# It starts with a home: Ten legal issues that cause – or are caused by – homelessness in Victoria

Submission to the Victorian Homelessness Inquiry

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**Connect with Victoria Legal Aid**

Victoria Legal Aid operates on Aboriginal country throughout Victoria; we acknowledge the traditional custodians of the land and respect their continuing connections to land, sea and community.

# Executive summary

In 2018–19, Victoria Legal Aid (**VLA**) provided legal assistance to over 6,300 Victorians who identified as being homeless or at risk of homelessness.[[1]](#footnote-1)

Through this work we see the two-way relationship between homelessness and legal issues in Victoria:

* Homelessness can cause or contribute to a person or family’s legal issues; and
* Legal issues can cause or contribute to a person or family becoming homeless.

This submission shares the stories of 11 people.[[2]](#footnote-2) These stories highlight the intersections between people’s experience of homelessness and their life and legal issues, including in relation to their families, income, health and mental health, ability to live free from discrimination, and engagement with the criminal justice system.

We set out 10 key legal issues that cause – or are caused by – homelessness:

1. Involvement with the criminal justice system for low-level offending
2. Inability to get bail or parole and a greater risk of re-offending
3. People with disability stuck in the justice system, including people under the *Crimes (Mental Impairment and Unfitness to be Tried) Act* *1997* (Vic)
4. Interaction with the mental health system, including inpatient units and compulsory treatment
5. Evictions: a cause of homelessness
6. Barriers to accessing social supports, including social security and the National Disability Insurance Scheme (**NDIS**)
7. Greater contact with the child protection system and the risk of homelessness for children leaving care
8. Greater risks from family violence
9. Discrimination that prevents people getting housing and discrimination based on someone’s homelessness status, and
10. People seeking asylum and refugees prevented from working, without support payments and facing lengthy visa delays.

These legal issues carry heavy personal and financial costs, which as a community, Victoria should be committed to preventing and avoiding wherever possible. The Inquiry into Homelessness in Victoria (**Inquiry**) presents an opportunity to recognise that investment in an adequate supply of social and affordable housing in Victoria is essential for supporting people to live happy, healthy lives and reduce interaction with our costly legal system.

Access to safe, stable and affordable housing is also at the foundation of many of the major social and policy reforms that the Victorian Government is committed to leading, including systemic responses to family violence and mental health initiated by our Australia-first royal commissions. Reforms to these systems and improvements to the lives of people who experience family violence or mental health issues will be persistently undermined without an adequate supply of safe, stable and affordable housing.

This Inquiry presents an opportunity to implement effective health and service-based responses to homelessness and poverty that do not rely on crisis-based systems, including the justice system. It also presents an opportunity to recognise where intersecting systems – including child protection, family violence, mental health, social security, the NDIS, justice and discrimination – need to be adapted to prevent and address (rather than contributing to and entrenching) homelessness. As our reformed *Residential Tenancies Act 1997* (Vic) takes effect this year, we must also use this opportunity to become a state that genuinely prioritises preventing evictions into homelessness.

Safe, stable, affordable housing is crucial for improving health, supporting mental health, keeping parents and children together, avoiding offending, and promoting social and economic participation. It is imperative that all levels of government invest in increasing the supply of social housing and supports so every person in Victoria has a home to live in.

## Six recommendations for reducing the links between homelessness and legal issues in Victoria

Informed by our work across Victoria, we put forward this suite of six priorities for reducing the links between homelessness and legal issues.[[3]](#footnote-3)

These recommendations seek to highlight – and address – the two-way relationship between homelessness and legal issues in Victoria. They illustrate how intertwined homelessness is with so many other personal and social challenges facing Victorians and our communities.

Together, through investments in housing and related system reforms, we can lead the way in preventing and addressing homelessness and the collection of costly challenges it brings.

Recommendation 1: Increase the supply of safe, stable and affordable housing

Access to safe, stable and affordable housing, including social housing, is a crucial part of preventing and addressing key issues that create hardship for people and communities.

Increasing the supply of long-term housing that is affordable for people on low incomes and has the right supports for people’s needs must be a priority across all levels of government.[[4]](#footnote-4) This includes **tailored housing and support programs – directed at accessing and sustaining housing** – that meet the diverse needs of:

1. **People engaged with the** **justice** **system:**[[5]](#footnote-5) To reduce the number of people remaining on remand due to lack of housing and improve prospects of remaining integrated in the community and engaging with treatment and support services, this should include:

* pre-trial programs to support bail (such as the Court Integrated Services Program) being made available state-wide with housing attached;
* the extension of initiatives such as the Atrium Housing and Support Program that provide housing assistance and support;[[6]](#footnote-6) and
* dedicated post-release planning and housing options.

1. **People in the** **forensic** **system:**[[7]](#footnote-7) Step-down services such as Secure Extended Care Units (**SECUs**) and Continuing Care Units to create pathways out of prison, Thomas Embling Hospital and the Disability Forensic Assessment and Treatment Service.[[8]](#footnote-8)
2. **People with disability or experiencing mental health issues:** Improved coordination between state-based services and agencies and the National Disability Insurance Agency, an increase in the supply of Specialist Disability Accommodation, and targeted programs aimed at reducing the risk of eviction.[[9]](#footnote-9)
3. **Aboriginal and Torres Strait Islander people:** A diversity of housing options for Aboriginal and Torres Strait Islander people, recognising the right to self-determination and the effects of colonisation and inter-generational trauma, which are linked to disproportionate experiences of imprisonment, homelessness, discrimination, family violence and involvement with child protection.
4. **Families engaged with the child protection system and young people leaving care:** A collaborative approach by the Department of Health and Services (**DHHS**) Child Protection, Office of Housing, housing providers and Family Safety Victoria that prioritises housing and prevents children being placed away from their families wherever possible.
5. **Victim survivors of family violence:** More options for people and families escaping family violence, including emergency accommodation services with clear pathways to obtain long-term, secure accommodation.
6. **Young people involved in family violence court matters:** Services and supports, including access to housing, provided by DHHS to young people aged 16–17 excluded from home.[[10]](#footnote-10)
7. **People who use violence:** When referrals are made, services should have sufficient housing supply to prevent people who have used violence from becoming homeless or being at risk of breaching an intervention order that excludes them from the family home.
8. **People who seek asylum and refugees:** More options for people and families seeking asylum, including temporary accommodation services where they meet financial criteria.

Each of these groups within our community has particular needs and requires housing and programs tailored to meet these needs. Access to safe, stable, affordable housing is part of any effective response to the needs of these groups within the Victorian community and a system-wide approach is essential.

Recommendation 2: Prevent people entering the justice system for reasons linked to homelessness and poverty

Deliberate measures should be introduced to reduce the over-reliance on the criminal justice system in circumstances where a housing and service-based response would be a more effective use of public resources. This should include:

1. **Summary crime reform:** Following on from the welcome announcement that public drunkenness will be decriminalised, VLA recommends that offences of poverty, including begging, be abolished or decriminalised. These offences have a disproportionate impact on some of the most disadvantaged people in the community, and should be replaced with housing and health-based responses.
2. **Increased use of referrals, cautions and diversions by Victoria Police:** To prevent people entering the criminal justice system, the use of cautions and diversion should be increased, including removing the requirement for police to consent to diversion. Police should also be equipped to make direct referrals into health and social services, rather than charging a person. In relation to Aboriginal and Torres Strait Islander people, these referrals should be to culturally appropriate services such as Aboriginal Community Controlled Organisations.

Recommendation 3: A legal and services system that prevents evictions into homelessness

Legal and policy safeguards must help to ensure that evictions are a last resort. This includes:

1. **Thoughtful implementation of the significant reforms to the *Residential Tenancies Act 1997* (Vic):** To maximise their potential to prevent evictions into homelessness, reduce discrimination in the housing market and improve the quality of housing for low income Victorians.
2. **Better application of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (Charter):** Improved training and resources for social housing providers, extending the jurisdiction of the Victorian Civil and Administrative Tribunal (**VCAT**) to consider human rights compatibility in tenancy and eviction matters, and confirming that community housing providers are covered by the obligations under the Charter.
3. **An** **internal review mechanism:** To improve access to a timely and cost effective review of decisions and the consistency of decision-making in the VCAT Residential Tenancies List, recognising the significant impact of these decisions on both landlords and tenants (which can currently only be appealed in the costly and daunting Supreme Court of Victoria).[[11]](#footnote-11)
4. I**ncreased access to tenancy legal advice and representation:** To support people to understand and assert their rights and minimise evictions into homelessness, together with other multi-disciplinary supports (e.g. social workers and financial counsellors).

Recommendation 4: Better ways of preventing and responding to homelessness in the child protection system

1. **Support families following a notification of risk:** Where DHHS has become involved following a notification of risk related to family violence, the ‘non-offending’ or ‘protective’ parent should receive the support necessary to provide a safe environment for the child. This should include focussing on accommodation arrangements for both parents and accommodating the children with the ‘non-offending’ parent rather than removing the children and placing them separately from the parent wherever appropriate and possible.[[12]](#footnote-12)
2. **Home stretch:** The Victorian Government pilot, which extends the state care from age 18 to 21 for 250 young people (including support with accommodation), should be expanded to cover all young people in care.

Recommendation 5: Strengthening our social safety net

1. **Barriers to accessing social supports should be addressed:[[13]](#footnote-13)** Addressing the complexity and inaccessibility of application processes, the often unfair and onerous obligations on individuals to prove eligibility for particular payment types (in particular the Disability Support Pension) and requirements (in some cases) for a fixed address.
2. **Better integration of services between the NDIS and state-based health and community services:** The Victorian Government should continue to work with the Australian Government and the National Disability Insurance Agency to enable easier access to social supports and pathways to safe, appropriate and affordable housing.[[14]](#footnote-14)

Recommendation 6: Tackling discrimination as a cause and consequence of homelessness

1. **Maximising the benefit of protections against discrimination in the updated Residential Tenancies Act:** Training and education should be provided to both tenants and landlords to make sure both parties understand their updated rights and obligations that seek to prevent unlawful discrimination in relation to rental applications, evictions and modifications. This should include updates to the practical documents and materials that accompany this legal framework, including rental application forms and the statement of information for rental applicants.[[15]](#footnote-15)
2. **Creating a modern, accessible legal framework for preventing and addressing discrimination:**

* **Broadening existing anti-discrimination protections:** In addition to existing grounds, Federal, State and Territory anti-discrimination laws should protect against discrimination on additional grounds of irrelevant criminal record, being a victim of family violence, homelessness and socio-economic status.[[16]](#footnote-16)
* **Reducing the burden on individuals to enforce their rights:** The Victorian Equal Opportunity and Human Rights Commission should have powers and functions under the *Equal Opportunity Act 2010* (Vic) to compel compliance with anti-discrimination or anti-vilification laws following an investigation, including entering into enforceable undertakings, issuing compliance notices and prosecuting breaches of these laws.

# Ten legal issues that cause – or are caused by – homelessness

# Involvement with the criminal justice system for low-level offending

VLA provides criminal law services from 15 offices across Victoria. This includes duty lawyer assistance for people in custody or appearing on bail or summons at Magistrates’ Courts across the state and at the Melbourne Bail and Remand Court during the weekend and evenings 365 days per year.

In 2018–19 VLA provided 67,427 criminal duty lawyer services. Our duty lawyers prioritise serious cases, including people who are in custody or at risk of going into custody, and people who have vulnerabilities.

We also provide specialist therapeutic courts assistance for clients appearing before the Assessment and Referral Court (**ARC**) at Melbourne, Frankston, Moorabbin and Latrobe Valley, Drug Court lawyers based at Dandenong and Melbourne, and lawyers who work at the Neighbourhood Justice Centre (**NJC**) in Collingwood (Melbourne).

Of VLA’s criminal law service clients in the 2018–19 financial year, 11 per cent self-identified as experiencing homelessness.[[17]](#footnote-17) We see that Victorians experiencing or at risk of homelessness:

* Are more likely than people with homes to come into contact with the criminal justice system for low-level offending related to homelessness and poverty; and
* Face complex barriers to attending court.

People experiencing homelessness are more susceptible to police attention because they occupy and live in public places. In our experience, homeless people are more likely to receive fines and be subject to other enforcement action for low-level offending. As discussed below, VLA is increasingly concerned about the high number of disadvantaged people entering the criminal justice system for low-level or minor offending such as begging, public drunkenness, shop theft of food and other low value items, and possession of personal use quantities of drugs of dependence.

We also frequently see people brought in on warrants that have been issued for failure to appear on summons. Magistrates are not obliged to issue warrants in these circumstances, but they are frequently sought by police.[[18]](#footnote-18) This has a disproportionate impact on the most vulnerable Victorians, particularly people experiencing homelessness. We commonly see people charged with criminal offending at a time when their lives are disrupted due to homelessness, mental health issues, drug or alcohol use or the impact of family violence, all of which make attendance at court difficult. The current summons process can also be confusing, and clients are often uncertain about whether they must attend court hearings.

**Sean: Taken into custody instead of to hospital**

Sean was found on the street in a confused state and appeared to passers-by to be hearing voices. He had previously been diagnosed with a mental health issue and lives with the trauma of past abuse. Passers-by called an ambulance to take Sean to an acute inpatient unit.

The police were also called and arrived first. As they waited for the ambulance, they discovered that Sean had outstanding court warrants for low-level summary offences. Despite having been told that an ambulance has been called, the police arrested Sean. Rather than being taken to access mental health treatment, Sean was instead placed on remand.

By this point, it was late on Friday afternoon. Sean has no permanent address, so police refused bail. Sean lives in a regional town and had to spend the weekend in custody. Sean spent a full weekend spent behind bars, which is widely understood to be extremely detrimental to the mental health of people in his situation. His health grew steadily worse over the two days. When he finally met with a lawyer he was teary and did not understand why he was in custody.

In VLA’s view, people experiencing homelessness charged with low-level offences should not be arrested and remanded into custody, but should be diverted to therapeutic options and referred to social and housing supports in the community. Preventing people experiencing homelessness from entering the criminal justice system, particularly in circumstances where the offending is low-level, is the best way to limit ongoing and entrenched involvement in a system that is costly for individuals and for the state.

For this reason, VLA supports measures to reduce the entry points in the criminal justice system in circumstances where a housing and service-based response would be a more effective use of public resources. This should include:

1. **Reorientation of enforcement practices including increased and consistent use of cautions and diversions by Victoria Police:** Police cautions or diversion can support a person to engage with support services to help address the underlying causes of the offending behaviour.[[19]](#footnote-19) Increasing the use of cautions and diversions for homeless people who are alleged to have committed minor offences could be achieved through:

* Reviewing and improving the current police **cautioning policy** to increase the range of offences for which a caution can be given and increase consistent use of cautioning across Victoria.[[20]](#footnote-20)
* Empowering Victoria Police to make **direct referrals** into health and social services rather than charging a person for these offences, particularly where a person has complex needs or circumstances.
* Removing the requirement for police to **consent to diversion**, ensuring the decision to grant diversion is made by an independent judicial officer.[[21]](#footnote-21)

If charges are required in the circumstances, Victoria Police should proceed with these by way of summons rather than arrest and bail, to ensure people experiencing homelessness and mental health issues can remain connected to treatment and support in the community.

1. **Summary offences reform which prioritises a social or welfare response to reduce the involvement of people in the criminal justice system:** Offences that penalise poverty and addiction should be repealed or decriminalised to reduce the overcriminalisation of people with complex needs. We welcome the Attorney-General’s announcement of the repeal of public drunkenness and look forward to better understanding and informing the proposed health-based response.[[22]](#footnote-22) We also recommend abolishing the offence of begging and note other offences of poverty that could be considered, including possession of drugs of dependence for personal use.[[23]](#footnote-23) Enforcement of these offences does not address the underlying circumstances of poverty, homelessness, mental health, disability and social marginalisation, and can further entrench these issues.

**Refer to Recommendations 1 and 2.**

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# Inability to get bail or parole and greater risk of re-offending

The Australian Institute of Health and Welfare’s 2018 report on the Health of Australia’s Prisoners found:

* Homelessness is far more common among people in contact with the prison system than people in the general community. About one-third (33 per cent) of prison entrants said they were homeless in the four weeks before prison – 28 per cent were in short-term or emergency accommodation, and five per cent were in unconventional housing or sleeping rough.
* More than half of prison dischargees (54 per cent) expected they would be homeless on release, with 44 per cent planning to sleep in short-term or emergency accommodation, two per cent planning to sleep rough, and eight per cent not knowing where they would sleep.[[24]](#footnote-24)

In recent years, there have been increases in the numbers of people held on remand and who are unable to be released from prison because of a lack of housing, leading to further periods in custody. In Victoria, 37 per cent of the male prison population and 47 per cent of the female prison population are on remand.[[25]](#footnote-25)

VLA has experienced significant increased demand for criminal law services in recent years, caused by increased police activity and legislative reform, which have increased the number of clients in custody and the complexity of bail applications. The 2018 bail reforms saw a particular increase in intensive duty lawyer services for people in or facing custody, reflected in a 28 per cent increase in bail applications.[[26]](#footnote-26)

# Housing, homelessness, bail and parole

Following the 2018 bail reforms, VLA sees more vulnerable people on remand because they are now required to prove exceptional circumstances or compelling reasons for bail, even if the alleged offending is very minor and would not receive a term of imprisonment. For example, where a person charged with begging subsequently offends while on bail by stealing food, this person will be required to demonstrate that there are “compelling reasons” for granting a further bail, even though begging and low value shop theft would not receive a custodial term.

Stable accommodation is a key factor in successfully securing bail. Homeless clients entering the criminal justice system rely on the limited short-term accommodation services provided by not-for-profit organisations and some limited government agencies. In all areas the demand for accommodation options outstrips the available resources, there are limited crisis accommodation options available and no long-term stable housing options available.

The Court Integrated Services Program (**CISP**) is a pre-trial and bail program that provides case management and coordinates referrals to external treatment and support services, such as housing. Our lawyers’ experience is that CISP is a significant factor in helping people find housing and stay out of custody. However, there is significant geographical disadvantage in access to court-based services like CISP. In regional Victoria less than half of all courts have access to this program.[[27]](#footnote-27)

The Atrium Housing and Support Program is a recent pilot program that is coordinated through CISP, currently offering supported housing as part of a pilot operating at Melbourne Magistrates’ Court. Eligibility is limited to people applying for bail at the Melbourne Magistrates’ Court, with high and / or complex criminogenic needs and difficulty securing and maintaining housing. Participants receive access to supported short-term housing, transition to medium and long-term accommodation, case support and intensive alcohol and drug treatment.

John’s story highlights how the lack of stable housing can contribute to people entering custody and spending prolonged periods in prison because they are unable to secure bail. John’s initial NDIS plan did not meet his disability support needs. Without more intensive supports in place, John committed offences and was taken into custody.

**John: In custody for almost 10 months because of lack of housing and supports**

John has an ABI and a diagnosis of schizophrenia, and his disabilities have contributed to past problematic substance use, lack of employment, and limited community engagement. He has a history of mostly low-level offending. His disabilities have a significant impact on his everyday functioning, and his behaviours of concern limit his housing options. When he has received consistent community supports, John has been most successful in retaining accommodation and avoiding reoffending.

When John transitioned to the NDIS, his plan was not sufficient to support him to live well in the community. Without the supports he needed, John committed further offences and was taken into custody. John could be placed on the waiting lists for community and public housing providers, but any housing option was unlikely to be sustainable for John without intensive daily support.

After re-entering custody, John remained in custody on remand, and applications for bail for John were adjourned and then withdrawn because of the absence of suitable housing in the context of his minimal supports.

At John’s hearing, the Magistrate indicated she would be satisfied that John had spent sufficient time in custody in relation to his offences but would only release him if appropriate supports were in place. A supported residential service said it could hold a room for him pending further planning, but it could not hold John’s housing indefinitely if the support was not confirmed.

Eventually John’s NDIS plan was reviewed and his supports were increased to provide 24/7 support for him in his home. These supports made living at the supported residential service feasible for John.

It took 10 months for an NDIS plan review, which led to a sustainable post-release package of supports. For the majority of this time, John was in custody.

John’s homelessness – which was interlinked with the lack of adequate supports for his disability –played a role in his offending and entry into custody and then prevented him getting bail.

In addition to the issue with bail, people released on parole are required to have their housing plans approved by the Adult Parole Board, and lack of housing options limits parole eligibility. The Victorian Ombudsman noted: “Prisoners often face a catch 22 where they are unable to get parole without having housing to go to on release, but cannot secure housing without having a parole date.”[[28]](#footnote-28)

To reduce the number of people remaining on remand due to lack of housing and improve prospects of remaining integrated in the community and engaging with support services, VLA recommends:

1. **Pre-trial supports** (such as CISP) should be made available state-wide with housing attached;
2. The extension of **housing assistance and support initiatives** such as the Atrium Housing and Support Program;[[29]](#footnote-29) and
3. Dedicated **post-release planning** and housing options.

# Housing and recidivism

The Australian Institute of Health and Welfare found that almost three in four prison entrants had previously been in prison, and around three in 10 had previously been in prison at least five times.[[30]](#footnote-30)

If a person is released from prison within business hours and they have means to access public transport they may seek crisis accommodation through a non-government service provider such as the Salvation Army. In some instances, they may be offered a night or two at a motel and anecdotally there are reports of prisoners being given camping swags.[[31]](#footnote-31) In some regional areas, VLA lawyers report that crisis accommodation is non-existent and formal housing support is not offered at all. Lawyers from our Warrnambool office report that people live on the beach foreshores while on bail in winter, and are moved on in summer when tourists arrive. Our lawyers in Gippsland recently said:

*“Our housing situation has been particularly impacted by the bushfires at the moment. Many clients cannot get crisis accommodation in the town as the hotels are all full with service providers. The campgrounds are also difficult, as many families have fled to the campgrounds while they wait until it is safe to return to their homes, so they are also very full. We are still taking stock of the issue …”*

Housing is a significant issue for people leaving prison, as there is no guarantee of secure housing. Release without housing, a NDIS plan in place, transition planning or practical supports are key factors which contribute to criminal justice churn in our experience. This is because housing provides security, stability, and an anchor through which a person can be linked into support services and seek employment.[[32]](#footnote-32)

In Victoria, 43.7 per cent of prisoners released in 2015–16 returned to prison within two years (2017–18).[[33]](#footnote-33) Homelessness, poverty, overcriminalisation of minor offending and lack of continuity of and engagement with mental health services contribute to recidivism in this context. For example, the Victorian-Auditor General noted that “[t]he likelihood that a recently released prisoner will reoffend is higher if they experience delays in accessing welfare benefits, housing, health and other social services.”[[34]](#footnote-34)

An Australian Institute of Criminology Report concluded that:

*“Several recent studies have reinforced the need for housing support for people leaving prison. … The literature provides further support for the contention that transitional and housing support services have the potential to reduce recidivism, thereby bringing direct benefits to clients, increasing community safety, and reducing criminal justice system costs. … While supported housing initiatives can be resource-intensive, there is evidence to suggest that they are nonetheless more cost-effective than imprisonment and can contribute to reduced reoffending.”*[[35]](#footnote-35)

The Victorian Ombudsman has also linked the lack of housing for people upon release from prison as a cause of recidivism, noting that only 1.7 per cent of prisoners have access to housing through the two state government programs specifically for former prisoners, and that over 40 per cent of women are homeless upon release from custody.[[36]](#footnote-36)

We are seeing more people exiting custody abruptly, making discharge planning very difficult. Contributing factors include:

* Slow and inflexible NDIS planning processes for people in the justice system.
* Prisoners sentenced to short terms of imprisonment or ‘time served’ sentences are unable to meaningfully engage with rehabilitation services while in custody.
* An increased number of people are being sentenced to time served as a sentence, without any ongoing supervision of a Community Corrections Order or the oversight of the Adult Parole Board as part of a parole sentence. The unplanned nature of this sentence and release can create additional problems in terms of access to support with housing and other services as there is no or little opportunity to prepare for release in advance.

These links between housing, mental health and imprisonment were recognised by the Productivity Commission in its Inquiry into Mental Health. Recommendations in the Commission’s draft report – which we support – include policies to prevent exits from prisons and inpatient units into homelessness and to encourage development of Specialist Disability Accommodation.[[37]](#footnote-37)

**Refer to Recommendations 1, 2 and 5.**

# People with disability stuck in the justice system

VLA has a specialist practice with clients who fall under the *Crimes (Mental Impairment and Unfitness to be Tried) Act* *1997* (Vic) (**CMIA**).

Following a finding of not guilty by reason of mental impairment or unfitness to be tried under the CMIA, the Court must either declare that a person is liable for supervision or order their unconditional release. The most common order under the CMIA is for a court to declare a person liable for supervision.[[38]](#footnote-38) The Court must then make a custodial or non-custodial supervision order. Supervision orders under the CMIA are indefinite orders and can only be brought to an end by a court determining that to do so would not present a risk of harm to the person on the order or anyone else.

Our specialist mental health and disability lawyers appear in hearings in the County Court and Supreme Court, as well as at the Forensic Leave Panel, for clients on supervision orders seeking access to leave.

Our lawyers see it can be difficult for people on custodial supervision orders to access appropriate housing and supports to facilitate their integration into the community and gradual exit from the system. This can have significant consequences for a person’s rehabilitation and recovery. Our experience is that this often leads to longer and at times clinically unnecessary periods of detention at Thomas Embling Hospital, and we see cases of people remaining under custodial supervision under the CMIA for longer than is required to manage their risk of reoffending because of sometimes extensive delays in securing these supports, particularly housing.

Key barriers that impede community transition include:

* Delays that arise from difficulties putting supports in place in the community, including housing. Mainstream rehabilitation, mental health, housing and aged care services may not want to accommodate people with forensic histories, which are further complicated by the intersection with the NDIS.[[39]](#footnote-39)
* Challenges people with a forensic history face in finding appropriate accommodation which is suitable for discharge due to a range of factors. For example, there is an acute shortage of affordable housing, discrimination and a lack of appropriate services including step-down services such as SECUs and Continuing Care Units.

Where people are held for prolonged periods in the restrictive (and scarce) beds of Thomas Embling Hospital or the Disability Forensic Assessment and Treatment Service (**DFATS**), it limits access to these facilities for others, such as prisoners who require mental health treatment or those subject to custodial supervision orders who are in prison following the making of their order.

People found not guilty by reason of mental impairment are commonly spending up to 12 months in prison awaiting transfer to Thomas Embling Hospital to commence the process of treatment and rehabilitation required by their order.[[40]](#footnote-40)

As we highlighted in our submission to the Royal Commission into Victoria’s Mental Health System, *Roads to Recovery: Building a Better System for People Experiencing Mental Health Issues in Victoria*,[[41]](#footnote-41) the policy intention of the CMIA – that people who are found not to be criminally responsible should be diverted from prison to hospital – is being undermined by the lack of access to appropriate housing.

Our lawyers also see people who get stuck in prison because of a lack of appropriate supported accommodation in the community. People like Rebecca, who was the subject of the Victorian Ombudsman’s Investigation of a Woman Found Unfit to Stand Trial.[[42]](#footnote-42) Rebecca is a young woman with complex needs who spent almost two years in the damaging prison environment, without adequate treatment or support and often subject to restrictive conditions such as 23-hour lockdowns, restraint of movement and solitary confinement. And people like Alex, whose story is below.

**Alex: Stuck in prison because he has nowhere else to go**

Alex is a young person with a number of complex cognitive and developmental disorders. He was living with his parents and on a NDIS plan which provided staff to support his disability needs on a daily basis.

Alex was charged with non-violent offending and found unfit to plead. He was placed on a non-custodial supervision order and continued to live at home with his family.

Over the next few months, there were some incidents in which Alex put himself in danger and the police were called. Alex was brought before a judge who reluctantly decided there was an unacceptable risk that Alex might reoffend, or hurt a family member or himself. Consequently, he was placed on a custodial supervision order. At the time, the Court acknowledged that it was a difficult decision to have to send such a young person with Alex’s disabilities to prison. However, there were no other options available for Alex.

There were no available placements in treatment facilities which could support Alex and his disability. Because there was nowhere for Alex to go, he was sent to prison. For almost a month he was held in 23-hour isolation, locked in a tiny cell in conditions which had a significant detrimental impact on his health and wellbeing.

Alex has now been in prison for months. He is acutely distressed and barely eating. His ability to communicate has been affected and he routinely engages in self-harming behaviour. The situation is very distressing for his parents, who are his strongest personal support but have been unable to visit him and have only been able to speak with him on the phone once.

Alex’s doctors say his time in prison will harm him further and hinder any progress he has made from treatment.

Since he has been in prison, disability advocates and his NDIS support coordinator have tried to find suitable accommodation for Alex in the community. There have been delays caused because of the lack of available specialist disability accommodation for young adults like Alex as well as misunderstandings about Alex’s eligibility for this accommodation under the NDIS. Although Alex is still young, he no longer qualifies for specialist accommodation services which supported him when he was a child. Alex’s NDIS plan now includes funding for specialist disability accommodation, but there is no suitable specialist disability accommodation for him to live in.

Alex will continue to stay in harmful conditions in prison until a placement in a suitable specialist disability accommodation becomes available for him.

The lack of housing pathways out of both prison and Thomas Embling Hospital, into stable, supported accommodation is one of the key blockages in the system.

These issues were recognised by the Victorian Ombudsman in her investigation of Rebecca’s case and she made recommendations that were intended to prevent people getting stuck in this way. The Ombudsman recommended that the Department of Justice and Regulation (as it then was):

“*Coordinate regular, whole-of-government reporting on the management of people subject to custodial and non-custodial supervision orders under the CMIA. To ensure appropriate decisions about placements, the department should share the reports with relevant agencies ….*”[[43]](#footnote-43)

These issues do not require a new policy or legislative response. They simply require additional investment in transitional support, accommodation and forensic mental health services to match increased demand and overall population growth to ensure that the service response gives effect to the current legislation and clinical framework.

**Refer to Recommendations 1, 2 and 5.**

# Interaction with the mental health system

In 2017–18, VLA assisted over 1000 people who were experiencing homelessness and identified as having a mental health issue or disability.

Through this work, VLA sees people who end up in crisis, and consequently in an inpatient mental health unit (or, as discussed above, the justice system) because of a breakdown in housing and services. Once people have entered these crisis-based systems, their exit, integration and/or recovery is again dependent on access to adequate housing and supports in the community.

As Hayley’s story highlights, while in an inpatient unit, people also experience significant barriers to exercising their rights in relation to their housing and face a high risk of eviction.

**Hayley: Facing eviction from her property while hospitalised for her mental health**

Hayley is a 58-year-old woman who had been living alone in a private rental property. Her real estate agent called the police, worried about her behaviour and she was subsequently admitted to a psychiatric unit.

At some point during her admission to hospital, her real estate agent applied for a possession order at VCAT (the first step in the process to evict a tenant) alleging damage to the property, during a time in which her psychiatrist believes that Hayley was suffering from symptoms of psychosis.

While a compulsory inpatient and being subjected to compulsory mental health treatment, Hayley found herself also having to try to defend legal proceedings that may have led to her eviction, rendering her homeless. The hospital social worker couldn’t help her to adjourn the eviction hearing. The mental health duty lawyer from VLA successfully advocated for her to be discharged from hospital.

The mental health duty lawyer was also able to arrange legal representation for Hayley at her VCAT hearing the very next day after her discharge, and she successfully defended the possession order application. Hayley was then able to remain in the property until eventually leaving on her own terms. Without legal assistance, it is highly likely that Hayley would have become homeless and faced significant difficulties maintaining her mental health.

Hayley’s experience highlights the difficulties faced by people who are detained and treated in acute mental health inpatient services when their accommodation is simultaneously at risk.

In addition to supporting people to avoid crisis, availability of appropriate housing and support in the community is essential to successful and sustainable discharge.

Through our work, we see people discharged into short-term, unstable housing, including couch surfing with family or friends, rooming houses or motels.

We also see that lack of access or delays in accessing housing and supports frequently result in people being subjected to a longer admission than is necessary. People in SECUs are particularly at risk of prolonged detention and a delay in discharge despite otherwise being clinically ready for community treatment.

**Jeremy: Young man in regional area detained in hospital under a compulsory order because he was homeless**

Jeremy was recently admitted to a mental health unit in a regional hospital.

VLA assisted him at a Mental Health Tribunal hearing. Jeremy agreed that he had a mental health issue. He agreed to taking medication and saw a benefit in doing so. His treating team agreed that he was ready to be treated in the community.

However, Jeremy was homeless, and the treating team had been unable to secure accommodation for him. The treating team was therefore seeking a 26-week inpatient treatment order (which would have the effect of detaining him in hospital). When asked what had been done to find Jeremy accommodation, the treating team indicated that the hospital’s social worker and case worker were on leave and no progress had been made as the Mental Health Tribunal hearing approached.

The Tribunal was concerned that an inpatient order was being sought simply because Jeremy was homeless. It suggested that he might be able to be treated on a community treatment order and allowed to reside in the hospital voluntarily (and be free to come and go) until accommodation was obtained. The hospital decided that due to hospital policy this was not possible and determined that he needed to be treated on an inpatient treatment order, meaning his ability to come and go from the hospital was tightly curtailed.

Jeremy’s experience illustrates how homelessness can lead to significant restrictions on a person’s rights. If Jeremy had housing, he would have been discharged into the community and able to regain his autonomy. However, due to his homelessness, he was detained and only allowed to leave the hospital with the permission of the authorised psychiatrist, even though this was no longer necessary for his mental health.

As the Royal Commission into Victoria’s Mental Health System progresses, it is essential that the over-reliance on our mental health system to respond to the inadequacies in our housing system – and the impact this has for people and their rights and wellbeing – is front and centre of the system reform and redesign.

**Refer to Recommendations 1, 2, 3 and 5.**

# Evictions: A cause of homelessness

VLA’s work in residential tenancy is aimed at helping tenants avoid eviction. There are four main ways VLA assists Victorians who are at risk of eviction: through the provision of legal information online, in brochures and over the telephone; through general and specialist telephone advice; through duty lawyer services at two VCAT locations (King Street, Melbourne and the Neighbourhood Justice Centre); and through case work.

In 2017–18, VLA provided 4,296 information services and 2,372 legal advices; opened 79 files for ongoing assistance; and made 301 appearances VCAT.

Through our work with Victorians experiencing or at risk of homelessness, we see the impact of housing instability and homelessness on people’s health and wellbeing;[[44]](#footnote-44) the risks of preventable evictions; and the barriers to getting safe, affordable housing, including because of low incomes, discrimination, and an acute shortage of affordable housing.[[45]](#footnote-45)

# Preventing evictions into homelessness

Unlike many of the other legal issues discussed in this submission, evictions directly *cause* homelessness, rather than being caused or exacerbated by it. Many of the risk-factors for homelessness are also risk-factors for eviction. For example, a person who is experiencing mental health issues may face eviction for reasons that are directly related to their mental health. This is illustrated by Lydia’s story, which highlights the two-way relationship between a person’s housing and their mental health: Lydia’s hoarding – directly related to her mental health – placed her at risk of eviction, and the stress of facing eviction exacerbated her mental health issues.

**Lydia: Threat of eviction for hoarding behaviours**

Lydia is a 53-year-old woman living in suburban Melbourne in a property managed by a social housing provider. She identifies as Aboriginal and regularly travels to regional Victoria to help care for her ageing parents. Lydia has had some involvement with the criminal justice system and has spent some time in prison. She has been a victim of family violence.

Lydia has been affected by complex trauma and this manifests in hoarding behaviours. This has caused issues throughout her 12-year tenancy. Her relationships with some of the other occupants of the apartment building have broken down and they complain frequently to the housing provider about Lydia’s hoarding. The housing provider has issued Lydia with numerous breach of duty notices over the years, and has applied to VCAT for possession of the property on multiple occasions. Lydia has defended many of these eviction applications and negotiated with respect to others, such that she has been able to remain in the property until now.

In 2018 Lydia was again issued with breach of duty notices and a new application was made to evict her from the property.

Lydia sought VLA’s assistance to oppose the application for possession of the property. Lydia’s mental health was adversely affected by the proceedings: her mental health is inextricably entwined with her housing, and a threat to the one is a threat to the other. Despite her best efforts, including consistent therapeutic engagement, her hoarding behaviours increased due to the stress.

At present, the VCAT proceedings are adjourned indefinitely while VLA negotiates an appropriate outcome with the housing provider. Lydia is, however, overwhelmed by the knowledge that the proceedings could recommence at any time, and she could again face the threat of eviction into homelessness due to compulsions she has been unable to control.

Lydia’s case highlights how community and public housing providers continue to resort to eviction as the mechanism for managing tenants with complex behaviours directly linked to their mental health.[[46]](#footnote-46)

Without significant formal and informal supports, Lydia, like many other vulnerable Victorians who are evicted, would face substantial difficulty getting back into secure accommodation, with private rentals unaffordable for many and the waitlists for public and social housing remaining prohibitively long.

The particular circumstances that may lead to the risk of eviction can also lead to a person being unable to attend to VCAT or, even if they do attend, being unable to properly defend their rights under the *Residential Tenancies Act 1997* (Vic).

Eviction proceedings are frequently successfully defended when a person has access to legal advice and representation. Many of the tenants assisted by VLA’s duty lawyers at VCAT have had no legal advice prior to attending on the day of the hearing. Many clients we work with would struggle to self-represent in what can be complex matters, complicated further by the inherently emotional situation of having their housing at risk. Unfortunately, funding constraints mean that access to legal advice and representation in tenancy matters is limited in Victoria, including VLA’s duty lawyer services which are only available in two locations across the state.

In addition to access to legal advice and representation, it is important that legal and policy safeguards help ensure that evictions are a last resort in Victoria. This includes:

1. An internal review mechanism as a means of improving the consistency of decisions made in the VCAT Residential Tenancies List, recognising the significant impact of these decisions on both landlords and tenants.[[47]](#footnote-47)
2. Better application of the Charter, including through improved training and resources for social housing providers, extending the jurisdiction of VCAT to consider human rights questions in tenancy and eviction matters, and confirming that community housing providers are covered by the obligations under the Charter.
3. Thoughtful implementation of the significant reforms to the *Residential Tenancies Act 1997* (Vic) to maximise their potential to prevent evictions into homelessness, reduce discrimination in the housing market and improve the quality of housing for low income Victorians.

# The flow-on effects of eviction

Where evictions are not prevented, M’s story highlights the flow-on effects of this for people and their wellbeing.

**M: Evictions into homelessness (part 1)**

My name is M and I am homeless. I have an injury which stops me from working, as well as severe agoraphobia. I had a good job years ago, and then I got into trouble with the police. I got a conviction and it’s been hard to find work since then.

I wanted to get away from the bad influences in my life, and to try to start again, so I moved to a different town in another part of the state. My friend and I rented a house directly from the owner. Things worked out for a while.

Pretty soon however the owner started to make unreasonable demands of my friend and me. The relationship broke down between the owner and me, and the owner kicked me out. I wasn’t given a proper notice to vacate.

I became homeless for the first time in my life. I had to go back to the city and live in my car with my dog. I got help from some crisis accommodation providers, but the accommodation is always temporary, and many places won’t accept me because I’ve got a dog. I had to leave my dog with my ex-partner just to get a roof over my head for the night.

The crisis accommodation houses can be very bad. Some of the houses I’ve seen have been falling apart, and the people who live in them can be violent and dangerous. I’m better off living in my car most of the time.

The problem with that is, everything becomes more expensive. I was injured a few years ago so I drive everywhere, and fuel costs a lot. If I want to have a wash, I pay money to go to a public pool or gym to use the showers. If I want to wash my clothes, I go to a laundromat and that’s expensive too. I have no way to keep fresh food because I don’t have a fridge, so I eat cheap take-out meals. I often skip meals, and some days I don’t eat at all because I receive Newstart allowance, which hardly covers anything.

I wouldn’t have these expenses if I hadn’t been evicted from my home.

M’s story illustrates the impact the experience of homelessness has on people, including the challenges of day-to-day living like eating, washing clothes and showering. M went from working in a good job to living in his car after eviction and he now faces significant barriers to accessing housing and adequate income support (see below part 6**Error! Reference source not found.**).

**Refer to Recommendations 1, 3, 5 and 6.**

# Barriers to accessing social supports, including social security and the NDIS

VLA contributes to the alleviation of poverty and social exclusion by providing advocacy to help resolve problems relating to social security and the NDIS, that would otherwise lead to entrenched disadvantage. In 2018–19, VLA assisted 25,129 clients who identified as having a mental health issue or disability.[[48]](#footnote-48)

Through our work, we see the way barriers to accessing disability services, employment, income support and/or mental health services in the community increases the risk of housing instability and homelessness. We have worked with many clients who are experiencing or at risk of homelessness because of the difficulties they face engaging with Centrelink and participating in job search requirements which can lead to payments being stopped and them falling into rental arrears.

In addition to contributing to people entering homelessness, once people are experiencing homelessness, it is almost impossible to navigate the complex application processes to gain access to social supports, including social security and the NDIS.

We also note that the very low rate of a number of social security payments, particularly Newstart, when combined with the issue of housing affordability, makes it impossible for many clients to maintain housing in addition to meeting their other basic needs, such as medical expenses, food costs and daily essentials.[[49]](#footnote-49)

# Homelessness and social security

Rather than providing a safety net for people, Australia’s social security system is contributing to people entering homelessness and, once people are homeless, is extremely difficult to navigate.

Recent years have seen a widening gap between the Disability Support Pension (**DSP**) and Newstart Allowance, and significant hurdles to qualification for the DSP,[[50]](#footnote-50) including changes to the impairment tables and the burden of “program of support” requirements.

M, who was living in a regional in Victoria and had to move back to the city after being evicted from his home, is facing significant barriers to accessing medical services and income support because he does not have a fixed address.

M’s story (also discussed above in Part 5) highlights the unintended and compounded impacts of homelessness on accessing social and community supports.

**M: No fixed address contributes to missing out on community supports and health services (part 2)**

Having a dog stopped me from getting emergency accommodation. It’s not an assistance dog or anything like that but it helps manage my agoraphobia. It was stressful and sad to have to leave my dog with my ex-partner. The thing is, without the dog, I find it even more difficult to get out in public and do the things I need to do.

Where I stay depends on whether I can get temporary accommodation. That means sometimes I’ll be all over the city – I have been on “both sides of the Bay” in recent weeks. It’s a big problem because it means that I don’t see the same doctor regularly, which means that I can’t get the documents I need for my disability support pension application. It also means that doctors don’t get to know me and my medical history. I can’t go on a mental health plan to help with my agoraphobia, because there’s no way that I can afford the upfront fees for a counsellor. I spend my Newstart allowance on fuel and food, they’re the essentials for me.

To get Newstart, I usually participate in job seeking activities. I’m medically exempt from that right now. When I’m not exempt from job-seeking I drive all over the place to get to Centrelink’s appointments. Centrelink reviews my medical exemption every month, and I have to drive around more to get medical certificates from a doctor.

I was evicted and so I came back to the city and went to my local Centrelink office. I wanted to lodge an application for the DSP. I told Centrelink that I was living in the city now. The people at the office told me that because my address is recorded at a town in rural Victoria – the address I was evicted from – I would have to either attend appointments with a Job Capacity Assessor in that town, which is three or four hours’ drive away, or provide an address in the city. I told them I don’t have an address here in the city because I’m homeless. They wouldn’t budge, so I tried to rent a post office box. I couldn’t afford the private PO box so I just have to pick up my mail at the post office using post restante, which costs money too.

The real catch-22 is that a lot of social support and homeless support agencies can’t help me because I am not in their “area”. I don’t have a fixed address and move around a lot, so a lot of agencies won’t “have me on the books”. I’m stuck just getting help bit by bit. I’m not even getting temporary help anymore. I’ve exhausted all the resources. All I’m eligible for now is rent assistance and the bond loan.

I can get the Department of Housing’s bond loan scheme so that I can rent privately. The problem is there are not many options when you’re on Newstart. I would like to rent a place with my friend, but most real estate agents don’t like accepting Department of Housing bonds and with my rental history, it’s hard to get references. I could look for a shared place, but my agoraphobia is a big barrier to that. I think that if I was able to get help with my mental health condition, from a local doctor or a counsellor, just to manage it, it would mean I could get a permanent place to live.

# The NDIS and homelessness

While the NDIS presents an opportunity to fill some of the gaps in appropriate accommodation for people living with disability, it has also added another layer of complexity to an already complicated social system.

It is a central feature of the NDIS that individuals are responsible for requesting access and navigating the system, which most significantly affects people with complex needs. For example, VLA has worked with a number of clients with intellectual disability, autism spectrum disorder and psychosocial disability who are experiencing or at risk of homelessness. A common theme that arises across VLA’s work is the lack of systemic coordination to navigate the complexity of the system, which leads to isolation from services and a lack of awareness about where to go for help. Through our work, we see the way in which the absence of skilled assistance for people with complex needs can lead to a failure to engage with the scheme or a failure to receive funded services that adequately respond to a person’s needs.

Gaps in specialist disability housing support and services together with the difficult interface between the NDIS and State- and Territory-funded services also contribute to homelessness and housing insecurity for people with complex needs.

Sam’s story from our previous submission *Ten stories of NDIS ‘Thin Markets’: Reforming the NDIS to meet people’s needs*,[[51]](#footnote-51) highlights the importance of planning for a person’s release before their sentence is complete or discharge is imminent so that supports are in place to facilitate successful discharge or release and reduce risk of reoffending or readmission.

Sam’s story shows the way in which people are falling between the housing and NDIS systems, which is contributing to people being kept in restrictive environments or facing homelessness.

**Sam: Young man in an acute psychiatric ward because he has no housing or services in the community**

Sam has spent over two years in an acute psychiatric ward of a public mental health service, despite not requiring inpatient treatment. Sam has Huntington’s disease – a neurogenerative disease which is terminal and can lead to complex support needs and behaviours of concern.

His successful discharge from the health service relies on a delicate balance of housing and supports, which span across NDIS and mainstream services. There are questions, for example, about whether Sam is eligible for Specialist Disability Accommodation (SDA) funding, and what packages of State-based and Federal funding could be combined to build durable housing and support options for him.

For over two years Sam has been confined to a restrictive environment which is not designed for his care because he does not have housing, is not funded to receive SDA (meaning that neither State nor Federal options are realistically available), and has not been the subject of any overarching consideration of what supports could be provided across the NDIS/mainstream interface to create a pathway out of the psychiatric ward.

Recently, VLA escalated Sam’s case to the DHHS Intensive Support Team. *The Age* reported that the Victorian Minister has directed the department to prioritise finding suitable accommodation options for Sam. It was also reported that the NDIA reiterated that state and territory governments remain responsible for providing affordable and accessible housing to the community, including people with disability.

The difficulties that people at risk of homelessness experience navigating the complex NDIS system are compounded by lack of access to services which they are funded to receive, particularly people with complex needs or people living in remote and regional areas. We continue to see the consequences of ‘market failure’ or ‘thin markets’ for our clients where service providers are not ready, willing or able to provide the services and supports a person needs to live well and safely in the community. These consequences can include homelessness or increased risk of homelessness for some of our clients.[[52]](#footnote-52)

**Refer to Recommendations 1, 3, 5 and 6.**

# Engagement with the child protection system

VLA has a significant presence in the Family Division of the Children’s Court across the state, providing legal advice and representation services to Victorians who are involved in matters before the court. Most families that the Department of Health and Human Services (**DHHS**) Child Protection has involvement with are low income and experiencing disadvantage. Their poverty is often intergenerational and is multidimensional, with one or more of the following factors also generally present: lack of education, inadequate housing, social isolation, mental health issues, family violence, or drug and/or alcohol abuse.

In 2018–19 the Child Protection program delivered over 2500 duty lawyer services and over 9600 grants of legal assistance, which provide for ongoing legal representation for young people and parents involved in child protection proceedings. Through VLA’s practice experience, we see the intersection of a range of issues, including experience of family violence and mental health issues putting our clients at risk of homelessness and engagement with child protection.

Equally, for children and young people involved in the child protection system, inadequate support services including the provision of support beyond the age of 18 increases their risk of homelessness and of entering the criminal justice system.

# Greater contact with the child protection system for families experiencing homelessness

We see two distinct ways in which the risk of homelessness and risk of the involvement of child protection intersect for our clients. The first involves inconsistent recognition of family violence and homelessness risks in child protection matters and inconsistent practice in response to these. The second is that child protection intervention can itself increase the risk of homelessness for some parents.

Firstly, we see cases where there is insufficient recognition and support by DHHS for families at risk of or experiencing homelessness due to family violence and/or other factors. This can lead to a failure to address their housing needs as part of child protection case planning. A client wishing to “act protectively” can be faced with a choice to stay in an abusive relationship so they and child have a home, versus choosing to leave the relationship to protect themselves and their child, but then being in precarious housing or even sleeping in a car.

Further, in our observations there is an inconsistency in the way the DHHS may support or respond to families if they are homeless or living in unstable/insecure housing – ranging from one matter where the DHHS funded a motel for a family at risk of homelessness for several months to other matters where VLA clients who are parents seeking the return of their child into their care experience delays or simply do not receive referrals for housing support from the DHHS.

Secondly, we see that the removal of a child because of protective concerns causes a cessation in parenting payments, placing a person at risk of homelessness when they’re no longer able to pay their rent. The subsequent lack of housing perpetuates protective concerns, preventing or delaying the return of their children.

Unsuitable or a lack of housing or other services is often exacerbated in regional areas where, through our work, we see the way in which unmet support needs in regional communities intersect with legal issues to undermine personal and community wellbeing.

**Julie: Aboriginal mother of four children living in unsafe DHHS property**

Julie is an Aboriginal mother of four young children. DHHS Housing had provided a home to Julie and her children but when Julie moved in there was significant damage including broken windows, graffiti and cracks in the walls. Julie made attempts to contact housing to have these issues addressed but did not receive a response.

The mother’s concerns about the conditions of the family home have since been raised during the proceedings, with a request for DHHS support to relocate from the area to more appropriate housing. There has been no meaningful response to that request for some months.

DHHS Child protection then became involved in Julie’s life with protective concerns including the home environment, which resulted in her children being placed in care, however DHHS Child Protection provided limited support to Julie to address these concerns. With the support of a VLA Aboriginal Community Engagement officer, Julie was able to have some of the issues with the home fixed and she did a significant clean-up of the property.

By way of further example, in the Latrobe Valley, families cannot access housing or emergency accommodation to prevent homelessness. Parents wanting to address their mental health, disability, or drug and alcohol issues so they can provide a safe home for their children, cannot access services and resolve child protection concerns. There are long wait lists for hearings in the local Magistrates’ Court. This is forcing clients to make difficult decisions to forgo their rights to procedural fairness to resolve their problems more quickly. Isolation and public transport difficulties exacerbate these issues.[[53]](#footnote-53)

A lack of housing is typically viewed by the court as a practical obstacle in returning children to parental care. VLA recommends more timely referrals and supports for families experiencing homelessness.

# The risk of homelessness for children in or leaving state care

As we said in our submission to Royal Commission into Victoria’s Mental Health System, we see the significant impacts across VLA’s different practice areas if young people do not receive the right supports at the right time. Young people should be able to access age-appropriate, targeted services, to prevent homelessness and engagement with youth justice, and later adult criminal justice systems. This is especially true for young people in state care, who are otherwise at increased risk of contact with the criminal justice system.[[54]](#footnote-54)

Young people living in residential care are some of the most vulnerable people in the state, generally having been exposed to multiple forms of harm, abuse or neglect including domestic abuse, sexual, physical or emotional abuse, substance abuse and homelessness.[[55]](#footnote-55)

Findings from a 2009 survey conducted by the CREATE foundation on care leavers found that almost 35 per cent were homeless in the first year of leaving care,[[56]](#footnote-56) and the 2015 Swinburne University national homeless youth survey found that 63 per cent of homeless youth have a history of out of home care.[[57]](#footnote-57)

We welcomed the Government’s announcement to pilot extended care in 2019 for 250 young Victorians from 18 to the age of 21[[58]](#footnote-58) and hope to see this extended to all young people in care.

**Refer to Recommendations 1 and 4.**

# Greater risks from family violence

VLA plays a leading role in the coordination and provision of family law and family violence legal services in Victoria. For example, in 2018–19 VLA provided nearly 17,000 duty lawyer services and 1970 grants of legal assistance in Family Violence Intervention Order (**FVIO**) matters across the state and over 3000 grants for family law parenting matters.[[59]](#footnote-59)

In addition to our practice in family law, family violence and child protection jurisdictions, we assist people who experience family violence with a range of civil legal issues that can arise from an experience of family violence, including tenancy, discrimination, social security, fines, migration status and mental health. VLA also assists people who experience family violence and who use family violence with a range of criminal law issues related to FVIOs.

# A lack of affordable housing and risk of homelessness for people who use and experience family violence

VLA sees through our practice experience that the lack of available and affordable housing can exacerbate the risk of homelessness or contribute to further exposure to family violence. A perpetrator may return to the family home (even if excluded from doing so by the FVIO) due to lack of alternative accommodation or the victim may be unable to find alternative accommodation to enable them to leave.

Court-based family violence legal services provide a vital link between the justice system and non-legal support services such as homelessness support, crisis support and medical support. As noted in the Centre for Innovative Justice’s recent report, the justice system can be an “active and involved participant that can *interrupt*”[[60]](#footnote-60) the use of family violence.

A perpetrator’s contact with the legal system provides an opportunity to refer that person to non-legal support services that address violence supporting attitudes and related problems such as drug and alcohol abuse, mental health and housing. Where a respondent is also charged with a criminal matter, VLA lawyers assisting an accused will make these referrals.

These referrals not only provide critical support for an accused person (and reduce the risk of further acts of family violence) but are also the subject of inquiry by sentencing courts when examining what supports and services are in place for a person appearing before the court.[[61]](#footnote-61) However, despite housing referrals being made, there is often not the accommodation available.

Conversely, while there are various victim support services and housing options, they are not always suitable, are not long term or stable or there is limited availability, particularly in regional areas. This puts a victim in the precarious position of being at risk of homelessness, remaining/returning to a violent relationship or, as was the case for Beth, moving to another precarious and potentially violent, situation.

**Beth: Inadequate regional housing supply for a victim of family violence**

Beth is an Aboriginal woman who was living in Melbourne but after becoming a victim of serious family violence moved to a town in regional Victoria to live with her family. Living in the family home is not without its challenges for Beth – she experiences family violence and is living with a family member with substance abuse issues.

On one occasion, Beth and her brother got into a dispute over rent payments which became physical. After police were called Beth was issued with a Family Violence Safety Notice and removed from the home. With limited housing options in this regional town, she was provided crisis accommodation in a hotel for several days, but without sufficient longer-term housing available she was then provided a swag to sleep in. Not only was this inappropriate for Beth’s safety she then became at risk of breaching her Intervention Order by returning to the family home.

# The risk of homelessness for young people involved in family violence court matters

VLA is observing an increasing number of children and young people who become excluded from the family home under a FVIO or sometimes under a child protection Interim Accommodation Order (**IAO**) (for example, due to concerns about sibling to sibling conduct).

For children who are 16 to 17 years old, their risk of this resulting in homelessness is especially high because they are not yet eligible for the support services available to people aged over 18 but DHHS does not get involved if they are near or over 17 years old.

Critically for people of this age, while homelessness services may provide them with a place to stay, the young person may require other support services to facilitate their access – such as transportation, counselling, food, clothing and money. Where a young person does not have these services in place, we see them sleeping on the streets or couch surfing, exacerbating flow-on effects such as not attending school, not having employment and facing challenges in accessing Centrelink payments.

Alternatively, in the case of young people on a FVIO, their parents may allow them to come home creating a risk of the young person facing breach charges or the family at risk of experiencing further violence.

Without the appropriate services and supports for these young people, there is an increased risk of offending and them then being propelled into the criminal justice system.

This is particularly concerning considering that there may be various underlying reasons for the young person’s behaviour that have led to a court order excluding them from the family home, including unrecognised trauma or mental health issues, or a misunderstanding of the dynamics of family violence occurring in the home, with the young person themselves potentially being the primary victim of violence.

**Refer to Recommendations 1 and 4.**

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# Discrimination

VLA provides advice and representation to clients who experience discrimination, victimisation, sexual harassment, and vilification in all areas of public life. Through our Equality Law Program, we provide telephone and in-person advice services in addition to representation in legal proceedings. In 2018–19, we provided 1376 legal advices on discrimination, sexual harassment, victimisation and vilification. We assist people under both State and Federal anti-discrimination laws.

# Discrimination can contribute to or prolong homelessness

Through our work, we see the way in which discrimination – including on the basis of age, race, gender, family responsibilities and disability – can prevent people accessing housing.[[62]](#footnote-62) Monique’s story is one example of this.

**Monique: Real estate agent refused housing when they saw her assistance dog**

When Monique went into a real estate office to sign papers to lease a property she’d recently secured, the agents withdrew their offer as soon as they saw her assistance dog.

Monique was devastated as she’d been house-hunting for months while living out of her car. Monique needs an assistance animal for her diabetes, but had found getting a roof over her head a challenge, due to her dogs, which were often thought of as “pets”. “It was pretty dark days … On the rental application they ask do you have any pets and my answer to that question is ‘Honestly no, I have working assistance animals’, so I always say no on the forms, otherwise there is no hope of getting a shoe-in at all and that’s just the reality of it.”

Assisted by VLA’s Equality Law Program, Monique negotiated with the real estate agent to gain access to the house and informed the company about why assistance dogs can be vital to many renters. Monique’s story was later featured in The Age newspaper and she believes her work advocating on behalf of people with assistance animals will help others. “The more we can get (information) about discrimination and assistance animals into the media and mainstream consciousness, the better it is for people with disabilities. That’s why I talk about it, because it makes life easier for the next person. If next weekend someone is applying for a house maybe an agent will have read that in the paper and think maybe I shouldn’t discriminate against this person.”

The Victorian Equal Opportunity and Human Rights Commission’s report *Locked out: Discrimination in Victoria’s Private Rental Market* analysed the findings of survey results of 165 people who sought accommodation.[[63]](#footnote-63) The report found that:

* Survey participants had experienced discrimination in the private rental market based on characteristics which are protected under the *Equal Opportunity Act 2010* (Vic) (**EO Act**), including race and disability.
* Participants reported that rental agents and landlords made decisions about their suitability as tenants based on myths and stereotypes.
* It is difficult to prove discrimination as rental agents give other reasons for the refusal.
* There appears to be a general lack of awareness among consumers about their rights.
* Discrimination has wide ranging consequences for individual health and wellbeing.

Despite these findings, and many renters feeling that protected attributes influence decision-making by rental providers and real estate agents about who to rent properties to, it is very difficult to prove discrimination to the standard needed to take action under the EO Act.

Currently Victoria’s EO Act places the burden entirely on individuals to take action and prove that the law has been breached. The Victorian Equal Opportunity and Human Rights Commission (**VEOHRC**) has education and dispute resolution functions, and some investigation powers, but no power to compel compliance with anti-discrimination or anti-vilification laws.[[64]](#footnote-64)

To make sure that Victoria’s protections against discrimination are effective in practice, including playing a meaningful role in reducing discriminatory barriers to people accessing housing, Victoria’s anti-discrimination and vilification laws should be amended to:

* Ensure VEOHRC has the power to investigate acts or practices of its own motion that may be inconsistent with anti-discrimination and vilification laws, without additional procedural requirements such as those present under section 127 of the current EO Act.
* Enable VEOHRC to enforce compliance with anti-discrimination and vilification laws following an investigation, including entering into enforceable undertakings, issuing compliance notices and prosecuting breaches of these laws.

# Discrimination on the basis of homelessness

In addition to discrimination preventing people accessing housing and exiting homelessness, people in Victoria can be discriminated against on the basis of their homeless status. Unlike in the ACT,[[65]](#footnote-65) homelessness or accommodation status is not a protected attribute under the *Equal Opportunity Act* 2010 (Vic). This means people have no recourse when they are, for example:

* Refused accommodation in the local caravan park because the rent will be paid by the local homelessness service
* Rejected from employment because a person lists ‘no fixed address’ on their online application
* Prevented from accessing their local GP because of their requirement to register an address.

As part of our recommendations for a modern, accessible legal framework for preventing and addressing discrimination, VLA has previously recommended that, in addition to existing grounds, Federal, State and Territory anti-discrimination laws should protect against discrimination on additional grounds, which relevantly include irrelevant criminal record, being a victim of family violence, homelessness and socio-economic status.[[66]](#footnote-66)

This year – in the tenth year of the EO Act – Victoria should consider our legislative framework for preventing and addressing discrimination and the role this has to play in reducing homelessness and its impacts for people and the community.   
  
**Refer to Recommendations 1, 3 and 6.**

# Refugees and people seeking asylum

VLA’s Migration Program provides advice and representation to asylum seekers and other vulnerable non-citizens primarily in relation to judicial review of administrative decisions, as well as through phone advice and duty lawyer services. In 2018–19, VLA provided legal advice in over 1300 migration matters.

People seeking asylum are at a significantly increased risk of experiencing homelessness, particularly because they are often not granted bridging visas enabling them to work. Without work rights, asylum seekers are reliant on charity to meet their basic needs, including food and accommodation. Where people seeking asylum do have work rights, they can face language and cultural barriers or the mental health impacts of severe trauma, which can make it difficult to obtain stable employment.

People seeking asylum are also not eligible for Centrelink support payments. While some asylum seekers are eligible for the Status Resolution Support Services payment (**SRSS**), these payments are limited and other than internal review, there are no formal review rights for people refused SRSS payments or whose SRSS payments have ceased. Further, people seeking asylum are not eligible for SRSS payments when seeking judicial review of their application for asylum.

As Amin’s story highlights, these structural and personal factors can put people seeking asylum at significant risk of homelessness.

**Amin: Accepted as a refugee but living in car with his daughter after SRSS payments cut**

I came to Australia in 2012 with my four-year-old daughter, after fleeing religious persecution in my home country of Iran. Our journey to Australia by boat was very traumatic.

After six long years, we were finally recognised by the government as refugees. It has been over one year since they accepted that we were refugees, but they have still not granted our visas. I tried my best to support my daughter and myself in Australia, but due to a bad back injury, I was unable to keep working. My daughter and I relied on SRSS payments and help from charities to survive.

One day, without warning, our SRSS payments were cut off. I didn’t know why this had happened or what I could do. I could no longer afford to pay rent, so my daughter and I lived in our car on and off for three months. My daughter could not go to school for one month because I could not afford to take her to school any more.

When I contacted VLA, they helped me get an appointment with a SRSS support service. After a long time, we finally got our payments back and were able to pay rent again.

In addition to federal laws and policies regarding migration, the lack of access to support payments and affordable housing places people who are coming to Australia to build a safer life for themselves and their families at significant risk of homelessness.

**Refer to Recommendation 1.**

# Victoria Legal Aid clients, housing and homelessness

VLA is an independent statutory agency responsible for providing information, advice and assistance in response to a broad range of legal problems. Working alongside our partners in the private profession, community legal centres and Aboriginal and Torres Strait Islander legal services, we help people with legal problems such as criminal matters, family separation, child protection, family violence, fines, social security, mental health, immigration, discrimination, guardianship and administration and tenancy.

Our Legal Help telephone line is a resource for all Victorians to seek information, advice and assistance with legal problems. We also deliver specialist non-legal services, including our Family Dispute Resolution Service, Independent Mental Health Advocacy and Independent Family Advocacy and Support, as well as providing community legal education, and contributing to law reform.

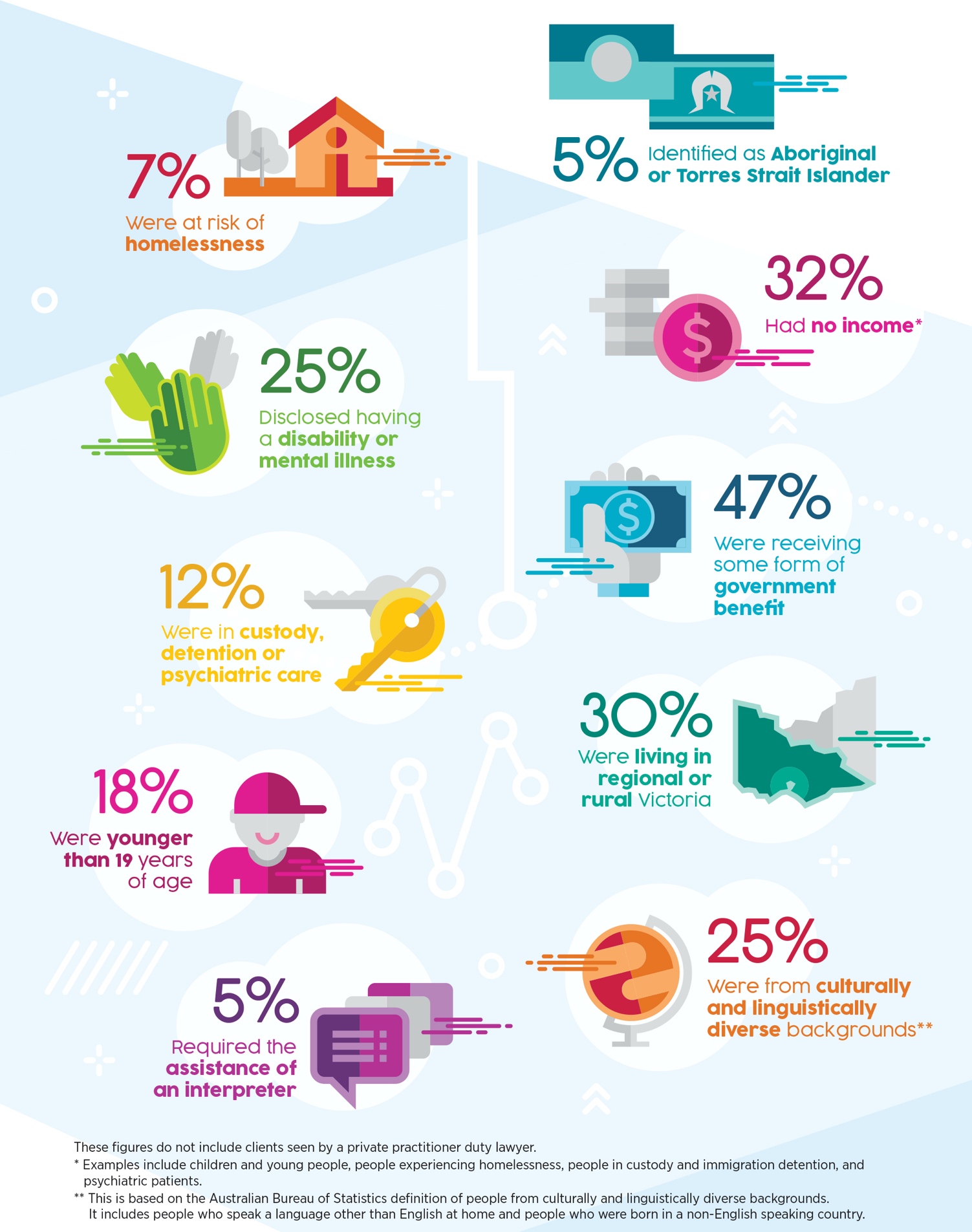
In 2018–19, VLA provided assistance to over 100,000 unique clients.[[67]](#footnote-67) As the image on the next page shows, our clients are diverse and experience high levels of social and economic disadvantage. Almost half of our clients are currently receiving social security and one in three receive no income at all. Over 25,000 people disclosed having a disability or experiencing mental health issues and approximately 25 percent are from culturally and linguistically diverse backgrounds. Over 5,000 of our clients identified as Aboriginal or Torres Strait Islander.[[68]](#footnote-68)

**Over 6,300 of our clients identified as being homeless or at risk of homelessness, which was an increase of 21 per cent since 2017–18**.[[69]](#footnote-69)

Almost 30 per cent of our clients – approximately 29,300 people – live in regional Victoria. We provide legal assistance across the state through our offices in Bendigo, Ballarat, Mildura, Warrnambool, Morwell, Bairnsdale, Geelong, Horsham and Shepparton. Through this work, we see the issues of housing and homelessness in regional Victoria and the importance of people being able to access housing in the areas they want to live (i.e. close to family, work and community) for safe and healthy communities.

We also see – even more acutely in recent times – that climate change and natural disasters often have a disproportionate impact on regional communities, and we need to be prepared to address displacement and potential future issues of homes becoming uninsurable in high-risk areas. We see the need to understand local markets and develop place-based solutions to meet community needs.[[70]](#footnote-70)

In our Mildura, Shepparton and Morwell offices, our Aboriginal Community Engagement Officers work to reduce the barriers between Aboriginal and Torres Strait Islander communities and legal services. These staff also see the intersection of people’s legal and non-legal needs, including the impact of housing and homelessness on Aboriginal and Torres Strait Islander people and families.

It is this work that has informed this submission and the priorities and recommendations it identifies.

1. Victoria Legal Aid, *Annual Report 2018 –2019* (2019) <<https://www.legalaid.vic.gov.au/about-us/our-organisation/annual-report>>.  [↑](#footnote-ref-1)
2. Unless otherwise indicated, the names of clients have been changed. Clients have given consent to their stories being used in this submission. [↑](#footnote-ref-2)
3. See also the detailed recommendations of specialist community legal service, Justice Connect Homeless Law, in their evidence and submission to this Inquiry. [↑](#footnote-ref-3)
4. We note the recommendation of investment in an extra 6,000 social housing properties per year for ten years put forward by key legal, homelessness and community sector organisations: Council to Homeless Persons, Evidence before the Legislative Council Legal and Social Issues Committee, Inquiry into Homelessness in Victoria (22 November 2019, Melbourne) 15; Victorian Council of Social Service, Evidence before the Legislative Council Legal and Social Issues Committee, Inquiry into Homelessness in Victoria (22 November 2019, Melbourne) 57; and Justice Connect Homeless Law, Evidence before the Legislative Council Legal and Social Issues Committee, Inquiry into Homelessness in Victoria (22 November 2019, Melbourne) 49 <<https://www.parliament.vic.gov.au/lsic-lc/inquiries/article/4285#Nov22>>. This figure is aimed at increasing the proportion of housing in Victoria that is social housing to the national average of 4.5 per cent. See also, Victorian Department of Environment, Land, Water and Planning, *Victoria in Future* (2016), which found that over 30,000 additional social housing dwellings need to be added in the next 20 years to maintain Victoria’s social housing rate of 3.5 per cent. [↑](#footnote-ref-4)
5. This includes people being released from custody on bail, parole or straight release. [↑](#footnote-ref-5)
6. See Melbourne City Mission, *The Atrium Housing and Support Program* <<https://www.mcm.org.au/justice/the-atrium-housing-and-support-program>>. [↑](#footnote-ref-6)
7. This includes people found unfit to stand trial or not guilty by reason of mental impairment under the *Crimes (Mental Impairment and Unfitness to be Tried) Act* *1997* (Vic). [↑](#footnote-ref-7)
8. See also Victorian Ombudsman, *Investigation of a Woman Found Unfit to Stand Trial* (2018) (**Ombudsman’s Report**) 66–7, Recommendations 1, 2, 6 and 7 regarding investment in secure therapeutic alternatives to prison for people found unfit to stand trial and/or not guilty because of mental impairment under the CMIA options for specialist units and services for women with an intellectual

   disability or cognitive impairment in Victorian prisons; coordinated regular, whole-of-government reporting on, and oversight of, the management of people subject to custodial and non-custodial supervision orders under the CMIA <<https://www.ombudsman.vic.gov.au/getattachment/Publications/Parliamentary-Reports/Investigation-into-the-imprisonment-of-a-woman-fou/Web-PDF-investigation-into-the-imprisonment-of-a-woman-found-unfit-to-stand-trial.PDF.aspx>>. [↑](#footnote-ref-8)
9. See Productivity Commission, *Mental Health Inquiry: Draft Report* (2019), Draft Recommendations 15.1 (housing security for people with mental health issues); 15.2 (support people to find and maintain housing); and 24.3 (the National Housing and Homelessness Agreement). [↑](#footnote-ref-9)
10. The Royal Commission into Family Violence made six recommendations (123–128) for establishing a specialised response for adolescents. While implementation of the recommendations is in progress, it is crucial that family violence responses for young people are resourced to identify and respond to the complexity of behavioural, developmental, and mental health needs of young people. [↑](#footnote-ref-10)
11. During the consultation phase of the “Fairer Safer Housing” review of the Residential Tenancies Act, VLA worked with other agencies representing users of the Residential Tenancies List at VCAT to reach a joint position on the need for an internal re-hearing right, similar to that which exists in New South Wales where in certain circumstances parties can appeal a decision to the NCAT Appeal Panel. The agencies included VLA, the Law Institute of Victoria, the Community Housing Industry Association, the Real Estate Institute of Victoria, Tenants Victoria and Justice Connect. This was an unusual alliance of organisations representing both landlords and tenants across private and social housing. In September 2018, Consumer Affairs Victoria announced that it intended to take steps to introduce the internal re-hearing right. [↑](#footnote-ref-11)
12. Victoria Legal Aid, *Submission to Victorian Royal Commission into Family Violence* (June 2015), 50. [↑](#footnote-ref-12)
13. This includes social security and the NDIS. [↑](#footnote-ref-13)
14. See: Victoria Legal Aid, *Ten stories of NDIS ‘Thin Markets’: Reforming the NDIS to meet people’s needs’* (Submission to the Department of Social Services and the National Disability Insurance Agency’s *NDIS ‘Thin Markets’ Project,* June 2019); National Legal Aid, *Putting people first: Removing barriers for people with disability to access NDIS supports* (Submission to the Review of the NDIS Act and the new NDIS Participant Service Guarantee, November 2019). [↑](#footnote-ref-14)
15. See, e.g., Victoria Legal Aid’s recommendation in relation to the proposed *Residential Tenancies Regulations 2020*, including that the following limitation is included on information required to be disclosed in rental application forms: ‘Any question that requires the disclosure of a protected attribute under the *Equal Opportunity Act 2010* (Vic), except for questions relating to an exception, exemption or special measure applicable under the *Equal Opportunity Act 2010* (Vic), and only where the reason the disclosure is necessary is set out in the application form’. [↑](#footnote-ref-15)
16. In addition to these proposed protected attributes, which are relevant to this Inquiry, we also recommend protection on the basis of physical features, lawful sexual activity, status as a parent or carer, religion, political belief or activity, industrial activity, nationality and being a victim of violent crime. See Victoria Legal Aid, *Submission to the Commonwealth Attorney-General and Minister for Finance and Deregulation on the Consolidation of Commonwealth Anti-Discrimination Laws* – 2012 (**Consolidation Submission**); Victoria Legal Aid, *Submission to Free and Equal Inquiry Discussion Paper: Priorities for Federal Discrimination Law Reform* (November 2019) (recommendation 5) <<https://www.legalaid.vic.gov.au/about-us/news/charter-of-human-rights-for-australia-fairer-decisions-in-our-daily-lives>>. [↑](#footnote-ref-16)
17. The VLA Duty Lawyer Records, Court Attendance Records and Applications for Grants of Legal Assistance ask, “are you homeless?”, which is input into our electronic case management system as a field attached to the client record. [↑](#footnote-ref-17)
18. VLA supports the development of a better response to failures to appear, including opportunities for escalation that do not require a person to be arrested in response to a warrant for failure to appear. Referral for legal advice or support to address underlying factors, such as homelessness or mental health issues which might otherwise prevent the person attending court, would also potentially reduce the number of people who fail to appear. [↑](#footnote-ref-18)
19. Diversion began as an adult pilot program at the Broadmeadows Magistrates’ Court in January 1997 and was reviewed and revised in late 2000. Diversion is now available in all Magistrates’ Courts in Victoria. Youth diversion began as a pilot in the Children’s Court in January 2017. In 2017 a legislated diversion option was inserted into the *Children, Youth and Families Act 2005*. The Crime Statistics Agency (**CSA**) has demonstrated that young people who were cautioned were less likely to re-offend than those charged (26.8 per cent compared to 57.6 per cent) and, for those who did reoffend, there was a longer duration between the police contact and the first reoffending incident compared with those charged. See: Crime Statistics Agency, *The Cautious Approach: Police cautions and the impact on youth reoffending,* 13 <<https://www.crimestatistics.vic.gov.au/sites/default/files/embridge_cache/emshare/original/public/2017/09/7f/e1e924c80/20170925_in%20brief9%20FINAL.pdf>>. [↑](#footnote-ref-19)
20. Ibid 10 – 11 (found that Aboriginal young people and those who lived in more socio-economically disadvantaged postcodes were more likely to be charged than cautioned). [↑](#footnote-ref-20)
21. Note that a recent analysis of the use of diversion in Victoria found that it has steadily decreased over the past ten years. See:

    D Cowan, H Strang, L Sherman et al, ‘Reducing Repeat Offending Through Less Prosecution in Victoria, Australia: Opportunities for Increased Diversion of Offenders’ *Cambridge Journal of Evidence Based Policing* (2019) 3 109–117. [↑](#footnote-ref-21)
22. The Hon Jill Hennessy, Attorney General and Minister for Workplace Safety, ‘New Health-Based Response To Public Drunkenness’ (Media Release, 22 August 2019) <<https://www.premier.vic.gov.au/new-health-based-response-to-public-drunkenness/>>. [↑](#footnote-ref-22)
23. *Summary Offences Act 1966* (Vic) s 49A. [↑](#footnote-ref-23)
24. Australian Institute of Health and Welfare, *The Health of Australia’s Prisoners* *2018*(Report, 30 May 2019) 24. [↑](#footnote-ref-24)
25. Department of Justice and Community Safety – Corrections Victoria, *Monthly time series prisoner and offender data* (January 2020) Table 1 <<https://www.corrections.vic.gov.au/publications-manuals-and-statistics/monthly-time-series-prisoner-and-offender-data>>. [↑](#footnote-ref-25)
26. Summary crime grants of aid case costs also increased by 12% from 2017/18 to 2018/19 as a result of the increase in clients on remand. [↑](#footnote-ref-26)
27. CISP is only available in eight of ten metropolitan courts and 12 of 41 regional courts (Ballarat, Bendigo, Geelong, Korumburra, La Trobe, Mildura, Portland, Shepparton, Warrnambool, Wangaratta, Wodonga and Wonthaggi) <<https://www.mcv.vic.gov.au/find-support/bail-support-cisp>>. [↑](#footnote-ref-27)
28. Victorian Ombudsman, *Investigation into the rehabilitation and reintegration of prisoners in Victoria* (September 2015), 102. [↑](#footnote-ref-28)
29. See Melbourne City Mission, *The Atrium Housing and Support Program* <<https://www.mcm.org.au/justice/the-atrium-housing-and-support-program>>. [↑](#footnote-ref-29)
30. Australian Institute of Health and Welfare (n 24) 13. [↑](#footnote-ref-30)
31. Victorian Ombudsman, n 29, para 687, 108. [↑](#footnote-ref-31)
32. Clients often tell their VLA lawyers that they feel they cannot seek employment while they are homeless, due to the high levels of uncertainty, particularly about where they might obtain ongoing housing and difficulties in maintaining a presentable appearance. [↑](#footnote-ref-32)
33. ML: Australian Productivity Commission, Steering Committee for the Review of Government Service Provision, *Report on Government Services 2019* (Report, 24 January 2019) Part C Table CA.4 1. [↑](#footnote-ref-33)
34. Victorian Auditor-General’s Office, *Problem-Solving Approaches to Justice* (Report, April 2011) 1. [↑](#footnote-ref-34)
35. Australian Institute of Criminology, *Supported housing for prisoners returning to the community: A review of the literature* (Research Report, No 7, 3 May 2018) v. [↑](#footnote-ref-35)
36. Victorian Ombudsman, n 29, 5-7. [↑](#footnote-ref-36)
37. Productivity Commission, *Mental Health Inquiry: Draft Report* (Report, 31 October 2019), Draft Recommendations 15.1 (housing security for people with mental health issues); 15.2 (support people to find and maintain housing); and 24.3 (the National Housing and Homelessness Agreement). See also responses to questions taken on notice by Ms Louise Glanville, CEO of VLA, following evidence given on 18 November 2019 before the Productivity Commission‘s Public Hearing into Mental Health. [↑](#footnote-ref-37)
38. Unconditional release is very rare once a person is found unfit to plead or not guilty by reason of mental impairment under the CMIA. [↑](#footnote-ref-38)
39. The intersection between the NDIS and mental health services is discussed further at part 4. [↑](#footnote-ref-39)
40. Victoria Legal Aid, *Roads to Recovery: Building a Better System for People Experiencing Mental Health Issues in Victoria* (Submission to the Royal Commission into Victoria’s Mental Health System, July 2019) 39. [↑](#footnote-ref-40)
41. Ibid. [↑](#footnote-ref-41)
42. Victorian Ombudsman, *Investigation of a Woman Found Unfit to Stand Trial* (Parliamentary Report, October 2018) (**Ombudsman’s Report**) <<https://www.ombudsman.vic.gov.au/getattachment/Publications/Parliamentary-Reports/Investigation-into-the-imprisonment-of-a-woman-fou/Web-PDF-investigation-into-the-imprisonment-of-a-woman-found-unfit-to-stand-trial.PDF.aspx>>. [↑](#footnote-ref-42)
43. Ombudsman’s Report, (n 42) 67 (recommendation 6). [↑](#footnote-ref-43)
44. In 2011, the Victorian Department of Health and Human Services estimated that it costs around $34,000 in publicly funded support services to rehouse someone following eviction from public housing. See: Victorian Government Department of Human Services, ‘*Human Services: The case for change*’ (Report, December 2011) 12 <<https://www.thelookout.org.au/sites/default/files/1_iwas_human_services_case_for_change_0412.pdf>>. [↑](#footnote-ref-44)
45. E.g. Victorian Department of Environment, Land, Water and Planning, *Victoria in Future* (Report, 2016) cited in Family Violence Housing Assistance Implementation Taskforce, *Victoria’s Social Housing Supply Requirements to 2036* (Report, May 2017) <<https://www.vic.gov.au/sites/default/files/2019-06/Victorias-social-housing-supply-requirements-to-2036.pdf>>. [↑](#footnote-ref-45)
46. E.g. C Martin, D Habibis, L Burns and H Pawson for the Australian Housing and Urban Research Institute, *Social housing legal responses to crime and anti-social behaviour: impacts on vulnerable families* (AHURI Final Report, No 314, June 2019) 2 <http://www.ahuri.edu.au/research/final-reports/314>. [↑](#footnote-ref-46)
47. During the consultation phase of the “Fairer Safer Housing” review of the Residential Tenancies Act, VLA worked with other agencies representing users of the Residential Tenancies List at VCAT to reach a joint position on the need for an internal re-hearing right, similar to that which exists in New South Wales where in certain circumstances parties can appeal a decision to the NCAT Appeal Panel. The agencies included VLA, the Law Institute of Victoria, the Community Housing Industry Association, the Real Estate Institute of Victoria, Tenants Victoria and Justice Connect. This was an unusual alliance of organisations representing both landlords and tenants across private and social housing. In September 2018, Consumer Affairs Victoria announced that it intended to take steps to introduce the internal re-hearing right. [↑](#footnote-ref-47)
48. Victoria Legal Aid (n 1) 8, 10. [↑](#footnote-ref-48)
49. Australian Council of Social Service, *Surviving, not living: the (in)adequacy of Newstart and related payments* (Submission to the Senate Community Affairs References Committee, September 2019) 7 < https://www.acoss.org.au/wp-content/uploads/2019/11/SurvivingNotLiving.pdf>. [↑](#footnote-ref-49)
50. E.g. ‘Over several years, governments have tightened DSP eligibility requirements … Successful [DSP] claims have dropped from 63 per cent in 2010 to just 25 per cent in 2015’. Australian Council of Social Service, ‘Disability Support Pension cuts bad news for people affected’ (21 February 2018) <<https://www.acoss.org.au/media_release/disability-support-pension-cuts-bad-news-for-people-affected/>>. [↑](#footnote-ref-50)
51. Victoria Legal Aid, *Ten stories of NDIS ‘Thin Markets’: Reforming the NDIS to meet people’s needs* (Submission to the Department of Social Services and the National Disability Insurance Agency’s *NDIS ‘Thin Markets’ Project*, June 2019) 16-17 (available for download at: <https://www.legalaid.vic.gov.au/about-us/news/reforming-ndis-to-meet-peoples-needs>). [↑](#footnote-ref-51)
52. Ibid; Legal Aid, *Putting people first: Removing barriers for people with disability to access NDIS supports* (Submission to the Review of the NDIS Act and the new NDIS Participant Service Guarantee, 4 November 2019) 4. [↑](#footnote-ref-52)
53. Gippsland Legal Assistance Forum, *Equal justice for a strong, healthy and resilient Latrobe Valley* (Report, February 201921 <https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-equal-justice-for-a-strong-equal-and-resilient-latrobe-valley.pdf >. [↑](#footnote-ref-53)
54. Sentencing Advisory Council, *Crossover Kids: Vulnerable children in the youth justice system* (Report 1: Children who are known to Child Protection among sentenced and diverted children in the Victorian Children’s Court, June 2019) 41 <<https://www.sentencingcouncil.vic.gov.au/sites/default/files/2019-08/Crossover_Kids_Report_1.pdf>>. [↑](#footnote-ref-54)
55. Victoria Legal Aid, *Care not Custody – a new approach to keep kids in residential care out of the criminal justice system* (Report, 2016) 5. [↑](#footnote-ref-55)
56. CREATE Foundation, *Create Report Card 2009 – transitioning from care: tracking progress* (Report, November 2009) 57. [↑](#footnote-ref-56)
57. Swinburne Institute for Social Research, *The cost of youth homelessness in Australia* (Research Briefing, 28 April 2016) 13. [↑](#footnote-ref-57)
58. The Hon Jenny Mikakos, Minister for Families and Children, Early Childhood Education and Youth Affairs, ‘Helping vulnerable young people on the home stretch’ (Media Release, 25 September 2018) <<https://www.premier.vic.gov.au/wp-content/uploads/2018/09/180925-Helping-Vulnerable-Young-People-On-The-Home-Stretch.pdf>>. [↑](#footnote-ref-58)
59. Victoria Legal Aid (n 1) 35. [↑](#footnote-ref-59)
60. Centre for Innovative Justice, *Opportunities for early intervention: bringing perpetrators of family violence into view*(Report, March 2015) 6, cited in Victoria Legal Aid, *Submission to Victorian Royal Commission into Family Violence* (June 2015) 58. [↑](#footnote-ref-60)
61. Victoria Legal Aid, *Submission to Victorian Royal Commission into Family Violence* (June 2015) 58. [↑](#footnote-ref-61)
62. See M’s story in part 5.2 regarding discrimination on the basis of criminal record, and the impact this has on people’s ability to maintain employment and housing. [↑](#footnote-ref-62)
63. Victorian Equal Opportunity & Human Rights Commission, *Locked out: discrimination in Victoria’s private rental market* (Report, August 2012). [↑](#footnote-ref-63)
64. Reforms in the original *Equal Opportunity Act 2010* (Vic) would have enabled VEOHRC to enter into enforceable undertakings and issue compliance notices, however these reforms were removed in 2011 before coming into force. [↑](#footnote-ref-64)
65. In the ACT, under the *Discrimination Act* *1991* (ACT): “It is against the law for someone to discriminate against you because of your current or previous accommodation status, including periods of homelessness, occupancy or tenancy, not having a fixed address, secure accommodation, living in a caravan park or boarding house, because you are a public housing tenant or are on the waiting list for public housing”. See: ACT Human Rights Commission, *Accommodation Status* (Web Page) <<https://hrc.act.gov.au/discrimination/accommodation-status/>>. [↑](#footnote-ref-65)
66. Victoria Legal Aid, *Consolidation of Commonwealth Anti-Discrimination Laws* ( Submission to the Commonwealth Attorney-General and Minister for Finance and Deregulation, February 2012); Victoria Legal Aid, *Priorities for Federal Discrimination Law Reform* (Submission to Free and Equal Inquiry Discussion Paper, November 2019) (Recommendation 5).In addition to these proposed attributes, we also suggested the inclusion of physical features, lawful sexual activity, status as a parent or carer, religion, political belief or activity, industrial activity, nationality, and being a victim of violent crime. [↑](#footnote-ref-66)
67. Victoria Legal Aid, (n 1) 11. Unique clients are individual clients who accessed one or more of Victoria Legal Aid’s legal services. This does not include people for whom a client-lawyer relationship was not formed, who received telephone, website or in-person information at court or at public counters or participated in community legal education. [↑](#footnote-ref-67)
68. Victoria Legal Aid, (n 1) 10–11. [↑](#footnote-ref-68)
69. Victoria Legal Aid, (n 1) 2. [↑](#footnote-ref-69)
70. E.g. B Phillips and C Joseph, Centre for Social Research and Methods, *Regional housing supply and demand in Australia* (CSRM Working Paper, No 1, November 2017). [↑](#footnote-ref-70)