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Legislative Council - Legal and Social Issues Committee  
Parliament of Victoria  
Parliament House, Spring Street  
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By email to: [homelessnessinquiry@parliament.vic.gov.au](mailto:homelessnessinquiry@parliament.vic.gov.au)

31 January 2020

Dear Chair of the Legislative Council - Legal and Social Issues Committee,

## **SUBMISSION TO THE INQUIRY INTO HOMELESSNESS IN VICTORIA**

### **About Inner Melbourne Community Legal**

Inner Melbourne Community Legal (IMCL) is an independent community legal centre (CLC) working for social purpose. Since 1978, we have served the inner Melbourne area.

We are a small but dedicated team of lawyers, administrative and project staff supported by volunteer law students and pro bono corporate partners. Our lawyers are experts in community law.

We are funded by government grants and donations.

### **Who we help**

People experiencing chronic disadvantage (such as homelessness, mental illness or low literacy) are more likely to experience a cluster of legal and non-legal issues. This can result in more frequent interaction with the justice system, which has an effect on their wellbeing and ability to achieve stability. We aim to minimise this impact.

Adverse circumstances in a person's life (such as ill health, relationship breakdown or unemployment), can put them in an acutely vulnerable position and trigger legal issues, putting them at further risk of longer-term, entrenched disadvantage. We aim to break this cycle.

For our clients, legal issues often do not occur in isolation, but are inter-related with other non-legal issues. We work holistically and tailor solutions to achieve sustained outcomes for our clients.

## **How we work**

We provide free legal help in the form of information, advice, casework and representation. We provide help in our office and through integrated outreach services to reach people who face barriers in accessing help. By reaching people earlier with their legal issues, we prevent problems from escalating.

We work in partnership with other community organisations that are committed to improving community health and wellbeing. Together we strengthen the impact of each other's work. Our partnerships include homelessness services, hospitals, community health services and maternal and child health services.

We are informed by our work with clients and community partners. Through our casework, we identify systemic issues and work with others to come up with solutions and influence decision makers.

To make sure we are effective in what we do, we continually monitor and evaluate our work.

## **Our legal outreach partners**

- Ozanam House – VincentCare Victoria
- The Royal Melbourne Hospital
- The Royal Women's Hospital
- Peter MacCallum Cancer Centre
- Inner-West Police and Clinician Emergency Response (PACER)
- City of Melbourne – Family Services
- Carlton Housing Estate – Carlton Neighbourhood Learning Centre
- North Melbourne Language & Learning
- Flagstaff Accommodation – The Salvation Army
- St Joseph's Flexible Learning Centre – North Melbourne – Youth Plus.
- The River Nile School – North Melbourne

Our lawyers also provide a duty lawyer service twice per week in Family Violence Intervention Order matters at Melbourne Magistrates' Court.

## **Our work with people experiencing homelessness**

People who are experiencing homelessness are highly vulnerable to experiencing adverse legal issues and are more prone to interaction with the legal system. The laws enforced in society often discriminate against, and target those who are experiencing homelessness.

Knowing this, our services target individuals who are experiencing or are at risk of homelessness, with 26% of our clients for the 2018/19 financial year either at risk of or experiencing homelessness. IMCL seeks to provide effective and timely legal assistance to people experiencing or facing homelessness due to eviction, as well as other social and health reasons.

## EXECUTIVE SUMMARY

With the public housing waitlist ballooning, the increasing unaffordability of rental housing for people on low incomes, and consistently growing numbers of people sleeping rough in inner-city Melbourne, the issues of housing and homelessness have reached a crisis point in Victoria.

Public and social housing is the option of last resort for many Victorians experiencing financial disadvantage, marginalisation and chronic mental and physical health issues. Public housing provides tenants with a higher level of security and is currently a preferable form of housing compared to housing provided through Community Housing Providers (CHPs).

IMCL strongly opposes the Public Housing Renewal Program (PHRP) initiative of the Victorian Government. The PHRP will only marginally increase the number of publicly owned homes but will in fact will reduce the overall capacity to house people on these redeveloped estates. Further, the Victorian government is transferring management of these estates to CHPs which will significantly reduce the rights of tenants in these properties.

The prevention of evictions, particularly from community and government housing, is a key priority in the prevention of homelessness. Chronic shortages of affordable housing for people on a low income mean that the eviction of tenants reliant on a government benefit are highly likely to result in homelessness.

There are a number of other factors that contribute to homelessness, including mental illness, family violence, gender inequality, socio-economic disadvantage and reduced access to income support. The functioning of Victoria's mental health, police and emergency services, can be dramatically improved to reduce the amount of people becoming homeless. Particularly, as it is more likely than not that people experiencing homelessness will have some form of interaction with the criminal justice system and subsequently, Victoria's fines system. Instead of providing the appropriate housing, social and health supports needed, Victoria currently exercises enforcement-based laws which seek to discriminate against people experiencing homelessness. Large scale reforms are needed to the criminal justice and fines systems to ensure that the Victorian government's funds and resources are being utilised in the most appropriate manner when dealing with people experiencing homelessness.

Unsuitable accommodation and unsafe environments are tangible barriers that restrict parents experiencing homelessness from contact with their children. Without adequate housing, parents are often unable to maintain, retain or re-establish care of their children. Housing is essential in demonstrating to DHHS and the Family Courts that a parent is able to have increased contact with their children or have them return to live with them.

Given the intersection between homelessness, criminal offending, family violence and mental health, proper co-ordinated reforms across a number of different areas are needed to provide a whole of system response.

Urgent action is required to address the homelessness crisis in Victoria. Large scale investment in public housing is desperately needed, and the PHRP initiative needs to be scrapped. We urge the Victorian State Government to take this opportunity to investigate and invest in much needed reforms to protect our most vulnerable Victorians.

## SUMMARY OF IMCL RECOMMENDATIONS

To address a large number of issues in relation homelessness within Victoria, IMCL recommends:

### **IMPROVING HOUSING ACCESSIBILITY AND SECURITY: PREVENTING HOMELESSNESS AT ITS ROOTS**

1. Undertake large scale investment in public housing to enable rapid expansion of housing stock, owned and managed by the DHHS to meet demand - current and future.
2. No further sale of public land to private developers or further transfer of titles and/or management of housing to Community Housing Providers.

### **PREVENTING EVICTIONS SO PEOPLE DON'T FALL INTO HOMELESSNESS**

3. Strengthen and implement safeguards to prevent evictions, such as provision of appropriate legal representation and integrated health and welfare services.
4. Align the internal policies of DHHS and CHPs so that all tenants are treated equally, with CHPs required to use eviction only as a last resort.
5. CHPs must be clearly bound by the *Charter of Human Rights and Responsibilities Act 2006* (Vic) by amending s 4(1)(c) of the Charter to explicitly include CHPs as functional public authorities under that Act.
6. CHPs must be subject to effective accountability and enforcement mechanisms so that protections for tenants can be exercised in practice.

### **IMPROVED MENTAL HEALTH RESPONSES**

7. Safeguards must be implemented to prevent people experiencing mental illness being discharged into homelessness.
8. Funding must be provided for independent support services to assist tenants/residents experiencing mental illness who are displaying complex behaviours and a requirement that CHPs must refer to them before pursuing compliance and eviction proceedings in the first instance.
9. CHPs must have fair and reasonable policies around anti-social behaviour, which requires a focus on providing support and engaging in mediation before VCAT compliance orders are pursued.
10. Social housing providers (both public and community housing) need to adopt policies not to seek compliance orders without time limits, and only seek orders which are reasonable and able to be complied with by the tenant/resident.



### **HOMELESSNESS CAUSED BY FAMILY VIOLENCE INTERVENTION**

11. Provide rapid rehousing to individuals fleeing family violence so that they can build a stable future around secure housing.
12. Increase support and funding to family violence support services to address short and long-term housing needs of people experiencing family violence.
13. Work with the Commonwealth Government to secure changes to the social security system, to enable all vulnerable people experiencing family violence to access income support, no matter what their visa status is.
14. Amend Office of Housing policies that restrict applications for housing by people because of their citizenship or resident status.
15. Victoria Police develop clear policies and procedures around managing circumstances where the victim of family violence has been misidentified as the respondent at the initial point of police intervention.
16. Ensure that police members and police prosecutors are trained and informed around appropriate actions to be taken in relation to the misidentification of the primary perpetrators of family violence.
17. Provide appropriate housing for respondents that are excluded from properties due to police intervention.

### **MENTAL HEALTH, FAMILY VIOLENCE AND POLICE RESPONSES**

18. Employ mental health triage workers at Magistrates' Courts to assist Police and Magistrates to make interim risk and mental health assessments.
19. Provide further resourcing, evaluation and extension to rapid Mental Health and Police Response teams to ensure more people in mental health crisis have access to a health-based crisis response.

### **REFORMS TO THE *SUMMARY OFFENCES ACT 1966 (VIC)***

20. Decriminalise begging so that people experiencing homelessness are not disproportionately affected by unjust laws.
21. Shift funding from the enforcement of begging offences to other forms of holistic and constructive interventions.
22. If not decriminalised entirely, reduce the maximum penalty for begging offences to reflect current public opinion in relation to this type of offending.

23. Decriminalise Drunk in Public offences. Victoria is currently the only Australian State to maintain such laws.
24. Shift funding from police enforcement of Drunk in Public offences to other forms of holistic and constructive interventions.
25. Reform move-on laws to address the power imbalance that exists between marginalised public space users and Victoria Police members.
26. Implement a statutory defence of reasonable excuse to allow marginalised public space users to defend their charge on the basis that their behaviour was directly related to factors outside their control.

### **HOMELESS PERSONS COURT**

27. Divert people experiencing homelessness out of the criminal justice system and provide people with health and social interventions over criminal interventions.
28. Establish a specialist court list for people experiencing homelessness to provide appropriate supports that address issues underlying low-level public space offending behaviour.
29. Provide a specialist court list for people experiencing homelessness with the power to discharge matters from its list at any time.

### **SPENT CONVICTION SCHEME**

30. Establish a spent conviction scheme to limit the impact of the criminal justice system on people that have become involved in the court system, due to their experience with homelessness.

### **BAIL CONDITIONS**

31. Prohibit Victoria Police members from granting bail with conditions that exclude people from public spaces, due to the risk that this will also exclude them from their social, housing and health services.
32. Increase housing for people experiencing homelessness who enter the criminal justice system and remain on remand due to a lack of secure housing.

### **INFRINGEMENTS AND HOMELESSNESS**

33. Undertake appropriate evaluation and economic research to determine if there is any economic argument in support of pursuing infringement debts against people experiencing homelessness, alcohol or drug dependency, mental illness, intellectual disabilities or acquired brain injuries.

### **REDUCED THRESHOLD TO PROVE HOMELESSNESS**

- 34. Reduce or abolish the criteria to meet the threshold of 'homeless' as a 'special circumstance' to mitigate the strain on vulnerable individuals.
- 35. Reduce or abolish the 'nexus' requirement for all special circumstances applications.

### **REINSTATE THE SPECIAL CIRCUMSTANCES LIST**

- 36. Legislate for the reinstatement of the Special Circumstances List at Melbourne Magistrates' Court and expand the Special Circumstances List as smaller lists sitting at a larger number of Magistrates' Courts across Victoria.

### **PROPORTIONAL INFRINGEMENTS SYSTEM**

- 37. Undertake large scale reforms to the infringements system whereby the penalty imposed is proportionate to an individual's income level.
- 38. In the meantime, introduce a set fixed reduction system to allow people experiencing special circumstances and financial hardship to access a concession reduction on their outstanding infringements.

### **ADDRESSING HOMELESSNESS AND THE FAMILY LAW SYSTEM**

- 39. Increase housing support for separated families, including further resourcing for Department of Health and Human Services to assist parents and children to access housing when child protection is involved.
- 40. Increase housing support for separated families at the Family Law Courts.

## SUBMISSION TO THE INQUIRY INTO HOMELESSNESS IN VICTORIA

### 1. HOMELESSNESS IN VICTORIA

With the public housing waitlist ballooning to more than 82,000 people, the increasing unaffordability of rental housing for people on low incomes, and consistently high numbers of people sleeping rough growing in inner-city Melbourne, the issue of housing and homelessness has reached a crisis point in Victoria.

The widely accepted definition of homelessness in Australia, used by the Australian Bureau of Statistics,<sup>1</sup> is when a person does not have *suitable* accommodation alternatives. People would be considered homeless if their current living arrangements are in:

- a dwelling that is inadequate; or
- a dwelling where there is no tenure over it, or if their initial tenure is short and not extendable; or
- a dwelling where a person does not have control, and access to space for social relations.<sup>2</sup>

This definition sees homelessness as about more than not having a roof over one's head. It leads to six categories of living situations in which the person is considered to be homeless:

1. Persons living in improvised dwellings, tents or sleeping out;
  - a. Persons sleeping out; or
  - b. Persons living in improvised dwellings or tents.
2. Persons living in short term supported accommodation for the homeless;
3. Persons staying temporarily with other households;
  - a. Persons staying temporarily with friends and relatives; or
  - b. Persons staying temporarily in visitor only households.
4. Persons living in boarding houses;

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<sup>1</sup> Australian Bureau of Statistics, 'Census of Population and Housing: Estimating Homelessness, 2016' (2018) <<https://www.abs.gov.au/Ausstats/abs@.nsf/Latestproducts/2049.0Appendix12016?opendocument&tabname=Notes&prodno=2049.0&issue=2016&num=&view>>.

<sup>2</sup> Australian Bureau of Statistics, 'Information paper – A Statistical definition of Homelessness' (2012) <<https://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4922.0Main%20Features22012?opendocument&tabn>>.

5. Persons living temporarily in other lodgings; and

6. Persons living in severely crowded dwellings.

This definition does not include people who are at risk of homelessness or who are in housing situations that put them at risk of homelessness. This means that it does not necessarily include people who are living in unsafe situations due to domestic and family violence.<sup>3</sup>

The right to adequate and safe housing is a basic human right, which the Victorian government has a key role in addressing.<sup>4</sup> Article 11 of the United Nations International Covenant on Economic, Social and Cultural Rights treaty recognizes the basic human right to ‘an adequate standard of living... including adequate food, clothing, and housing and to the continuous improvement of living conditions’.<sup>5</sup> Australia became a signatory to this treaty in 1972 with ratification completed by 1975.<sup>6</sup> Access to adequate housing is a fundamental step in promoting a safe and inclusive community which acknowledges the right for everyone to be housed.

As of the 2016 Census, 116,427 people were experiencing homelessness across Australia. Approximately, 25,000 of these people were Victorians who were either homeless or living in severely overcrowded settings.<sup>7</sup> This included people who were living on the streets, moving between various forms of temporary shelter and crisis accommodation, or living in crowded boarding houses without their own bathroom, kitchen or security of tenure.

In Victoria, homelessness is not a transient or temporary state for people. People who experience episodes of homelessness will often spend long periods of time “trapped” in homeless settings, albeit moving from one venue to another. Research has shown that less than 10% of persons experiencing homelessness report being so for less than 3 months. While almost 50% report homelessness of longer than 1 year.<sup>8</sup>

Among the cohort of people experiencing homelessness, those with severe persistent mental illness are even more likely to be chronically homeless. For example, the proportion of time men experiencing homelessness with psychosis spent homeless in the previous 12 months was 48% in 1999, 58% in 2004 and 74% in 2018.<sup>9</sup>

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<sup>3</sup> Mission Australia ‘*Out of the Shadows: Domestic and Family Violence: a leading cause of homelessness in Australia*’ (2019) <<https://www.missionaustralia.com.au/publications/position-statements/out-of-the-shadows/911-out-of-the-shadows-domestic-and-family-violence-a-leading-cause-of-homelessness-in-australia/file>>.

<sup>4</sup> North and West Homelessness Networks, ‘Human Rights – Housing & Homelessness’ <<http://www.nwhn.net.au/Human-Rights---Housing-Homelessness.aspx>>

<sup>5</sup> United Nations Human Rights Office of the High Commissioner, International Covenant on Economic, Social and Cultural Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 <<https://www.ohchr.org/en/professionalinterest/pages/ceschr.aspx>>

<sup>6</sup> United Nations Human Rights Office of the High Commissioner, UN Treaty Body Database, 29 January 2020 <[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=En&CountryID=9](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=En&CountryID=9)>

<sup>7</sup> Australian Bureau of Statistics, ‘Census of Population and Housing: Estimating Homelessness 2016’ (2018) <<https://www.abs.gov.au/ausstats/abs@.nsf/mf/2049.0>>.

<sup>8</sup> Andrew Bevitt et al, ‘Journey Home Research Report No. 6 Complete Findings from Waves 1 to 6’, *The University of Melbourne Faculty of Business and Economics* (2015) 115 <[https://melbourneinstitute.unimelb.edu.au/\\_data/assets/pdf\\_file/0007/2202865/Scutella\\_et\\_al\\_Journeys\\_Home\\_Research\\_Report\\_W6.pdf](https://melbourneinstitute.unimelb.edu.au/_data/assets/pdf_file/0007/2202865/Scutella_et_al_Journeys_Home_Research_Report_W6.pdf)>.

<sup>9</sup> Alfred and Melbourne Health, ‘Homeless Outreach Psychiatric Services’, *Submission to the Royal Commission into Victoria’s Mental Health System Severe Mental Illness and Homelessness* (May 2019) 11 <<https://s3.ap-southeast->

While historically the predominant population of homeless people have been viewed as older males, often experiencing mental illness or drug and alcohol dependency, increasingly other cohorts are experiencing high levels of homelessness. This includes single women and women with children escaping family violence, youth, Aboriginal people, and refugees without access to Commonwealth programs such as Medicare and Centrelink.

## 2. PREVENTING HOMELESSNESS

### A. Improving housing accessibility and security: Preventing homelessness at its roots

Public and social housing is the option of last resort for many Victorians experiencing financial disadvantage, marginalisation and chronic mental and physical health issues. For many of IMCL's clients, public housing has provided security and safety following previous lived experiences of homelessness, family violence and trauma.

The redevelopment and sale of public housing currently underway in Victoria has occurred alongside growing unaffordability of private rental and ownership markets.<sup>10</sup> These factors are reflected in marked increases in the waiting lists for public housing. At March 2018, there were 57,877 adults and 24,622 children on the Victorian Housing Register. Given that these numbers are increasing by approximately 1,500 every three months, the current figure is likely to be significantly higher.<sup>11</sup>

For those in receipt of a government pension, public housing – which limits rent charges to 25% of income – may be the only viable housing option, especially for those who require multiple bedrooms. However, the supply of public housing is vastly inadequate to meet current demand. This must be recognised as a core contributing factor to the current state of homelessness in Victoria.

IMCL has strongly opposed the Public Housing Renewal Program (PHRP) initiative of the Victorian Government<sup>12</sup>, which plans to use the proceeds of the sale of land from 11 publically-owned estates to fund the development of new housing on a portion of that land. The PHRP will only marginally increase the number of publicly owned homes on those estates; the homes will

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[2.amazonaws.com/hdp.au.prod.app.vic.rcvmhs.files/5615/6591/2098/Homeless\\_Outreach\\_Psychiatric\\_Services\\_Alfred\\_Health\\_and\\_Melbourne\\_Health.pdf](https://2.amazonaws.com/hdp.au.prod.app.vic.rcvmhs.files/5615/6591/2098/Homeless_Outreach_Psychiatric_Services_Alfred_Health_and_Melbourne_Health.pdf).

<sup>10</sup> SGS Economics and Planning, *Rental Affordability Index: Key Findings* (November 2018),

[https://www.sgsep.com.au/assets/main/SGS-Economics-and-Planning\\_RAI\\_Nov\\_2018\\_-\\_high\\_quality.pdf](https://www.sgsep.com.au/assets/main/SGS-Economics-and-Planning_RAI_Nov_2018_-_high_quality.pdf).

<sup>11</sup> Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into the Public Housing Renewal Program* (2018)

xi [https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Public\\_Housing\\_Renewal\\_Program/LSIC\\_58-11\\_PHRP\\_Text\\_WEB.pdf](https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Public_Housing_Renewal_Program/LSIC_58-11_PHRP_Text_WEB.pdf).

<sup>12</sup> See:

- <https://imcl.org.au/assets/downloads/submissions/Abbotsford%20St%20signed%202017.10.16.pdf>,
- <https://imcl.org.au/news/housing/duplicate-of-submission-to-the-social-housing-renewal-standing-advisory-committee-at-planning-panels-victoria>
- <https://imcl.org.au/news/housing/duplicate-of-abbotsford-st-public-housing-redevelopment-%E2%80%93-fact-sheet>
- <https://imcl.org.au/news/housing/duplicate-of-imcl-lawyer-molly-williams-and-client-les-speak-to-the-age-about-the-human-side-of-the-public-housing-renewal-program>
- <https://imcl.org.au/news/housing/imcl-on-abc-radio-nationals-law-report-program>
- <https://imcl.org.au/news/housing/imcl-on-3cr-community-radio-done-by-law-program>
- <https://imcl.org.au/news/housing/public-housing-renewal-project>



be smaller and have capacity to house less people than previously, while the majority of the land will be lost to private ownership.

All tenancy management of the publicly owned homes in the PHRP will be transferred to Community Housing Providers (CHPs).<sup>13</sup> The PHRP reflects a continued government policy shift away from the provision and management of housing by the State, and a reluctance to make adequate stand-alone investment into public housing. Victoria's spending per person on social (public and community) housing is the lowest of all the states and territories, less than half the national average.<sup>14</sup>

The transfer of management of public homes to CHPs does not grow the overall capacity of the social housing sector to house Victorian tenants and serves only to outsource the management of housing, which occurs at the expense of tenants' rights. This is particularly problematic because discrepancies in policies, combined with weaker enforcement mechanisms, mean that tenants in homes managed by CHPs have fewer rights (as set out below) than those in public homes managed by the Department of Health and Human Services (DHHS).<sup>15</sup> An increase in the provision of DHHS owned and managed homes would ensure greater access to affordable and sustainable tenancies; a transfer of management or title of government owned homes to CHPs, or incentivisation for growth in that sector, cannot be seen as a substitute for this.

### **Recommendation:**

1. Undertake large scale investment in public housing to enable rapid expansion of housing stock, owned and managed by the DHHS to meet demand - current and future.
2. No further sale of public land to private developers or further transfer of titles and/or management of housing to Community Housing Providers.

## **B. Preventing evictions so people don't fall into homelessness**

The number of tenants facing eviction has soared over the past five years. According to the Australian Institute of Welfare, over 43,751 people presented at Victorian homelessness services due to eviction in the 2016-17 financial year, more than double the figure in 2011-12.<sup>16</sup> Though there is little data kept on reasons for evictions, we can assume that many of

<sup>13</sup>RMIT Centre for Urban Research, 'Understanding the Assumptions and Impacts of the Victorian Public Housing Renewal Program' (May 2019) <<https://cur.org.au/cms/wp-content/uploads/2019/05/understanding-the-impacts-of-phrp-final-5-6-19.pdf>>.

<sup>14</sup>Productivity Commission, *Report on Government Services* (January 2019) <<https://www.pc.gov.au/research/ongoing/report-on-government-services/2019/housing-and-homelessness>>.

<sup>15</sup>Stephanie Price and Louisa Bassini, *Comparison Between DHHS and Housing First Policies* (July 2019) Unpublished Document.

<sup>16</sup>Australian Institute of Health and Welfare, *Specialist Homelessness Services Annual Report 2017-18* (February 2019) <<https://www.aihw.gov.au/reports/homelessness-services/specialist-homelessness-services-2017-18/contents/clients-services-and-outcomes>>.

these occur due to rental arrears, as the rise in evictions correlates with a rise in housing affordability stress for those on low incomes.<sup>17</sup>

Evictions also occur for a range of other reasons, not related to rental arrears. For example, a tenant may engage in prohibited conduct, or they may be absent for a period of time due to imprisonment, alcohol and other drug rehabilitation treatment, hospital admission or an unsafe home. The context for such evictions can often be characterised by crises related to the tenant's mental or physical health, or instances of family violence. The loss of one's housing at a time of such a crisis can have a cascading effect on the health and social problems that led to the eviction and can further obstruct the potential for recovery from the crisis. Adequate health and welfare services are therefore integral to the capacity of tenants to sustain their tenancies.

The response taken by a person's landlord to the mental, physical, or social problems that they are experiencing can also be pivotal in determining whether the behaviour will result in their eviction into homelessness. This may be entirely discretionary (within the bounds imposed by the law), as in the private rental market, or it may be shaped by the various policies and guidelines of the landlord, as in community and public housing tenancies.

Public housing provides a security of tenure and protection against unfair evictions not afforded by the private rental market or community housing. DHHS commits to only use eviction proceedings in its tenancy management as a mechanism of last resort.<sup>18</sup> This means that tenancies in public housing are more sustainable and less likely to result in eviction than private or community tenancies, where no such commitment is made. Policy differences that exist in other areas between community and public tenancies can also have a significant impact on the capacity of the person to recover from a crisis. For example, DHHS allows a period of temporary absence of up to 6 months (or longer where a tenant has special circumstances) with rent reduced to \$15 per week, whereas CHPs generally do not allow periods of temporary absence.<sup>19</sup> This prevents tenants from being able to undergo alcohol and other drug rehabilitation or have a hospital admission without the risk of losing their tenancy.

Similarly, where a landlord seeks to use eviction, or the threat of it (as with the use of compliance orders), to resolve behavioural problems, this can have a devastating impact on the individual and does not resolve the underlying social issues causing such behaviour. When tenants exhibiting problematic behaviours are evicted, they are at best shifted to another tenancy and at worst, find themselves homeless. In both cases, the crisis they are experiencing is likely to be aggravated and recovery made more difficult.<sup>20</sup>

Evictions can also occur through no fault of the tenant but simply due to the desires of the landlord. An example of this is in circumstances where 'end of fixed term' notices to vacate are

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<sup>17</sup> SGS Economics and Planning, *Rental Affordability Index: Key Findings* (November 2018)

<[https://www.sgsep.com.au/assets/main/SGS-Economics-and-Planning\\_RAI\\_Nov\\_2018\\_-\\_high\\_quality.pdf](https://www.sgsep.com.au/assets/main/SGS-Economics-and-Planning_RAI_Nov_2018_-_high_quality.pdf)>

<sup>18</sup> Department of Health and Human Services, *Tenancy Management Manual, Chapter 1 – Arrears* (October 2017)

<<https://providers.dhhs.vic.gov.au/tenancy-management-manual>>.

<sup>19</sup> Victorian Department of Health and Human Services, *Temporary Absence Operational Guidelines* (September 2018)

<<https://providers.dhhs.vic.gov.au/tenancy-management-manual-temporary-absence-operational-guidelines-word>>.

<sup>20</sup> Justice Connect, *Creating a Fairer and Stronger Community for Victorians Experiencing Mental Illness, Homelessness & Housing Insecurity* (July 2019) <<https://justiceconnect.org.au/wp-content/uploads/2019/07/JCHL-Submission-to-Royal-Commission-into-Victorias-Mental-Health-System-July-2019.pdf>>.

served. The basis and process by which an eviction can legally occur for all tenancies is established at a minimum by the *Residential Tenancies Act 1997* (Vic). At times when a landlord is pursuing an eviction, a tenant's access to legal services that can ensure that their rights are enforced and that their interests are properly represented are of crucial importance. This is often hindered by the limited capacity of specialist legal services. As such, greater funding of community tenancy lawyers is necessary. Due to the chronic shortage of affordable housing for people on a low income, evictions of tenants reliant on a government benefit are highly likely to result in some form of homelessness.<sup>21</sup> The prevention of evictions, particularly from community and government housing, is a key priority in the prevention of homelessness.

The legal recourse available to tenants to protect themselves from eviction varies, depending on the type of housing that they occupy. Private tenancies have very limited security of tenure when compared to public tenancies. Whereas, DHHS internal policies establish security of tenure and eviction is to be used only as a mechanism of last resort.<sup>22</sup> Similarly, community housing tenancies have limited security of tenure when compared to public tenancies; the policies of providers are often unclear and make no commitment to the use of eviction as a last resort or to allow for periods of temporary absence.<sup>23</sup>

The disadvantage experienced by community housing tenants is further compounded by inconsistency in decision-making by CHPs and inadequate avenues for review of those decisions. Although CHPs are regulated by the Housing Registrar and must comply with the *Housing Act 1983* (Vic) and the relevant Performance Standards<sup>24</sup>, in practice the Housing Registrar often only makes limited enquiries or declines to investigate matters that may alternatively be considered by the Victorian Civil and Administrative Tribunal (VCAT). The internal policies of CHPs are consequently difficult to enforce. Tenants in CHPs do not have the same level of protection of their rights as they would in DHHS homes, where they have access to robust mechanisms of internal review through the Housing Appeals Office and a capacity to enforce their rights under the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**the Charter**). There remains ongoing uncertainty as to whether CHPs are public authorities for the purposes of the Charter,<sup>25</sup> which would require their conduct and decision-making to be consistent with the rights contained within the Charter. The strict obligations imposed by the Charter on DHHS as the landlord to prevent evictions that disproportionately restrict a tenant's human rights are therefore not necessarily applicable to tenants in community housing.<sup>26</sup>

So long as there remains an inequity in policy and compliance between CHPs and DHHS, the transfer of management of publicly owned housing stock to CHPs serves to undermine the rights and security of tenure that would otherwise be enjoyed by tenants in those homes.

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<sup>21</sup> Council to Homeless Persons, *Position Paper on the Victorian Homelessness Action Plan Reform Project: A Framework for Ending Homelessness* (2014) <<http://chp.org.au/wp-content/uploads/2014/01/131224-CHP-position-paper-on-VHAP-FINAL-.pdf>>.

<sup>22</sup> Victorian Department of Health and Human Services, *Tenancy Management Manual: Chapter 1* (October 2017) <<https://providers.dhhs.vic.gov.au/sites/default/files/2017-11/Tenancy-management-manual-arrears.docx>>.

<sup>23</sup> Victoria Legal Aid, *Residential Tenancies Act Review Security of Tenure Submission* (2015) <<https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-submission-residential-tenancies-act-review-security-of-tenure.docx>>.

<sup>24</sup> *Housing Act 1983* (Vic) ss93-95.

<sup>25</sup> *Durney v Unison Housing* [2019] VSC 6, [65]-[66] (Garde J).

<sup>26</sup> Justice Connect, *There's No Place Like Home: Submission on the Security of Tenure Issues Paper* (2015) <<https://justiceconnect.org.au/wp-content/uploads/2018/08/Homeless-Law-response-to-the-security-of-tenure-issues-paper-December-2015.pdf>>.

Further, it creates a two-tiered lottery whereby those on the Victorian Housing Register who are placed in a CHP managed home are at a disadvantage, when compared with those placed in a DHHS managed home. There is a clear need for the alignment of the policies of CHPs with those of DHHS as they come to play a greater role in the Victorian social housing sector. There must also be effective accountability and enforcement mechanisms to ensure that such policies are adhered to.

### **Case study**

#### **KEITH – COMPLIANCE AND EVICTION INSTEAD OF TREATMENT AND SUPPORT.**

After experiencing years of homelessness, Keith was housed by a CHP in a supportive housing model specifically for residents with highly complex needs. Keith suffers from post-traumatic stress disorder and an Acquired Brain Injury (ABI). These can result in him experiencing outbursts of frustration which often include suicidal threats.

Keith was issued with a 'breach of duty' notice by the CHP after he had an outburst in a communal area. Keith's behaviour was a result of his poor mental health and his ABI. The CHP sought compliance orders at VCAT which would likely result in Keith's eviction if he were to breach the order.

Keith's housing support worker booked an appointment with IMCL's tenancy law clinic for legal advice. IMCL arranged for a Victoria Legal Aid (VLA) duty lawyer to represent Keith at his VCAT hearing and was successful in opposing the compliance order. The order would have sought to control Keith's behaviours in an unethical and unsupported manner; he would have been setup to fail.

Four months later, the CHP tried to seek a compliance order again. IMCL was still in contact with Keith when this matter was before VCAT. IMCL represented Keith at this hearing. Following the submissions presented on his behalf, the application for compliance was dismissed on the same grounds as previously determined by the same tribunal.

IMCL's provision of effective and timely legal assistance prevented Keith from being displaced from his home and becoming homeless. Instead of seeking to support Keith to receive ongoing assistance for his mental illness and ABI, the CHP simply sought to place a restrictive compliance order on Keith, knowing that they could apply for eviction as soon as it was breached.

### **Recommendation:**

3. Strengthen and implement safeguards to prevent evictions, such as provision of appropriate legal representation and integrated health and welfare services.
4. Align the internal policies of DHHS and CHPs so that all tenants are treated equally, with CHPs required to use eviction only as a last resort.

5. CHPs must be clearly bound by the *Charter of Human Rights and Responsibilities Act 2006* (Vic) by amending s 4(1)(c) of the Charter to explicitly include CHPs as functional public authorities under that Act.
6. CHPs must be subject to effective accountability and enforcement mechanisms so that protections for tenants can be exercised in practice.

### C. Improved Mental Health Responses

Mental illness and homelessness are strongly correlated; people with severe and persistent mental illness are overrepresented among the long-term and chronically homeless. A study of homelessness in Melbourne identified a psychiatric disorder as one of the major contributing factors to experiencing homelessness.<sup>27</sup>

For those experiencing mental illness, having access to stable housing is a crucial step in the path to recovery and in enabling them to manage their illnesses on an ongoing basis. The number of Victorians who have been discharged from mental health facilities and subsequently fallen into homelessness has grown by 55% since 2012-2013. The number of people accessing Victorian homelessness services who report having a mental illness has increased by 84% in this same period. A hierarchical classification of the main pathways to homelessness confirmed that a large number of people who were chronically homeless had diagnoses of comorbid psychotic illness or substance use disorder.

As discussed in Section 2, Part B above, too often community and public housing providers continue to resort to eviction as the mechanism for managing tenants with complex behaviours linked to their mental health. Often, a person's experience with mental illness is attempted to be managed by compliance orders and eviction proceedings at VCAT by landlords including DHHS and CHPs as opposed to a more appropriate health-based intervention. It is vital that we build a legal and services system that makes eviction for conduct related to a person's mental health a last resort.

Furthermore, the minimal availability of affordable private rental for single persons on Newstart allowance or the Disability Support Pension (DSP) means that those with serious mental illness who commonly become disengaged from family and friends, will remain homeless in the absence of secure DHHS or CHP provided housing. Given that the personal and economic costs of homelessness are well known, legal protections, alternatives to eviction and effective tenancy sustainment programs must be prioritised.

To reduce homelessness among people with mental illness, Victoria must also address the unmet demand for homelessness services. The cost of providing accommodation to people with

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<sup>27</sup> Guy Johnson and Chris Chamberlain, 'Are the Homeless Mentally Ill?' (2016) 46(1) *Australian Journal of Social Sciences* 29-48; see also Australian Institute of Health and Welfare, 'Sleeping Rough: A profile of Specialist Homelessness Services Clients' (2018).



mental illness in need of longer-term housing will result in significant associated cost reductions in use of health, justice and community services.<sup>28</sup>

To significantly address chronic and persistent homelessness for people with severe mental illness, Victoria and CHPs should develop and promote a strong Housing First culture. This approach to addressing homelessness provides rapid access to long-term housing and mental health supports that is not conditional on participants becoming housing-ready or engaging with support services. Several trials of Housing First programs in Australia and around the world have effectively housed thousands of people with severe mental illness.<sup>29</sup>

The right to health includes the right to access the social determinants that prevent health problems. For mental health this means building a society that is safe, equitable, respectful and inclusive. Long term stable housing must be the foundation stone for any long-term mental health strategy if genuine progress is to be achieved.<sup>30</sup>

### Case Study

#### MEGAN – KEEPING MEGAN IN HER HOME.

Megan was referred to IMCL by her clinician at a local mental health service. She had been receiving treatment for a number of years for schizophrenia.

Megan was a public housing resident and had been in her property for several years. She reported that while unwell, she attended her local Housing Office and requested the immediate termination of her tenancy. The Housing Office called Victoria Police, who attended and assisted Megan in completing a notice to terminate the tenancy with immediate effect and it was processed later that day.

Megan's clinician subsequently made a number of representations on her behalf to the Housing Office seeking to reinstate her tenancy but was unsuccessful. As a result, Megan was left homeless and spent several nights' couch surfing and in crisis accommodation.

Megan instructed that she had not wanted to terminate her tenancy and only did so as a direct consequence of her illness. IMCL contacted the Housing Office who maintained that the tenancy had been terminated by competent consent. IMCL escalated the matter to a team manager, highlighting concerns that the termination was accepted and processed immediately without the usual 28 day notice period being afforded. IMCL stressed that it was inappropriate for a police officer to make an assessment of Megan's capacity to give consent, and that a termination should not have been readily accepted in circumstances which

<sup>28</sup> Nicola Brackertz et al, Australian Housing and Urban Research Institute, 'Housing, Homeless and Mental Health: Towards Systems Change' to Australian Mental Health Commission (November 2018) 47.

<sup>29</sup> Guy Johnson and Chris Chamberlain, 'Are the Homeless Mentally Ill?' (2016) 46(1) *Australian Journal of Social Sciences* 43.

<sup>30</sup> Victorian Mental Health Awareness Council, 'From Harms to Humanity', *Submission to the Royal Commission into Mental Health* (July 2019) 5 <[https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-rcvmhs/files/9215/6513/7243/Victorian\\_Mental\\_Illness\\_Awareness\\_Council.pdf](https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-rcvmhs/files/9215/6513/7243/Victorian_Mental_Illness_Awareness_Council.pdf)>.



rendered Megan homeless. IMCL advised that an urgent application to VCAT may be made on Megan's behalf if the matter could not be resolved.

Within two days of Megan's first meeting with IMCL, the tenancy was reinstated and she was able to collect her keys and return home. In addition, the Housing Office implemented a system for regular meetings with Megan and her clinician to better manage her tenancy. IMCL's close relationship with community agencies was a key factor in the prompt and holistic resolution of Megan's case.

### **Recommendation:**

7. Safeguards must be implemented to prevent people experiencing mental illness being discharged into homelessness.
8. Funding must be provided for independent support services to assist tenants/residents experiencing mental illness who are displaying complex behaviours and a requirement that CHPs must refer to them before pursuing compliance and eviction proceedings in the first instance.
9. CHPs must have fair and reasonable policies around anti-social behaviour, which requires a focus on providing support and engaging in mediation before VCAT compliance orders are pursued.
10. Social housing providers (both public and community housing) need to adopt policies not to seek compliance orders without time limits, and only seek orders which are reasonable and able to be complied with by the tenant/resident.

## **D. Preventing homelessness caused by family violence intervention**

In Australia, family violence is one of the major causes of homelessness for women and children.<sup>31</sup> Homelessness and family violence are underpinned by a range of factors including gender inequality, socio-economic disadvantage, mental health issues and reduced access to income support.<sup>32</sup>

Over the past three years, approximately 40% of IMCL's clients have experienced family violence. IMCL provides a duty lawyer service twice per week in the Intervention Order list at Melbourne Magistrates' Court (**Court**) for Family Violence Intervention Orders (**FVIVO**). Through this service, we assist both victims of family violence (Affected Family Members) and perpetrators (Respondents) by providing legal advice, negotiating with Victoria Police and other

<sup>31</sup> Angela Spinney and Sarah Blandy 'Homelessness Prevention for Women and Children who have experienced Domestic and Family Violence: Innovations in Policy and Practice' (2011) (AHURI Positioning Paper No. 140), Melbourne: AHURI.

<sup>32</sup> 'Family violence and homelessness', *Launch Housing* (Web Page, 25 November 2019) <<https://www.launchhousing.org.au/family-violence-and-homelessness/>>.

lawyers, and in court advocacy. We also support clients experiencing family violence through our various clinics and outreaches.

### **i. Preventing homelessness among women affected by family violence**

Women and children affected by family violence are at an increased risk of homelessness due to a range of short and long-term factors. Women who are forced to leave their home to escape violence will almost always experience some form of homelessness. This may be either: sleeping rough or in their cars; couch surfing with friends or family; living in emergency accommodation; or in a refuge.

Of the almost 290,000 people who sought assistance from Specialist Homelessness Services in 2017-2018, 42% or 121,000, were experiencing domestic or family violence.<sup>33</sup> In 2017-2018 amongst clients of specialist homelessness services who had experienced domestic and family violence, short term or emergency accommodation was needed by 40% and received by 70% of those who needed it. However, long term housing was needed by 30%, with only 4% receiving this service.<sup>34</sup> These figures reveal significant unmet housing need for people escaping domestic and family violence, particularly for those who are seeking long-term housing.<sup>35</sup>

After leaving a violent relationship, it is often far harder for women to secure housing, maintain safety and find employment. This hardship is exacerbated if they do not have a rental history, identification documents, personal belongings or access to finances when they flee their homes to escape violence. Even in those cases where women (and their children) are able to stay in the home, they can still be at risk of homelessness because the household income has been reduced or they cannot access any income support to meet rent, mortgage repayments or any other living expenses. As the violent family member may have left the property voluntarily, or been excluded by police or a FVIVO, they will often focus their income and financial resources to providing housing for themselves and will not, or sometimes financially cannot, support the victim to remain in the property. The victim may not be able to remain in the property in the long-term if they cannot meet the rent or mortgage repayments, but affording to stay is just one hurdle they face.

For victims wanting to stay in rental properties where the perpetrator's name is on the lease, they have to get the consent of the perpetrator and landlord to transfer the lease into their name. Failing that, they can apply to VCAT to end the lease and create a new tenancy, but this is only an option if a final FVIVO has been made. With the numbers of FVIVO matters listed in the Magistrates Court increasing each year, it can take months, and sometimes even longer for contested matters to resolve. This makes the process even more difficult for victims.

Where the home is owned by the victim and perpetrator, or in many cases the perpetrator only, the exclusion of the perpetrator is just the beginning of what can be a long and costly process. A perpetrator may be excluded by a FVIVO, but this does not effectively settle the rights and

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<sup>33</sup> Mission Australia, 'Out of the Shadows: Domestic and Family Violence: a Leading Cause of Homelessness in Australia' (2019) <<https://www.missionaustralia.com.au/publications/position-statements/out-of-the-shadows/911-out-of-the-shadows-domestic-and-family-violence-a-leading-cause-of-homelessness-in-australia/file>>.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

interests of the parties to the property itself, which can only be resolved through the mechanisms established by the *Family Law Act 1975* (Cth).

The longer term impacts of family violence, such as mental illness, financial hardship or isolation from family and friends, can ultimately make all future living arrangements precarious for women.<sup>36</sup> With all of these obstacles, the risk of homelessness can trap a victim in a cycle of violence, periods of homelessness and – for women who perceive they have no other choice – a return to a violent partner.<sup>37</sup> It places women in the invidious position of having to decide whether it is in their best interests to stay in secure housing along with a violent partner. For women with children, they face added pressures, and sometimes stay so that they can still have access to safe housing and the children can remain in their schools.

Women from asylum seeker and refugee backgrounds are often financially dependent on their violent partner, and their visa status is intrinsically linked to their partner's sponsorship. For them, the risk of homelessness and poverty is overwhelming. Access to ongoing social security benefits from Centrelink can be limited or non-existent, depending on a woman's circumstances and visa status. A migrant woman may qualify for Special Benefit and, if they are caring for a child that is an Australian citizen or Permanent Resident, also qualify for Family Tax Benefit. However, this is contingent upon them meeting a number of other criteria that is very much tied to their immigration status. IMCL has worked with many migrant women that cannot access any social security benefits, leaving them in an unsafe situation and at risk of further violence if they stay, or alternatively, living in poverty and homeless if they leave.

### Case study

#### ARINI - HOMELESSNESS AND FAMILY VIOLENCE.

Arini and her family were originally from New Zealand, but settled in Australia when she was still a teenager as Special Category Visa holders. She never took any steps to become an Australian citizen or Permanent Resident once she started working as an adult. When she stopped working because of a violent sexual assault, she became increasingly reliant on her partner for support and housing. As a Special Category Visa Holder, she could not access a number of different social security payments, including Newstart. She started using drugs to self-medicate because of her experiences of trauma, which led to her being prosecuted by the Police when she started offending to support her habit.

She tried to get her life together when she fell pregnant to her partner, but he then started being violent towards her. She could not return to live with her family as they could not accommodate her, and she could not leave because she could not access any social security benefits that would allow her to find any independent accommodation. The only option was a refuge which she could not contemplate, because of the severity of her anxiety and depression that resulted from the original sexual assault. She made the decision to stay with

<sup>36</sup> Lucy Adams, Patrick Warner and Antoinette Russo, Justice Connect, 'Women's Homelessness Prevention Project – Keeping Women and Children Housed: 12 Month Project Report' (2015) 5 ('Women's Homelessness Prevention 12 month Project Report').

<sup>37</sup> Victorian Government, *Royal Commission into Family Violence*, Report and Recommendations (March 2016) 38 ('Royal Commission into Family Violence Report').

her violent partner, but because her experiences of family violence had been reported to Child Protection as part of an unborn report, they met with her to discuss their concerns for her safety and the unborn child. Arini knows that when the baby is born, Child Protection is likely to intervene but she feels that she is in an impossible position. If she stays with her violent partner, Child Protection is likely to question her judgment and their safety, but if she leaves, she will be homeless without an income and Child Protection will then question her ability to provide for her child.

### **Recommendation:**

11. Provide rapid rehousing to individuals fleeing family violence so that they can build a stable future around secure housing.
12. Increase support and funding to family violence support services to address short and long-term housing needs of people experiencing family violence.
13. Work with the Commonwealth Government to secure changes to the social security system, to enable all vulnerable people experiencing family violence to access income support, no matter what their visa status is.
14. Amend Office of Housing policies that restrict applications for housing by people because of their citizenship or resident status.

## **ii. Preventing homelessness among women displaced by intervention orders**

There are ongoing issues around the misidentification of women as the respondents in police applications for FVIOs and around being incorrectly identified as the primary aggressor.<sup>38</sup> Misidentification often results in the exclusion of the victim from housing and, in circumstances of long-term abuse, without any social, health or housing support to fall back on.

Once at Court, police prosecutors routinely seek full no contact FVIOs against misidentified respondents. In IMCL's experience, even where matters are to be adjourned on an interim basis, so Victoria Police can conduct a further risk assessment, police at Court will insist upon full no-contact orders with exclusion conditions. These orders often result in misidentified respondents experiencing extended periods of homelessness until the matters can be resolved within a severely delayed judicial system.

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<sup>38</sup> Women's Legal Service Victoria, Snapshot of Police Family Violence Intervention Order Applications' (31 October 2019) <[https://womenslegal.org.au/files/file/Snapshot%20of%20Police%20Family%20Violence%20Intervention%20Order%20applications%2029.10%20\(002\).pdf](https://womenslegal.org.au/files/file/Snapshot%20of%20Police%20Family%20Violence%20Intervention%20Order%20applications%2029.10%20(002).pdf)>.

## Case study

### CHIN - ONGOING HOMELESSNESS DUE TO FAMILY VIOLENCE.

Chin was referred to IMCL by her support worker from the Women's Refuge where she was staying. She had been charged by Police for assaulting her husband and damaging his property. She had never been in trouble with Police before, and it was only after she was charged that she finally made a complaint to Police about a number of violent sexual and physical assaults that were committed by her husband throughout their fifteen year marriage.

When she entered the Women's Refuge, Chin made the heartbreaking decision to leave her three children with her husband. Two of the children were on the Autism Spectrum and had high care needs. She knew that if they came with her, they would be removed from the home environment which was comfortable and familiar to them, and that they would become disconnected from their schools and support networks. She believed that if she was not in the home, there was no risk to them because her husband was only violent towards her.

Chin wanted to organise housing so that she could arrange for her children to come and live with her eventually. However, her efforts were thwarted by the fact that she had no identity documents because her husband had burned her passport. In addition, she was born overseas and could not easily access her birth certificate. She then left the Refuge because she felt unsafe after other residents were racist towards her and she began sleeping rough in parks around Melbourne. By this stage it had become apparent that Chin was likely suffering from complex undiagnosed trauma, presumably as a result of her experiences of family violence. As she had no phone and her Centrelink pension had been cut off, she was unable to engage with any support services. She was only able to meet us at Court because she was so fearful of being arrested again that she would not miss any Court dates.

We were eventually able to negotiate with the Police so that the charges of assault could be withdrawn. This was because an independent witness had verified that her husband had assaulted Chin, and that she had been acting in self-defence. She was offered diversion for the charge of damaging her husband's property, which she accepted even though her actions were never intentional and she had strong grounds to contest it.

As she struggled to find safe housing for herself, let alone her three children, she made the decision to withdraw her statement to Police so that her husband could not be prosecuted and to avoid displacing the children. Concerns about her safety and the safety of her children remained, forcing DHHS to intervene. Even with their intervention, she could not access housing in the short to long-term and her homelessness became a reason for the children to not be returned to her care. Feeling hopeless and without options, Chin disengaged and stopped working with us.



**Recommendation:**

15. Victoria Police develop clear policies and procedures around managing circumstances where the victim of family violence has been misidentified as the respondent at the initial point of police intervention.
16. Ensure that police members and police prosecutors are trained and informed around appropriate actions to be taken in relation to the misidentification of the primary perpetrators of family violence.

**iii. Preventing homelessness among respondents in intervention order matters.**

If a victim and perpetrator share a residence, and an application for a FVIVO is made either by the police or the victim, it will often lead to at least one of the parties being made homeless. On most occasions, the perpetrator is excluded from the residence on an interim basis at the least, resulting in often vulnerable people becoming homeless.

Appropriate housing must be provided for perpetrators who are excluded from their properties due to police intervention. Housing support services for victims and perpetrators at court should be improved in an attempt to prevent and/or reduce the impact of such orders on these individuals at the time a FVIVO is made. Improved housing for perpetrators of family violence will further allow victims to freely enforce their right to safety and will not impede them from seeking an exclusion order. This will prevent pressure being placed on victims to support 'limited' or 'safe contact' FVIVOs, which allow perpetrators to return to the property due to lack of housing options available to the respondents.

**Recommendation:**

17. Provide appropriate housing for respondents that are excluded from properties due to police intervention.

**iv. Mental health, family violence and police responses**

In the Melbourne Magistrates' Court, IMCL observes a significant amount of matters arising from incidents arising out of police attendances, where a person was experiencing a severe mental illness. In these situations, the people would have better serviced by a mental health professional or the Crisis Assessment and Treatment Team (CATT) as opposed to a member of Victoria Police. However, due to growing demand being placed on CATT and mental health services, combined with a chronic lack of resourcing, this has resulted in frontline police members and hospital emergency departments bearing the burden to assist people in a mental health crisis.<sup>39</sup>

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<sup>39</sup>Victorian Auditor General's Office, *Access to Mental Health Services* (Independent Assurance Report to Parliament No 16, March 2019) 11; Aisha Dow, 'The Patient Had Planned His Suicide. But the Crisis Team Was Busy', *The Age* (online, 15 November



Often, instead of providing the appropriate mental health intervention required, Police will issue a safety notice in circumstances where an individual is expressing suicidal ideation and/or threatening self-harm to a family member, on the basis that the individual is perpetrating family violence by voicing these threats. This frequently results in the vulnerable individual experiencing a severe mental health episode and being made homeless.

There are instances in which a family member has called '000' out of concern for the welfare of their loved one, rather than out of fear for their own safety or because they feel they are being manipulated and controlled by the threats, and become distressed when the matter is treated as a family violence incident. The broad categorisation of mental health episodes as family violence incidents is a cause for concern, as family members dealing with loved ones experiencing mental health crises may be reluctant to seek help in the future, due to the potentiality of legal proceedings. Further, IVOs can be particularly distressing for family members who are not supportive of the order and simply want the individual to return home and be provided with appropriate mental health care.

The presence of mental health triage workers at Court would be an important step in making sure our judicial system addresses the needs of those who experience mental health illnesses. The integration of such services within our court system would enable Magistrates and police to have access to the clinical information they need to properly assess whether there is in fact a family violence risk at play in situations such as those outlined above. Additionally, the presence of a mental health triage worker at Court would assist parties impacted by mental health issues and allow for a platform in which necessary referrals can be made. This is consistent with the recommendations made by the Royal Commission into Family Violence regarding greater collaboration between mental health and other family violence services.<sup>40</sup>

#### **Recommendation:**

18. Employ mental health triage workers at Magistrates' Courts to assist Police and Magistrates to make interim risk and mental health assessments.
19. Provide further resourcing, evaluation and extension to rapid Mental Health and Police Response teams to ensure more people in mental health crisis have access to a health-based crisis response.

### **3. REDUCING THE IMPACT OF EXISTING HOMELESSNESS**

#### **B. Reforms to the criminal justice system**

There is a clear correlation between homelessness and criminal offending. Due to public visibility, enforcement-based laws and policies mean that people experiencing homelessness have increased interactions with police. This exposes them to a greater risk of receiving 'move

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2018) <<https://www.theage.com.au/politics/victoria/the-patient-had-planned-his-suicide-but-the-crisis-team-was-busy-20181106-p50edk.html>>.

<sup>40</sup>See, eg, Recommendations 87 and 99: Victoria, Royal Commission into Family Violence, *Report and Recommendations* (2016).

on' cautions, fines, and being charged for summary offences such as begging or public drinking.<sup>41</sup>

There is also an interrelation between poor housing affordability, unfavourable mental health outcomes and offences caused by homelessness. Criminalising homelessness not only aggravates the hardship and vulnerability experienced by people experiencing homelessness; ultimately, it overlooks the root causes that contribute to the offending. It is therefore imperative to pursue constructive alternatives and form holistic solutions to prevent homelessness.

### **a. Reforms to the *Summary Offences Act 1966 (Vic)***

The criminalisation of homelessness, the pre-existing vulnerability of people experiencing homelessness, and a lack adequate legal recourse against police, all result in a criminal justice system which is designed to discriminate against people experiencing homelessness. To address the long standing criminalisation of homelessness, IMCL supports major reforms to the *Summary Offences Act 1966 (Vic)*; 'SOA'.

#### **i. Begging and Gathering Alms**

Begging and gathering alms offences are governed by s 49 of the SOA. Begging offences are actively pursued by Victoria Police, with 800 people being charged in Victoria from 2012-2016.<sup>42</sup>

Actively prosecuting begging offences is ineffective and fails to achieve any public interest objectives. An enforcement based approach to this offending fails to address the systemic underlying reasons for begging, such as homelessness.<sup>43</sup> It also places further stress and financial hardship on our community's most vulnerable.<sup>44</sup>

Under s 49 of the SOA the maximum penalty available to a Magistrate is 12 months imprisonment. IMCL asserts that this maximum penalty is manifestly excessive and does not reflect the nature of these offences.

### **Case Study**

#### **MICHELLE – SITTING ON THE STREET LANDS HER IN COURT.**

Michelle attended our office with her support worker. Michelle had been living with her uncle, but soon fell into homelessness. Michelle experiences extreme anxiety and depression and is also diagnosed with a liver disease. She was engaged with numerous support workers, including for alcohol and drug counselling.

Michelle had been charged with the offence of gathering alms. Michelle was sitting in the

Suzie Forell et al, 'No Home, No Justice? The Legal Needs of Homeless People in NSW: Access to Justice and Legal Needs' (2) *Law and Justice Foundation of New South Wales* (Report, Vol 2, July 2005).

<sup>42</sup>Tom Nightingdale, 'Welfare Organisations call Begging to be Decriminalised across Australia', *The ABC* (online, 18 October 2016) <<https://www.abc.net.au/news/2016-10-18/calls-for-ban-on-begging-to-be-lifted/7943714>>.

<sup>43</sup>Tamara Walsh, 'Defending Begging Offenders' (2004) *Queensland University of Technology Law and Justice Journal* 4(1) 58.

<sup>44</sup>Lucy Adams, 'Asking for change: Tackling Begging with Enforcement in Melbourne' (2014) *Parity* 27(9) 24, 25.

Bourke Street Mall with her dog watching a busker, homeless and with nowhere else to go. It was Christmas time and a stranger approached Michelle and generously gave her a Christmas card, a coffee, face wipes and some coins.

Michelle didn't realise that accepting this gift was a criminal offence and that she was being watched by security contractors at City of Melbourne's Safe City Camera Program. Security called police who attended the Mall and charged her on the spot.

Michelle wasn't actively asking passers-by for anything. She didn't have a sign or poster asking for contributions. She was charged with an offence for merely sitting by the side of the street and receiving face wipes and coins from a kind passer-by.

At Court, the police refused to drop this charge. Michelle was in tears when she realised that they would be pursuing it. Her best option to have the matter resolved was to plead guilty, rather than running to a hearing, as it was likely the matter would be found proven and dismissed that day. IMCL represented Michelle in a guilty plea where the matter was found proven and dismissed by the Court, without a conviction.

The case exacerbated Michelle's pre-existing anxiety, and needlessly used prosecution resources in obtaining an unconditional dismissal. It is arguable that the justice system did not gain a result in the public interest from prosecuting this crime.

Michelle still has the Christmas card which she received that day, wishing her a better 2019.

### **Recommendation:**

20. Decriminalise begging so that people experiencing homelessness are not disproportionately affected by unjust laws.
21. Shift funding from the enforcement of begging offences to other forms of holistic and constructive interventions.
22. If not decriminalised entirely, reduce the maximum penalty for begging offences to reflect current public opinion in relation to this type of offending.

### **b. Drunk in public**

Victoria is currently the *only* Australian state that prohibits public drunkenness, which is governed by ss 13-15 of the *SOA*. Current practices adopted by Victoria Police utilise the powers afforded to them under s 15 of the *SOA* to place people in lock-up until they are sober, then

issue them with an infringement notice.<sup>45</sup> This process fails to give regard to the long-standing, underlying issues around substance dependence and/or mental illness.

People experiencing homelessness, particularly those that are rough sleeping, are being criminalised for conducting their lives in the 'public sphere' simply because they have no other option. These offences contribute to the longstanding discrimination by Victoria Police against already-disadvantaged people experiencing homelessness. We acknowledge that the Victorian Government announced in 2019 that we would abolish these laws, but at this point in time people are still being charged with these offences.

### Case Study

#### ARTHUR - NO BED TO 'SLEEP IT OFF'.

IMCL met Arthur through our weekly outreach at Ozanam Community Centre. He has experienced significant periods of homelessness, as well as suffering from anxiety and alcohol dependence. Arthur reported experiencing severe trauma in his life including the death of his two brothers to suicide. To deal with this lifetime of trauma, Arthur struggles to remain sober and maintain his medication.

One night, Arthur was experiencing hallucinations and called the Fire Brigade, stating that a car had collided with a tree and trapped three people inside. He was trying to help but when the Fire Brigade arrived, they discovered that there had never been an accident. The police were called.

When the police attended they found half a bottle of wine in Arthur's bag, they asked if he had someone to collect him or somewhere safe to go. Arthur told the police he was homeless and had nowhere to go. He was arrested and taken to the police station. Arthur was charged after being held in a cell for four hours.

Drunk in public laws and police practices are used to penalise homeless individuals who experience vulnerabilities. Arthur was prosecuted due to this behaviour, rather than being directed to services that could assist him. Drunk in public laws ultimately serve to discriminate against homeless people.

### **Recommendation:**

23. Decriminalise Drunk in Public offences. Victoria is currently the only Australian State to maintain such laws.
24. Shift funding from police enforcement of Drunk in Public offences to other forms of holistic and constructive interventions.

<sup>45</sup> Justice Connect, *Homelessness and Policing Submission to the Consultation on the Victoria Police Field Contact Policy and Cross Cultural Training* (14 August 2013) <<https://justiceconnect.org.au/wp-content/uploads/2018/08/Consultation-on-the-Victoria-Police-Field-Contact-Policy-and-Cross-Cultural-Training-Submission-August-2013.pdf>>.

### c. Move On Offences

The move on provisions under s 6 of the SOA are excessively broad. An individual may be given a direction to move on from any public space subject to the 'reasonable' belief of a police officer. In effect, the move-on laws disproportionately affect people experiencing homelessness, as they are often major users of public spaces.<sup>46</sup>

Move on powers and other enforcement-based approaches give police interventionist authority, which often escalates to individuals being arrested or fined for simply living their life in the public sphere.<sup>47</sup> Additionally, there is no empirical evidence to suggest that the removal or exclusion of a person from a space reduces the incidence of crime.<sup>48</sup>

#### Case study

##### AADEN - NOWHERE ELSE TO GO.

Aaden was 24 years old when IMCL met him. He had no prior criminal convictions. He was from a refugee background and lived with his parents and siblings in the North Melbourne public housing estate. We started helping Aaden in relation to a police matter, where IMCL believed that he had been racially profiled and misidentified as the offender in a theft and assault matter.

During our engagement with Aaden, his family relationships and mental health deteriorated to the point where he had two separate admissions to youth specialist mental health services. Aaden started sleeping rough in the CBD as he felt safest in well-lit areas with security cameras.

One night when he was with some friends in the CBD, his friends got into an argument with strangers. The police were called and gave a verbal move-on request to Aaden and his friends to leave the CBD. Aaden had nowhere to go. He walked a kilometre away from where the police had spoken to him but was followed on the Safe City Camera network. Aaden was picked up by police an hour later, arrested and charged with failing to comply with the move on request.

Ultimately, Aaden did not feel safe sleeping outside the CBD. He actively moved a reasonable distance away from the area he was asked to move-on from but that was clearly not sufficient for the police. Move-on laws provide the police with discretionary and expansive powers to interfere with public space users' rights, particularly people engaging in rough sleeping.

<sup>46</sup> Monica Taylor and Tamara Walsh, 'Nowhere to Go: The Impact of Police Move-On Power on Homeless People in Queensland' (2006) *The University of Queensland* 22, citing Council to Homeless Persons, *Submission to 'A Good Night for All: Options for Improving Safety and Amenity in Inner City Entertainment Precincts'* (2005).

<sup>47</sup> [http://www.chp.org.au/public\\_library/items/2005/05/00065-upload00001.doc](http://www.chp.org.au/public_library/items/2005/05/00065-upload00001.doc) at 5; Emma Greenhalgh, 'Local Government Responses to Homelessness in Public Space: An Overview' (2006) 19(1) *Parity* 95; Terry O'Gorman, 'Move-on Powers Backgrounder', (2006) at 2.

<sup>48</sup> Natalia Gale 'Justice Project - Yfoundations Submission' (September 2017) *Yfoundations* <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/JP%20Submissions/S98%20-%202017%2010%2006%20-%2020Yfoundations.pdf>

<sup>48</sup> James Farrell, 'All the Right Moves? Police 'Move On Powers in Victoria' (2009) 34(1) *Alternative Law Journal* 21-26.

**Recommendation:**

25. Reform move-on laws to address the power imbalance that exists between marginalised public space users and Victoria Police members.
26. Implement a statutory defence of reasonable excuse to allow marginalised public space users to defend their charge on the basis that their behaviour was directly related to factors outside their control.

**ii. Homeless Persons Court**

IMCL views homelessness as a social and health issue; not a criminal justice issue. The most important step is ensuring that people experiencing homelessness are being diverted from the criminal justice system in the first instance.

We know that current policing practices and lack of supports mean our criminal justice system is oversaturated with people experiencing homelessness.<sup>49</sup> We do not support this enforcement based approach to policing people experiencing homelessness. However, until that is a large scale shift away from this enforcement based approach the Victorian criminal justice system must improve how it interacts with people experiencing homelessness. Individuals who are charged with offences that relate to their experience of homelessness such as begging, being drunk in public, shop theft and public urination need to be provided with social and health support, not just punished.

This can be achieved through the establishment of a specialist homelessness court. This will provide the Victorian Magistrates' Court with the ability to intervene at an early stage with supports and services that these individuals would otherwise not receive. Further, equipping the specialist court with the discretion to discharge matters at any point in time can also divert people experiencing homelessness away from the criminal justice system.

**Recommendation:**

27. Divert people experiencing homelessness out of the criminal justice system and provide people with health and social interventions over criminal interventions.
28. Establish a specialist court list for people experiencing homelessness to provide appropriate supports that address issues underlying low-level public space offending behaviour.
29. Provide a specialist court list for people experiencing homelessness with the power to discharge matters from its list at any time.

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<sup>49</sup> Andrew Bevitt et al, 'Journey Home Research Report No. 6 Complete Findings from Waves 1 to 6', *The University of Melbourne Faculty of Business and Economics* (2015)  
<[https://melbourneinstitute.unimelb.edu.au/\\_data/assets/pdf\\_file/0007/2202865/Scutella\\_et\\_al\\_Journeys\\_Home\\_Research\\_Report\\_W6.pdf](https://melbourneinstitute.unimelb.edu.au/_data/assets/pdf_file/0007/2202865/Scutella_et_al_Journeys_Home_Research_Report_W6.pdf)>



### iii. Spent Conviction Scheme

Victoria is the *only* jurisdiction in Australia that does not have a legislated scheme for convictions to become spent. Currently, the disclosure of criminal record information is governed solely by Victoria Police's own information release policy.

It is more likely than not that people experiencing homelessness will have some form of interaction with the criminal justice system.<sup>50</sup> Accordingly, it is important for there to be a formal process to limit the impact of this interaction on an individual's future employment prospects.

Criminal record checks are increasingly becoming common practice from major employers. A legislated spent convictions scheme allows people who have been involved in the criminal justice system the opportunity to leave behind the attached stigma.

#### Case Study

##### WAYNE – FROM PSYCHIATRIC CARE TO THE STREETS.

Dwayne is 34 years old and has been diagnosed with bipolar disorder and manic depression. As a juvenile, Dwayne was found guilty in the Children's Court for minor offences involving drug possession and criminal damage. Convictions were not recorded. As an adult, Dwayne was found guilty of a single charge of possession of cannabis. Again, no conviction was recorded. Dwayne's last finding of guilt (without conviction) occurred when he was 18 years old – over 15 years ago.

During an incident in 2018, Dwayne jumped on a car and caused damage to the bonnet. The police attended the scene and conveyed Dwayne to a hospital under the *Mental Health Act*. He was later charged with criminal damage and unlawful assault. At the time of the incident, Dwayne was experiencing mental illness and homelessness. He had been released from psychiatric care in regional Victoria two days earlier without anywhere to stay, not even a car to sleep in. The lack of housing undoubtedly contributed to his experience of significant stress and poor mental health, resulting in the charges.

However, under the current Victoria Police information release policy, if Dwayne is found guilty of a new offence, all of his prior findings of guilt will be released, including the juvenile offences. This is despite the prior offences being minor, without convictions and the last finding of guilt occurring over 15 years ago.

The current practice also contributes to unnecessary strain on the criminal justice system. Initially, Dwayne was willing to accept a guilty plea. However, due to the potential impacts of having his entire criminal record information detrimentally released to a future employer, Dwayne has invested significant time and resources to contest these offences. In addition to

<sup>50</sup> Ibid - Andrew Bevitt et al, 'Journey Home Research Report No. 6 Complete Findings from Waves 1 to 6', *The University of Melbourne Faculty of Business and Economics* (2015) <[https://melbourneinstitute.unimelb.edu.au/\\_data/assets/pdf\\_file/0007/2202865/Scutella\\_et\\_al\\_Journeys\\_Home\\_Research\\_Report\\_W6.pdf](https://melbourneinstitute.unimelb.edu.au/_data/assets/pdf_file/0007/2202865/Scutella_et_al_Journeys_Home_Research_Report_W6.pdf)>

the burden on himself, Dwayne's matter also places demands on the limited resources of the police to prosecute and on the Courts to have the matter heard. The matter was ultimately considered suitable for diversion.

**Recommendation:**

30. Establish a spent conviction scheme to limit the impact of the criminal justice system on people that have become involved in the court system, due to their experience with homelessness.

**iv. Bail Conditions**

Victoria Police are increasingly bailing people with inappropriate and unjustified exclusion conditions. Bail conditions that prevent people experiencing homelessness from entering the Melbourne Central Business District and other central locations across greater Melbourne (St Kilda, Footscray etc.) cause further disadvantage and vulnerability. These conditions often serve to exclude marginalised people experiencing homelessness from a large number of social, housing and health supports, which are often concentrated around these central locations.

Current bail laws and practices also discriminate against people experiencing homelessness. The lack of secure and stable accommodation is a major factor that directly prevents individuals from being granted bail as they are unable to provide an address to which to be bailed.

**Recommendation:**

31. Prohibit Victoria Police members from granting bail with conditions that exclude people from public spaces, due to the risk that this will also exclude them from their social, housing and health services.
32. Increase housing for people experiencing homelessness who enter the criminal justice system and remain on remand due to a lack of secure housing.

**B. INFRINGEMENTS AND HOMELESSNESS**

People experiencing special circumstances often receive a large number of infringement notices for repeated minor offences such as drunk in public offences, public urination, riotous behaviour, offensive language, parking fines, toll fines and fare evasion.<sup>51</sup>

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<sup>51</sup> Law Council of Australia, 'People who are Homeless: The Justice Project Final Report- Part 1' (August 2018) <<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/People%20who%20are%20Homeless%20%28Part%201%29.pdf>>.

International research has demonstrated that the cost of issuing and enforcing fines, such as begging, far outweighs the payments received in relation to these infringements.<sup>52</sup>

In 2013, Justice Connect Homeless Law (formerly Homeless Persons' Legal Clinic) noted that the average time to resolve a fines matter was 14 months, with an average cost of \$19,825.<sup>53</sup> This costing only encompasses the legal costs and does not consider the greater economic costs to Victoria Police (and other issuing agencies), CCV (now Fines Victoria), Courts Victoria, support workers, medical practitioners and housing workers. Since the fine reforms, this average cost would have undoubtedly increased, due to the significant delays and stricter threshold for proving special circumstances, increasing the workload of IMCL and other CLCs.

State funds could be better spent facilitating support for people experiencing special circumstances, as opposed to seeking to enforce fines that the State is unlikely to ever recover.

### **Recommendation:**

33. Undertake appropriate evaluation and economic research to determine if there is any economic argument in support of pursuing infringement debts against people experiencing homelessness, alcohol or drug dependency, mental illness, intellectual disabilities or acquired brain injuries.

## **i. Reduced Threshold to Prove Homelessness**

Homelessness is set out as a 'special circumstance' in relation to infringement matters under s 3 of the *Infringements Act 2006*. Accordingly, people experiencing homelessness at the time of incurring their infringements are able to make an application for either internal review at the first instance with the issuing agency, or an enforcement review once the matter is lodged with Fines Victoria.

Currently, the system to prove homelessness for the purpose of Fines Victoria is arduous for those who already lack social supports. People's experiences with homelessness are complex and often clouded in feelings of shame, which prevents them from asking for assistance. This complexity means that people can be homeless and incur infringements, long before accessing housing supports that will be able to 'sign off' on their homelessness to satisfy Fines Victoria.

A further issue is the wording of the legislation, enforcing a requirement that the person's homelessness has resulted in them 'being unable to control conduct which constitutes an offence'. This 'nexus' must be established between the individual's circumstances and the offending behaviour. This requirement may be difficult to establish if social workers or psychologists fail to outline *how* the client's circumstances have contributed to the offending.

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<sup>52</sup> Lucy Adams, 'Criminalising Homelessness: Why Enforcement is Not the Answer', *The ABC* (online, 8 August 2017) <<https://www.abc.net.au/religion/criminalising-homelessness-why-enforcement-is-not-the-answer/10095534>>.

<sup>53</sup> Justice Connect, 'Fines Infringements and Homelessness', *Submission to the Sentencing Advisory Council Fines and Infringements Project* (October 2013) 6 <<https://justiceconnect.org.au/wp-content/uploads/2018/08/Sentencing-Advisory-Council-Fines-and-Infringements-Project-Submission-October-2013.pdf>> citing Justice Connect, *What's the Cost? Infringements System Review*

### Case Study

#### YONAS - NOT HOMELESS ENOUGH.

In 2016, Yonas' public housing unit was ruined in a fire, which meant that he lost all his possessions, became homeless and now experiences post-traumatic stress disorder from the incident. Yonas has been engaged with numerous crisis and transitional housing facilities since 2016. He has been trying to get his life back on track, by working towards training and acquiring long-term accommodation.

Yonas had been issued with a number of infringements since becoming homeless. IMCL advised him that an Enforcement Review on the grounds of his special circumstances might be a good way to manage these fines. In the social worker's letter, they explained that the fines were 'due to Yonas' transience and lack of support networks in Australia... his depressed mental state and general personal disorganisation induced by homelessness'.

However, Fines Victoria did not cancel the fines as they concluded that the 'link' between Yonas' homelessness and the offences was not satisfied. They advised that we had failed to outline that he 'was unable to understand or control the behaviour that led to the offences as a result of his living conditions'.

Yonas could try to make another application to Fines Victoria but he currently does not have enough fines outstanding to make him eligible for a grant of legal assistance through Victoria Legal Aid. Without a grant of aid, IMCL cannot afford to pay for a retrospective psychologists report or other support material and Yonas has no financial ability to pay for these materials either.

It is currently exceptionally difficult to prove a link between the offender's acts and their homelessness to Fines Victoria. This process has taken Yonas 18 months and he is now in the same position he was when he met with IMCL despite providing support material that should have been considered completely satisfactory to demonstrate his homelessness.

#### **Recommendation:**

- 34.Reduce or abolish the criteria to meet the threshold of 'homeless' as a 'special circumstance' to mitigate the strain on vulnerable individuals.
- 35.Reduce or abolish the 'nexus' requirement for all special circumstances applications.

### **ii. Reinstate the Special Circumstances List**

For over a decade, the Special Circumstances List functioned in a highly effective manner to provide fair, efficient and rehabilitative sentencing outcomes for people experiencing homelessness. The List provided infringement offenders with a therapeutic setting to deal with

their infringements, which carefully took into account their ‘special circumstances’, such as homelessness, when determining sentencing outcomes.

### Case Study:

#### STEVE - FINES DISMISSED THROUGH THE SPECIAL CIRCUMSTANCES LIST.

Steve had been experiencing long-term homelessness and was living out of his car. Whilst accessing crisis accommodation, he incurred multiple parking fines in the thousands of dollars. He wasn’t eligible for a local parking permit given his impermanent residential status and was forced to park in one and two hour parking.

A financial counsellor at Ozanam helped him write to the local council to have the fines waived because he’d received them as a consequence of his homelessness. The council rejected his application, questioning the connection between the fines and his homelessness. As a result, Steve was sent to the Special Circumstances List of the Melbourne Magistrates’ Court.

Before his court date, Steve’s counsellor referred him to IMCL’s services to seek legal advice. Steve was facing many challenges in securing accommodation and managing his day to day life, and the multiple fines added increased stress and complications.

At the hearing, we had an opportunity to put Steve’s case to a Magistrate who agreed that Steve’s fines were indeed caused by his homelessness and for that, he shouldn’t be penalised. As a result, the fines were waived, enabling Steve to focus on finding stable accommodation.

Since the establishment of Fines Victoria and the commencement of the *Fines Reform Act 2014* (Vic), there have been significant processing delays in relation to infringement matters that would subsequently be referred to the Magistrates’ Court. Due to these processing delays and lack of referrals to Court, the Magistrates’ Court decided to abolish the List. Matters are no longer heard within this specialist jurisdiction; instead they are listed in ‘open court’ mainstream criminal lists.

Without a dedicated Special Circumstances List, infringement matters are now being listed across numerous Magistrates’ Court on a variety of dates, including for individual people with multiple infringements. This process inevitably places an enormous administrative burden on the Courts and the lawyers involved. It also results in multiple findings of guilt for the highly vulnerable individual and a complete disregard for the principle of totality in sentencing.<sup>54</sup>

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<sup>54</sup> *Mill v The Queen* (1988) 166 CLR 59 at 63.

## Case Study

### **DYLAN - FINES WITHOUT THE SPECIAL CIRCUMSTANCES LIST.**

We met Dylan at our office after his housing worker contacted us for assistance. Dylan had been homeless for three years at that point, living with depression, an intellectual disability, as well as an alcohol and cannabis dependency. Dylan was a person experiencing a very high level of vulnerability due to his 'special circumstances'.

Dylan had incurred a large number of fines, mostly consisting of fines relating to being drunk in a public place. IMCL submitted a revocation application to the Infringements Court for Dylan on the grounds of his special circumstances in November 2017. At that time the Melbourne Magistrates' Court Special Circumstances List was fully operational and hearing all referrals to court from successful revocation applications.

Whilst the application was being processed, Fines Victoria was created and significant processing delays occurred in relation to the new enforcement review applications. Due to the lack of court referrals, the special circumstances list was significantly reduced and later abolished.

In August 2018, IMCL was advised that Dylan's application to cancel the enforcement of his fines was cancelled due to his clear special circumstances. However, this does not finalise the matters. The fines were referred back to the issuing agencies. In Dylan's matter, we received 29 notices from Victoria Police outlining their intention to proceed to open court in relation to this matter.

These matters would previously have all been listed on the one occasion in Melbourne Magistrates' Courts Special Circumstances List, where Dylan would have had a fair and rehabilitative court experience. Instead, Dylan received six charges and summons for six completely different dates across three different metropolitan Magistrates' Courts in their mainstream criminal courts.

IMCL were able to have these matters administratively adjourned to the one location for Dylan. Without our help, Dylan would have been forced to attend each court date for each individual hearing. For a person that has already demonstrated that he has significant special circumstances, this is a complex, confusing and anxiety-inducing experience.

### **Recommendation:**

36. Legislate for the reinstatement of the Special Circumstances List at Melbourne Magistrates' Court and expand the Special Circumstances List as smaller lists sitting at a larger number of Magistrates' Courts across Victoria.



### **iii. Proportional Infringements System**

Fines for various types of offences, from public transport ticketing offences to low-range driving offences, place a disproportionately large burden on those without the means to pay off such debts. For people on little to no income, a fine of a few hundred dollars can drastically impact their lives, causing severe financial strain and resulting psychological stressors.

The Victorian fines system disproportionately impacts those who are experiencing special circumstances, receiving a Centrelink benefit, or are on a low income. Such a system highlights the inefficiency of demanding high-fine debt payment by people experiencing social and financial disadvantage. Often, the fines are simply too large to conceivably be paid off and result in large administrative costs to government funded bodies, and lost revenue for the State.

Large scale reforms to make all infringements proportional to an individual's income level would seek to ease this disproportionate burden that the current system places on our community's most vulnerable. Until such time, a set fixed reduction system for people on nil or low income and/or experiencing special circumstances would strengthen the fairness of, and compliance with, the infringements system, ensure that more fines are paid, and reduce unrecoverable enforcement costs.

#### **Recommendation:**

- 37.Undertake large scale reforms to the infringements system whereby the penalty imposed is proportionate to an individual's income level.
- 38.In the meantime, introduce a set fixed reduction system to allow people experiencing special circumstances and financial hardship to access a concession reduction on their outstanding infringements.

## **4. ADDRESSING HOMELESSNESS AND THE FAMILY LAW SYSTEM**

When a parent is experiencing homelessness, this can stop them from trying to maintain meaningful relationships with their children or trying to maintain care of them in child protection and family law matters. IMCL's family law cases are intensive and comprehensive by reason of the complexity of issues, legal process and individual client vulnerabilities, including traumatic experiences of family violence, sexual assault, mental illness and/or homelessness.

### **a. Families that become homeless**

Some families become vulnerable to homelessness because they are struggling to make ends meet. The pressures of paying off a mortgage or rent, together with the increasing costs of living, can lead to the breakdown of relationships and exacerbate financial difficulties. For

other families, the loss of private rental accommodation and the difficulty of finding alternative affordable property to rent result in homelessness.<sup>55</sup>

The impact of homelessness on children can last a lifetime. Evidence, on a national and international scale, shows that disruption and disadvantage in early years can have a negative impact on their adult life.<sup>56</sup> When combined with other risk factors—such as the trauma of adult relationship breakdown, unsupportive relationships with parents, disruption to schooling, being a witness to family violence, and separation from friends and communities—homelessness can have enduring effects on children.<sup>57</sup> Families experiencing homelessness need to receive timely and coordinated support to access stable housing, education and other health and community services to limit the long-term impact of homelessness.

## **b. Homelessness caused by relationship breakdown and family violence**

Families and relationships can break down for a number of reasons. When there are children involved in the context of family violence, child protection, housing and family law processes can become overwhelmingly complex.

As noted above, in instances of family violence, it is not uncommon for a victim and their children to remain in the violent relationship for a prolonged period of time. This may be due to their reliance on housing provided by the violent partner. Parents who seek to leave without a supported transition into secure housing risk homelessness with their children and involvement with child protection.

Unsuitable accommodation and unsafe environments are tangible barriers that also restrict parents experiencing homelessness from contact with their children. For single parents experiencing homelessness, once child protection and DHHS are involved, children are often not allowed to go back to single parents experiencing homelessness unless accommodation has been secured.<sup>58</sup> This limited contact often results in a less meaningful engagement and relationship between the child and the parent.<sup>59</sup> Without adequate housing, parents are often unable to maintain, retain or re-establish care of their children. Housing is essential in demonstrating to DHHS and the Family Courts that a parent is able to have increased contact with their children or have them return to live with them.

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<sup>55</sup>Victorian Government, 'A Better Place: Victorian Homelessness 2020 Strategy: New Directions to Reduce Homelessness in Victoria' <[http://www.nwhn.net.au/admin/file/content101/c6/A-Better-Place-Victorian-Homelessness-2020-Strategy\\_1285220695133.pdf](http://www.nwhn.net.au/admin/file/content101/c6/A-Better-Place-Victorian-Homelessness-2020-Strategy_1285220695133.pdf)>.

<sup>56</sup>See Jack Shonkoff and Deborah Phillips, 'From Neurons to Neighbourhoods: The Science of Early Childhood Development' (2000) *National Academy Press*, Washington DC; Michael Rutter, 'Pathways from Childhood to Adult Life' (1989) *Journal of Child Psychology and Psychiatry* 30(1), 23–51; Richard Tremblay 'When Children's Social Development Fails' in Daniel Keating and Clyde Hertzman *Developmental Health and the Wealth of Nations: Social, Biological and Educational Dynamics* (The Guildford Press, 1999); John Hobcraft, 'Intergenerational and Life Course Transmission of Social Exclusion: Influences of Childhood Poverty, Family Disruption and Contact with the Police,' CASE, Paper 15, London (1998).

<sup>57</sup>Victorian Government, 'A Better Place: Victorian Homelessness 2020 Strategy: New Directions to Reduce Homelessness in Victoria' 23 <[http://www.nwhn.net.au/admin/file/content101/c6/A-Better-Place-Victorian-Homelessness-2020-Strategy\\_1285220695133.pdf](http://www.nwhn.net.au/admin/file/content101/c6/A-Better-Place-Victorian-Homelessness-2020-Strategy_1285220695133.pdf)>.

<sup>58</sup>Melanie Schwartz, Fiona Allison and Chris Cunneen, Australian Indigenous Legal Needs Project, *The civil and family law needs of Indigenous people in Victoria* (2013) 90.

<sup>59</sup>Justin Barker et al, 'More Than Just Me: Supporting Fathers who are Homeless' (August 2011) *Institute of Child Protection Studies*, Australian Catholic University 71 <<https://apo.org.au/sites/default/files/resource-files/2012/09/apo-nid30895-1137371.pdf>>.

### Case Study

#### **YUSUF – THE CYCLE OF NO HOUSING AND NO ACCESS TO THE FAMILY LAW ORDERS.**

Yusuf is a father of ten, and originally from West Africa. After separating from his wife, he went to live with his adult children. He was on the priority waitlist for public housing, given he had a number of health complications, but was waiting for years to get appropriate housing. He wanted to be able to spend more time with his youngest children, but they were both going through puberty and needed space of their own in their father's home. He could not accommodate this where he was, since he was sleeping on the couch in the property where he lived with his adult children. It was already overcrowded and could not accommodate his large family.

He had no choice but to apply for parenting orders through the Family Law Courts for his youngest children, after his former wife stopped him from spending time with them due to concerns about where he was living. While the Court could have made orders for him to spend time with the children outside of a home environment and in public places, this was not workable for him because his health complications prevented him from spending extended periods of time outside of the home, particularly as he was easily fatigued and found going out very taxing. The Office of Housing could not provide adequate housing for him and his youngest children, unless he could show that they would be staying with him for substantial periods of time. Yusuf could not obtain orders for his children to spend substantial periods of time from the Courts, without adequate housing though.

He remains on the priority wait list, hoping to find independent and secure housing.

Contact with children is a vital need for many parents that are experiencing homelessness. Prohibiting a parent from having contact with their child naturally tends to cause them despair, stress and depression, which can result in self-destructive coping behaviours that further prevent them from resolving their homelessness.<sup>60</sup> This, in turn, exacerbates the conditions that may have led to their homelessness, making it even more difficult for them to see their children. For many parents trying to access affordable community or public housing, they need to substantiate how often their children spend time with them. However, reaching an agreement with the other parent, or obtaining suitable orders in the Children's Court of Victoria and the Family Law Courts, can be impossible if the parent cannot show that they can provide adequate accommodation for their children when they are spending time with them. This places them in an impossible position, where they cannot obtain suitable housing because they cannot obtain an agreement or orders for their children; and they are restricted from an agreement or orders without suitable housing.

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<sup>60</sup> Justin Barker et al, 'More Than Just Me: Supporting Fathers who are Homeless' (August 2011) *Institute of Child Protection Studies, Australian Catholic University*<sup>85</sup> <<https://apo.org.au/sites/default/files/resource-files/2012/09/apo-nid30895-1137371.pdf>>.

## Case Study

### BILLY – HOMELESSNESS AND CHILD CONTACT.

Billy is a father of two and has a long history of homelessness, mental illness and drug dependency. The relationship breakdown with the mother of his sons left Billy devastated. For a number of years he struggled with his mental illness and drug use before reconnecting with his mother. With the support of his mother, Billy was able to abstain from drug use and start to deal with his mental illness in a supported environment.

Billy attended IMCL to seek assistance with seeing his sons. He was in a far better place than when he had last seen them but he was still homeless. IMCL assisted Billy to have regular contact with the children at his mother's house and under her supervision. These visits were providing a positive and meaningful interaction for Billy and his sons.

After IMCL initiated proceedings for Billy to have unsupervised contact he was kicked out of the property that he had been couch surfing at. Billy was left with no other option but to start rough sleeping. He struggled to meet his regular meetings with the children which in turn exacerbated his mental health and unfortunately saw Billy return to drug use.

Billy's life began to spiral to the point where his mother could no longer support the supervised contact with the children. Without seeing his children, Billy engaged in more and more self-destructive coping behaviours to the point where he was no longer in a position to pursue his application for unsupervised contact.

### **Recommendations:**

39. Increase housing support for separated families, including further resourcing for Department of Health and Human Services to assist parents and children to access housing when child protection is involved.
40. Increase housing support for separated families at the Family Law Courts.

## Conclusion

We have highlighted some of the far reaching and devastating impacts of homelessness on our clients in this paper, but these are just a handful of stories. When tens of thousands of people at any one time, will be experiencing homelessness in Victoria.

Given the intersection between homelessness, criminal offending, family violence and mental health, proper co-ordinated reforms across a number of different areas are needed to provide a whole of system response.

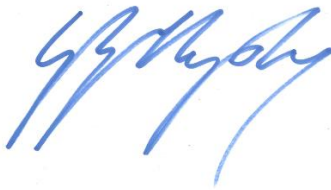
Urgent action is required to address the homelessness crisis in Victoria. Large scale investment in public housing is desperately needed, and the PHRP initiative needs to be scrapped. Until then, increased funding to the legal assistance sector is required from both

the State and Commonwealth Government, to provide legal help to people experiencing homelessness that face a cluster of legal issues.

We urge the Victorian State Government to take this opportunity to investigate and invest in much needed reforms to protect our most vulnerable Victorians.

We look forward to your review. Feel free to contact our office on 9328 1885 or IMCL lawyer Lloyd Murphy at [Lloyd.Murphy@imcl.org.au](mailto:Lloyd.Murphy@imcl.org.au) if you wish to discuss these issues further.

Yours sincerely



Lloyd Murphy  
Lawyer



Nadia Morales & Jessica de Vries  
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