly, these digital tools offer one-to-many supports at scale, with significant potential to reach more people across Victoria, including people in outer-metro, regional and rural areas.

Investment in digital tools and targeted information can be seen as complementary to the provision of high intensity, integrated legal and social work supports for Victorians with the most complex needs, who directly benefit from wrap-around legal, housing, financial, social and health supports to avoid homelessness.



Prioritising client-centred, integrated legal services

Client-centred, integrated legal services are a vital part of a multi-disciplinary service response for Victorians, particularly community members with complex needs, to successfully access or maintain secure housing. Holistic services are key to ensuring 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 needs to stop future legal needs from occurring, as seen through Mary's story below.

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

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 COVID-19.

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 DFFH 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, coordinated 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 and GreenLight;
- Homeless Persons' Liaison Officer 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 – keeping women and children safely housed through integrated legal and social work assistance. Pitcher Partners prepared a pro bono report that cost the benefit of the WHPP to be 6.3 times the level of investment, with a current cost saving to the government and wider-community of over \$8.2 million.⁶⁶

Customised, intensive 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 avoid homelessness.

⁶⁶ Estimated annual cost to government services of an individual experiencing homelessness is \$29,450 higher than for the rest of the Australian population: see Kaylene Zaretzky and Paul Flatau (n 4).

Targeted, proactive information from practice-based learnings supports at-risk renters to better understand and access supports

Practice-based evidence from specialised, integrated legal services can also lead to the development of targeted, proactive information for Victorians facing homelessness.

This is highlighted by Justice Connect's current pilot with the Melbourne East Region of Victoria Police, which is aimed at supporting renters to better understand their options and access key supports when a warrant of possession has been purchased and is pending execution by police. In particular, police are providing renters with a best-practice information sheet (see **Annexure 2**), which has been collaboratively developed by Justice Connect. The information sheet directs renters to Victoria's central crisis housing support helpline, to Victoria Legal Aid's legal helpline, and to Lifeline.

Initial feedback from the pilot has been positive, with renters indicating to police they were grateful for the information and that they would contact the identified services. Justice Connect has also been working with VCAT around options to provide more information to renters in the context of possession warrants, which has contributed to VCAT now delivering key information through a regular email process.

Justice Connect sees the impactful potential in continuing and expanding on this pilot, so more Victorian renters at risk of homelessness to access priority supports earlier, along with wider opportunities to draw on client and casework insights from the renters' assistance sector to equip Victorian renters with priority information.

Scaling homelessness prevention through digital self-help tools

Demand from Victorians seeking free tenancy legal assistance has increased significantly throughout COVID-19 and the continuing 'recovery phase'. To meet this increasing need within the community, Justice Connect scaled the reach and impact of our homelessness prevention work through co-designed, innovative digital tools and resources, such as Dear Landlord. These digital tools directly complement our intensive, integrated legal and social work services for people facing homelessness who have the most complex needs.

First launched in 2018, Dear Landlord is Justice Connect's award-winning free digital, self-help tool that support Victorian renters to avoid eviction for falling behind in rent. Dear Landlord was responsively updated due to COVID-19, ensuring renters had access to timely and trusted help, so they knew their rights and options and could take earlier, proactive steps to stay securely housed. This included directly empowering renters who were seeking a rent reduction, proposing a manageable payment plan, or navigating Victoria's extensive new tenancy reforms, along with offering tailored pathways to additional legal and financial support.

Early access to information, financial aid, self-help resources, legal advice and support can prevent eviction and housing debt for both renters and rental providers, as seen through the feedback from a Dear Landlord help-seeker below.

"I feel more confident having had them show me what's possible, I am financially better off, I am mentally better off, I had a huge weight lifted and in the process of doing so, I found housing."

Since COVID-19 started, over 84,000 renters have used Dear Landlord to avoid eviction. User data and analytics from this period provide insight into the rising housing insecurity being experienced by Victorians. Rent arrears remains the most common reason Victoria renters face eviction into homelessness. Of the tens of thousands of Dear Landlord users, the average amount of rent arrears has been \$2,580, particularly caused by a growing intersection between housing insecurity, family violence and financial stress for many renters.

Building on these learnings, Justice Connect is currently taking a human-centred design approach to developing a new digital tool, which will proactively help renters who are experiencing or at risk of family violence to better understand and exercise their legal rights under Victoria's new rental laws. This new digital tool will further extend Justice Connect's reach to ensure that more renters facing or rebuilding from family violence, particularly women and their children, can get the legal and non-legal help they need to safely avoid homelessness.

To support and scale early intervention, Justice Connect recommends prioritising and resourcing the development and ongoing operation of digital tools, which empower more renters to understand their rights and options and take preventative steps to avoid eviction.

Invest in ongoing financial brokerage and rent relief grants

Ongoing housing and cost of living pressures are placing more Victorians at risk of eviction, with rising financial insecurity causing many renters to fall behind in rent. One-off, unexpected costs can place renters and their families at risk of eviction from an otherwise sustainable tenancy.

As discussed, user feedback and data insights from Dear Landlord have shown that many Victorians in rent arrears only owe contextually small amounts. This is supported by Mia's story below, which demonstrates the real difference that access to financial brokerage and rent relief grants can make for renters in our community.

As discussed, user feedback and data insights from Justice Connect's Dear Landlord have shown that many renters behind in rent owe less than \$3000. With a contextually small amount of financial support, many Victorians can make manageable payment arrangements to address the rental arrears and maintain their housing. Financial brokerage and one-off rent relief grants are essential supports for people experiencing financial insecurity to maintain or access stable housing, avoiding the additional risk of homelessness, as demonstrated by Mia's story below.

Family violence victim-survivor and three children keep their safe private rental property through wrap-around legal supports

Mia is a single mother and family violence victim-survivor, living with her three dependent children in a private rental property. Mia has experienced family violence perpetrated by her ex-partner, and has diagnosed complex Post Traumatic Stress Disorder, anxiety and depression. Mia is also the sole carer for her son who has significant physical health issues.

When Mia first spoke with Justice Connect, she had received a Notice to Vacate for falling behind in rent, and she was concerned about being evicted into homelessness. Mia had to stop working as her ex-partner found her place of employment. Without employment, Mia had been struggling to cover her family's essential living costs, and she had been unable to make her rent payments.

Justice Connect's lawyers advised Mia about her legal rights, and represented her at VCAT, where they successfully advocated for a manageable payment plan with a lump sum payment. Justice Connect's integrated social worker sourced \$750 in crucial financial brokerage, which addressed the lump sum payment.

Due to Justice Connect's integrated legal supports, Mia and her children have been able to sustain their safe private rental property, avoiding the crisis of eviction. This essential financial and housing security has enabled Mia to prioritise the health and wellbeing of herself and her young family, and proactively return to the workforce.

Rent relief programs are also effective in addressing acute housing affordability pressures. As suggested, many renters who sought help from Dear Landlord had less than \$3,000 in arrears, often caused by unexpected health, financial, or family costs. However, only 25% of the renters seeking assistance through Dear Landlord were eligible for the Victorian Government's COVID-19 rent relief grant, which highlights that any rent relief programs need to be as flexible and accessible as possible for community members facing housing and financial stress.

Justice Connect recommends reintroducing ongoing Rent Relief Grants, and increasing ongoing financial brokerage programs for those most at risk of homelessness, including women and children facing family violence, people who have experienced prison, and people who have slept rough.

Recommendation 6: Increase availability of early intervention, prevention-focussed integrated and digital legal supports

Preventative, integrated legal services are key to ensuring that all Victorians, particularly community members with complex needs, can avoid homelessness. Justice Connect recommends:

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

To provide better access to early intervention information and to customised, proactive supports, which keep more people safely housed across Victoria, Justice Connect recommends:

- c. Prioritising and resourcing the development and ongoing operation of digital tools, which empower more renters to understand their rights and options and take preventative steps to avoid eviction.
- d. Reintroducing ongoing rent relief grants, and increasing ongoing financial brokerage programs for those most at risk of homelessness, including women and children facing family violence, people who have experienced prison, and people who have slept rough.

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

Briefing Paper:

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

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

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

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

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

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

These concerns are creating significant issues within the RT List.

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

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

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

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

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

What are the main concerns?

1. *Lack of consistency and predictability*

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

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

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

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

2. *Inaccessible appeal rights*

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

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

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

3. *Insufficient oversight of decision-making*

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

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

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

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

How would an internal appeals division address these concerns?

1. *More consistent decision-making*

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

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

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

2. Greater accessibility

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

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

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

3. Greater oversight of decision-making

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

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

What could an internal appeals division look like?

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

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

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

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



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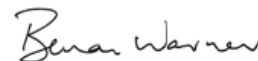
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Annexure 2 – Information sheet for renters facing warrants of possession (2022-23)

You are being evicted

Act now to seek help with alternative housing or get advice on your legal rights.

Your rental provider has a warrant of possession from the Victorian Civil and Administrative Tribunal (VCAT).

The police can now make you leave this property.

The police will tell you when you need to leave. This may be immediately or they may return (usually within 14 days).

If you need help with **crisis or emergency housing:**

1800 825 955

24-hour, state-wide, toll-free

If you need help to understand your **legal rights:**

Victoria Legal Aid

1300 792 387

Monday to Friday 8am -6pm

If you need **someone to talk to:**

Lifeline

13 11 14

24-hour Crisis Support

