

Submission to Royal Commission on Mental Health

About Tenants Victoria

Tenants Victoria was founded over 30 years ago to promote and protect the rights of tenants and residents in all forms of residential accommodation in Victoria. We aim to inform and educate tenants about their rights and work for social change to improve conditions for all tenants.

In 1974, a group of disgruntled tenants in Royal Court, Parkville formed a tenants' association to do something about their landlord: Rents were continually rising despite the landlord's failure to carry out repairs. The tenants at Royal Court soon realised that the basic problem was the archaic tenancy laws that still existed in Victoria at the time. They took their story to the media and in the process, raised awareness of tenancy law reform in Victoria. Tenants Victoria was formed as a result of the support and momentum from this brave undertaking.

By the mid-1970s, consumer rights had gained acceptance and the idea that tenants, as consumers, are entitled to basic consumer protection became easier to support in public policy. Once formed, Tenants Victoria – with a number of other community organisations – was instrumental in having the Community Committee on Tenancy Law Reform established, which ultimately led to the Residential Tenancies Act of 1980.

Since its inception, Tenants Victoria has worked continuously to provide advice to as many individual tenants as possible while working towards long-term change for the benefit of all tenants. We successfully campaigned to have caravan park residents included in the 1987 legislation and rooming house residents covered in 1990. After a protracted campaign of more than ten years, an independent Residential Tenancies Bond Authority was established in 1997.

Tenants Victoria was a leader of the "make renting fair" campaign in 2018 which resulted in amendments to the Rental Tenancies Act. These landmark changes which include minimum standards for all rental properties will be implemented by 1 July 2020. We work in partnership with other Community Legal Centres, housing sector organisations, and strategically with government departments to inform policy development and enhance service delivery.

We have assisted more than half a million tenants since that first informal advice service of 30 years ago. The need for basic advice and advocacy for residential tenants is as strong as ever, and we are now assisting more than 16,000 public and private tenants each year.

Scope of this submission

This submission will be confined to only three questions raised by the Royal Commission. What makes it hard for people to experience good mental health and what can be done to improve this? What are the drives behind some communities in Victoria experiencing poor mental health outcomes and what needs to be done to address this? And what are the

opportunities in the Victorian community for people living with mental illness to improve their social and economic participation, and what needs to be done to realise these opportunities.

To provide Tenants Victoria's responses to these questions, it is necessary to set the scene by providing the context giving rise to our observations.

Housing Context

Renters – a growing and diverse group

According to the Australian Bureau of Statistics (ABS), renters make up almost one-third of all Australian households¹. This is an upward trend, increasing 4.6 percentage points to 30.9 per cent between the 2001 and 2016 Censuses. ABS also reported that 59.0 per cent of apartments and 21.0 per cent of separate houses were rented.

At the same time, the number of owner-occupied households decreased from 71.4 per cent in 2001 to just 67.5 per cent by 2016.

The 2016 Census estimated Victoria's population at 6,244,227. Of the 2,112,702 privately-occupied dwellings recorded in Victoria, 28.7 per cent were rented. A further 52,242 state housing authority dwellings were also recorded.

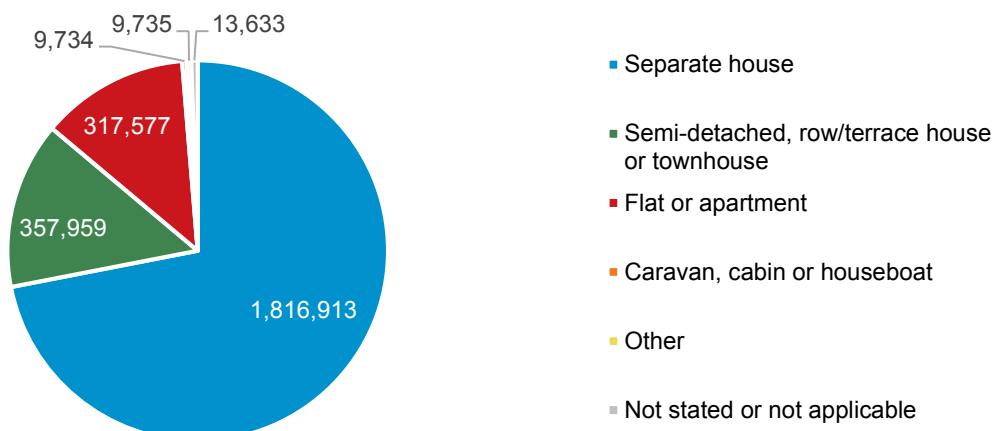


Figure 1: Rented households by dwelling type in Victoria, as reported in the Australian Bureau of Statistics, Census of Population and Housing, 2016.

A diverse market

While renting was once considered a transitional phase in life primarily undertaken by young singles and couples saving up for their first home, the modern day rental market is breaking this stereotype.

One of the fastest growing groups of renters in Australia are the elderly. Between 1996 and 2011, the number of renters aged 55 to 64 years increased by 130 per cent, and renters

¹ Australian Bureau of Statistics, Census of Population and Housing, 2001 and 2016

aged 65+ increased by 88.0 per cent². In Victoria alone, there were 168,819 elderly renters in 2016, almost 60 per cent more than in 2011³.

There are more families with dependent children renting in Victoria than any other household type, with 231,936 single and two parent families renting as of 2016⁴.

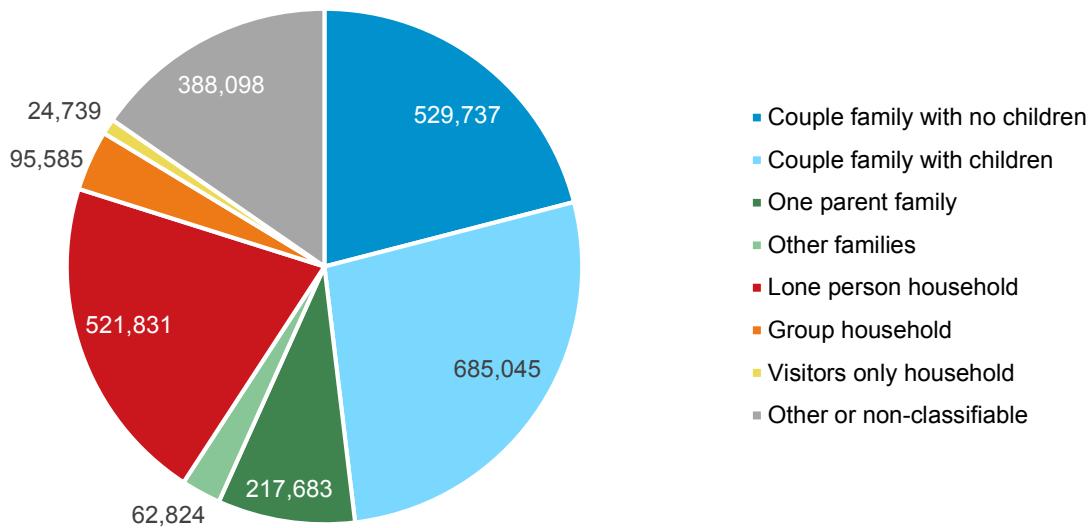


Figure 2: Rented households by family composition in Victoria, as reported in the Australian Bureau of Statistics, Census of Population and Housing, 2016.

Renters include an increasing number of culturally and linguistically diverse (CALD) tenants. According to the 2016 Census, 67 per cent of the Australia population was born in Australia. In Victoria, 45.5 per cent of the population identified one or both parents as having been born overseas, and there were 536,633 renters who reported speaking a language other than English at home.

A further 24,143 Victorian renters identified as Aboriginal and/or Torres Strait Islander.

Lifelong renters

The Household, Income and Labour Dynamics in Australia (HILDA) Survey reported that only 10 per cent of renters moved into homeownership between 2013 and 2016 – a decrease of 3.6 per cent from the average reported between 2001 and 2004⁵.

Decreased housing affordability has a significant impact on the rental market: Not only are more people seeking residential tenancies due to their inability to afford to purchase property, rental prices have steadily risen over the years. The median weekly household rent paid in Victoria increased by 75.6 per cent between 2006 and 2016⁶. This stands in

² Australian Bureau of Statistics, Census of Population and Housing, 1996 and 2011

³ Australian Bureau of Statistics, Census of Population and Housing, 2011 and 2016

⁴ Australian Bureau of Statistics, Census of Population and Housing, 2016

⁵ Melbourne Institute of Applied Economic and Social Research, Household Income and Labour Dynamics, Annual Statistical Report of the HILDA Survey, 2018, p. 132

⁶ Australian Bureau of Statistics, Census of Population and Housing, 2006 and 2016

stark contrast to the median weekly household income during the same time period, which increased by just 27.9 per cent.

Retirees face even greater challenges with affordability in the rental market. A recent survey of over 4,000 Australian workers conducted by the Australian Services Union found that the median women's superannuation balance immediately prior to retirement was under \$80,000, estimated to fund less than three years of retirement "even on the most basic living standard"⁷. The survey also indicated that men fared only marginally better, with an average superannuation balance funding an estimated five and a half years of retirement.

A Reserve Bank Discussion Paper analysed the effect of increased housing prices, changing demographics and preferences have on the likelihood of buying a first home. It found that:

"...potential First Home Buyers (FHBs) today are less likely to take on a mortgage and purchase a home than those earlier in the 2000s. Our results provide evidence that FHBs are being crowded out of the market by higher housing prices ... That is, people do not appear to be merely delaying the age at which they purchase their first home. In short, 'generation rent' appears to be an important phenomenon that is related to the rise in housing prices rather than a shift in preferences or changing demographics."⁸

Competition for rental housing and lack of rental housing affordability

Where households are paying more than 30% of income for housing, they are deemed to be suffering housing stress. 2016 Census figures show that 10.4% of renters are paying 30% or more of their income in rent (compared to 9.1% in 2011), while only 7.5% of households with mortgages are suffering housing stress (a decrease from 10.1% in 2011). Further between 2006 and 2016 in greater Melbourne median weekly rent grew by 75%, while median weekly total personal income grew by only 39.9% (i.e. rent increased by nearly twice income).⁹

In Victoria the cost of renting a home is reported on a quarterly basis by DHHS¹⁰. According to this long running survey rents in regional areas increased 2.6% in the year from December 2017 to December 2018, (rising on average over 10 years by 3.6% per annum) while in the metropolitan area the annual increase was 4.5% (compared to 3.3% per annum average increase over the previous ten years).

Anglicare has been tracking rental affordability to assess the ability of its clientele to access housing for many years. Anglicare's most recent Rental Affordability Snapshot (released 29 April 2019)¹¹ found that just 2 per cent of properties are affordable for a single person working full time on a minimum wage. For families with two young children where both members of a couple are earning a minimum wage, 3 out of 4 properties are out of reach. The situation for those on an aged pension or Newstart are much worse. Only 3.2 percent of

⁷ D Hetherington & W Smith, Not So Super, For Women: Superannuation and women's retirement outcomes, July 2017

⁸ John Simon and Tahlee Stone, 'Generation Rent' and the First Step on the Property Ladder', Reserve Bank Discussion Paper, September 2017, <https://www.rba.gov.au/publications/rdp/2017/2017-05/generation-rent-and-the-first-step-on-the-property-ladder.html>

⁹ Dr Kate Raynor, Igor Dosen and Caley Otter, Housing Affordability in Victoria, No 6 Dec 2017, P.12, Parliamentary Library and Information Service, Parliament of Victoria.

¹⁰Rental Report - <https://dhhs.vic.gov.au/publications/rental-report>;

¹¹ Rental Affordability Snapshot, National Report, April 2019 <https://www.anglicare.asn.au/our-work/research-reports/the-rental-affordability-snapshot>, p 8

properties are affordable for a pensioner couple, and only 2 properties in Australia were affordable for a job seeker trying to survive on Newstart.

Role of Social Housing

Rental housing in Victoria includes public housing which is provided by government and managed by Department of Human Services, and community housing which is provided by provided by non-government providers. Social housing (encompassing both public and community housing) is targeted to those on low incomes and households in greatest need. Funding is provided both by the State and Australian governments via the National Affordable Housing Agreement (NAHA) funding for services.

Over half (53%) of greatest need households reported being homeless prior to commencing their public housing tenancy in 2016-17. Of all households commencing public housing tenancy, 37% were previously homeless.¹²

The Report on Government Services compiled by the Productivity Commission includes details of social housing and homelessness services provided by all Australian governments. According to the productivity commission, in 2017-18, in Victoria targeting to greatest need scored 90.3 in public housing, and 84.9 in community housing.¹³ However Victoria has the lowest rate of social housing in Australia with only 3.5% of dwellings being social housing properties and in 2017-18 spent \$529.7million on social housing¹⁴. At 3 June 2016 there were 64,663 public housing units owned and/or managed by the Victorian Government and a further 19,000 community housing units¹⁵. Compared to other states Victoria spends less per head of population on public housing than any other state.

¹² Australian Institute of Health and Welfare, Housing Assistance in Australia, 2018 (28 June 2018) <https://www.aihw.gov.au/reports/housing-assistance/housing-assistance-in-australia-2018/contents/priority-groups-and-wait-lists>, accessed May 2019.

¹³ Report on Government Services, Part G, Chapter 19- Housing, 2019; Productivity Commission, Equity – Access indicators <https://www.pc.gov.au/research/ongoing/report-on-government-services/2019/housing-and-homelessness/housing>

¹⁴ Ibid, Report on Government Services, Part G, Chapter 19- Housing Table 18.1 – State and Territory Government net recurrent expenditure on social housing, 2019; Productivity Commission.

¹⁵ Victorian Auditor General, Managing Victoria's public Housing, Victorian Auditor General's Office, Melbourne, 2017, p.1 <https://www.audit.vic.gov.au/report/managing-victorias-public-housing?show-sections=1§ion=32146--1-audit-context-#chapter-1>



Figure 1 Expenditure on Social Housing by State 2017-18¹⁶

While targeting social housing to need is accurate, there is a continuing shortage of properties compared to the waiting list. In October 2018, the Victorian waiting list for public or community housing was over 82,000¹⁷¹⁸, resulting in the development of an alliance of organisations working in housing and homelessness to call for reinvestment to build 30,00 new affordable homes. The Victorian government is undertaking a program to renew “walk-up” and other older housing stock in Melbourne, and has committed to a plan to provide an additional 1,700 housing properties¹⁹. In addition, in March 2017 the Government committed to a number of social housing measures in *Homes for Victorians*, such as establishing a \$1 billion Victorian Social Housing Growth Fund to establish partnerships with the private sector to deliver extra social housing properties and provide subsidised rental from the private rental market, as well as measures to speed up town planning and an Inclusionary Zoning Pilot to increase housing supply. However the Auditor General noted that the funded measures in *Homes for Victorians* was unlikely to increase supply to the national average of 4.5 per cent of occupied housing.²⁰

¹⁶ Report on Government Services, Part G, Chapter 19- Housing Table 18.1 – State and Territory Government net recurrent expenditure on social housing, 2019; Productivity Commission

¹⁷ Parliament of Victoria, Legal and Social Issues Committee 2018, p.25

¹⁸ <https://vcoss.org.au/news/alliance-demands-a-whittlesea-a-year-to-end-social-housing-crisis/>

¹⁹ Media Release, Hon Martin Foley, Minister for Housing, 29 March, 2018

<https://www.premier.vic.gov.au/more-public-housing-better-local-communities/>

²⁰ Victorian Auditor General, Managing Victoria’s public Housing, Victorian Auditor General’s Office, Melbourne, 2017, chapter 3; 3.2.1 <https://www.audit.vic.gov.au/report/managing-victorias-public-housing?show-sections=1§ion=32148--3-improving-public-housing>

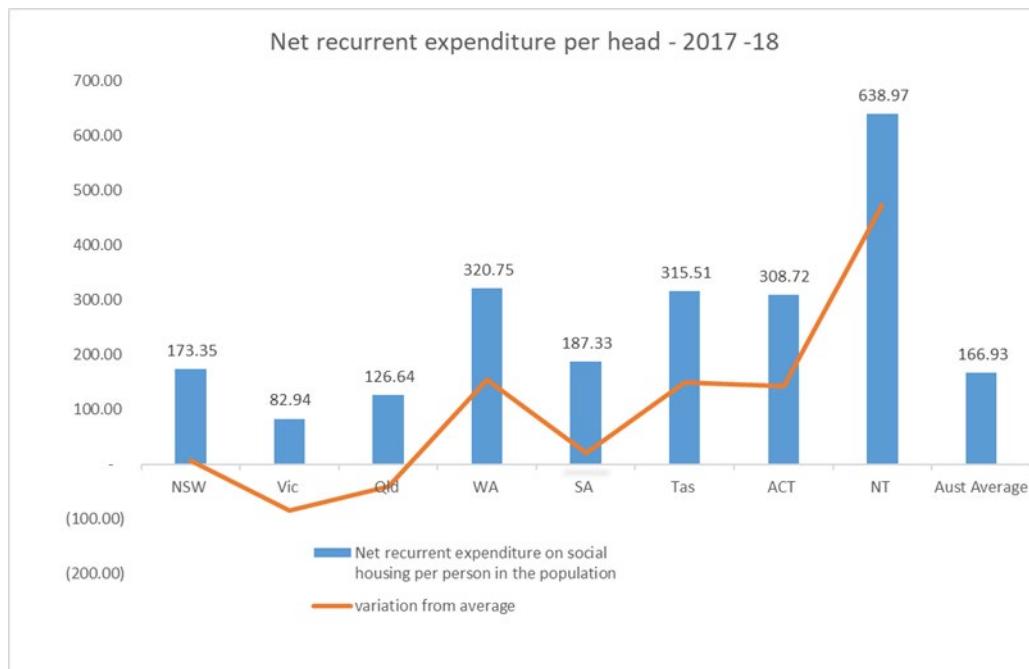


Figure 2 - Net recurrent housing expenditure by head, 2017-18²¹

The Community Housing sector represents a sizeable portion of rental housing, although there is some confusion in the publicly available data. AIHW found 80,225 community housing properties (14,236 in Victoria) and an additional 27,533 State owned and managed indigenous housing and indigenous community housing at June 2016 (1,939 in Victoria)²², while the Report on Government Services found it comprised 75 634 households and 82 902 community housing tenancy rental units at 30 June 2017, and at June 2016, 13 177 households and 15 461 permanent dwellings managed by government funded Indigenous Controlled Housing organisations²³. Both the Productivity Commission and AIHW reported that the community housing sector is growing as jurisdictions continue to transfer properties to it for management.

Tenancies in public housing are more likely to be long term (unlike in NSW, South Australia and Queensland where public housing is provided via fixed term tenancy) with ongoing tenancy provided dependent on income thresholds. Limited information is available on the comparison between public housing and community housing. One major housing community housing provider in a study on the reasons for breakdown of tenancy found that only 56.5 percent of 625 community housing tenancies remained after 18 months (but only 41% of rooming house residents remained compared to 63% of longer term tenancies were sustained for 18 months)²⁴. 19 months is the median length of occupation of tenants²⁵.

²¹ Ibid

²² <https://www.aihw.gov.au/reports/housing-assistance/housing-assistance-in-australia-2017/contents/social-housing-dwellings>

²³ <https://www.pc.gov.au/research/ongoing/report-on-government-services/2018/housing-and-homelessness/housing/rogs-2018-partg-chapter18.pdf> at 18.3,

²⁴ Johnson, G, McCallum, S., and Watson J (2018) "Who stays, who leaves and why? Occupancy patterns at Unison Housing between 2014 and 2016", Melbourne, Unison Housing – p.21

²⁵ DHHS Rental Report, March quarter 2019, Table 7, p 15 <https://dhhs.vic.gov.au/publications/rental-report>

Mental Health Context

Mental illness describes a wide variety of conditions across the spectrum of severity and persistence. Intermittent illness or episodes (such as psychosis) may be totally disabling, but remit. Other conditions may be cognate or complicated by the presence of several distinct disorders. In a rental context, some conditions, such as hoarding disorders may be exceptionally difficult for a tenant to manage or create safety issues requiring intervention by municipal councils, fire brigade or police

According to DHHS in 2017 -18, almost 1.2% of Victoria's population (or 72,859 people) were registered clients with public mental health services²⁶. The 92,610 mental health related presentations to emergency departments in the same period, and 26,098 hospitalisations (50.3% being compulsory admissions) indicates the seriousness of mental illness. The 2017-18 figures show a 9.6% increase in mental health related presentations to emergency since 2016-17, while hospitalisations rose by 7.2%²⁷. 13.8% of those hospitalised were re-admitted as inpatients within one month of separation²⁸. The bed occupancy for all types of mental health support was high at 85.5%, ranging from 88.7% (acute admission) to 77.9% (non-admitted sub-acute)²⁹

Cost of Victorian public mental health services in 2017-18 was significant, with \$1,376.8m for clinical mental health services, and a further \$120m for mental health community support services³⁰. This commitment continues to rise, as the Victorian government budgeted \$1,742.6m in the 2019-20 year, an 8.5% increase over 2018/19 figures³¹.

NDIS overlay

A further complication in support for Victorians with mental health conditions is the transition of services and support to the NDIS, and the lack of clarity regarding NDIS access for those with psychosocial disabilities requiring ongoing support. At 1.7.2018, 42,204 Victorians were receiving NDIS support including 4,389 with primary psychosocial disability and this is expected to increase to between 15,000 and 16,000 people.³² NDIS participants are required to have an approved plan that will allocate funds for identified purposes such as housing, transport, clinical or personal services. This purchaser/provider model then requires an NDIS participant to obtain required services on the open market. However, entry into the NDIS requires reports by specialists to attest to the nature, degree and practical effects of the applicant's disability. These are obtainable at significant cost, which anecdotally will mean that potential NDIS recipients are unable to gain access to the scheme as the necessary supporting documentation cannot be obtained. In addition, once a plan has been agreed, it must be reviewed annually, again requiring reports from specialist providers. Both of these mechanisms will be a practical hurdle to those with mental illness who do not have significant financial resources. There are reports from other advocates about the NDIS'

²⁶ Year in Review – Public Mental Health Services in 2017-18 <https://www2.health.vic.gov.au/mental-health/priorities-and-transformation/mental-health-annual-report>

²⁷ Department of Health and Human Services, Victoria's Mental Health Services Annual Report 2017-18, p 43

²⁸ Ibid, p.68

²⁹ Ibid, p67

³⁰ Ibid p.70

³¹ Service Delivery - Budget Paper No.3, Victorian Budget 2019/20, p.193 <https://budget.vic.gov.au/budget-papers>

³² Department of Health and Human Services, Victoria's Mental Health Services Annual Report 2017-18, p. 26 & 27. (accessed 15 March 2019 from: <https://www2.health.vic.gov.au/mental-health/priorities-and-transformation/mental-health-annual-report>

failure to include payments associated with housing in a plan, such as modifications to rental properties and rectification of modifications following the end of a tenancy.

NDIS is predicated on the person with the disability having choice of service and providers so creating a market will result in better outcomes. However a review of NDIS found “vulnerable NDIS participants and their families, including some with psychosocial disability... were identified as being at risk of poorer outcomes”³³. NDIS is an evolving system, and it is not yet clear that sufficient choice exists to enable the market to adequately support participant choices.

It is further expected that NDIS plans will not be readily directed to accommodation provision outside of Supported Residential Accommodation (which is to be devolved from Victorian Government control as part of the transition to NDIS). It is anticipated that those with psychosocial disability needing support to remain living independently will not readily be funded for rental premises large enough to allow live in carers, and a more drop-in carer model will be preferred. While NDIS roll-out in Victoria is not yet complete, it is highly likely that access to NDIS for individuals with a psychosocial disability will be difficult³⁴ and expensive and obtaining programs to fit their needs will be dependent on the existence of a responsive market. In 2017 media publicised the case of an individual with complex needs forced to live in the Melbourne Remand Centre as the market has not taken up the challenge of providing for him ³⁵ At that time Victoria Legal Aid stated they were aware of at least three similar cases. The need for a provider of last resort to prevent this type of occurrence has been recognised by the Joint Standing Committee on the NDIS, the Productivity Commission and the Australian National Audit Office ³⁶ but not yet addressed.

Effect of mental health on income and housing – chicken or egg?

Like physical ill health, mental ill-health has social determinants, for example poverty and social exclusion are established risk factors for mental disorders³⁷ both at an individual and

³³ Mavromaras, K, Moskos, M, Mahuteau,S, Isherwood,L. et al, Evaluation of the NDIS, Final Report, National Institute of Labour Studies, Flinders University, February, 2018,

P.34.https://www.dss.gov.au/sites/default/files/documents/04_2018/ndis_evaluation_consolidated_report_april_2018.pdf The study used large scale surveys as well as in depth interviews, drawing from NDIS trial experience in SA, TAS, NSW, VIC, ACT and the Barkly Region of NT.

³⁴ Initial NDIS planning was predicated on 6% of population with psychosocial disorder, however its understood the demand is greater than this assessment.

³⁵ Victoria Legal Aid, “NDIS ‘market failure’ leading to vulnerable people being unfairly jailed”, November 2017 <https://www.legalaid.vic.gov.au/about-us/news/ndis-market-failure-leading-to-vulnerable-people-being-unfairly-jailed>

³⁶ Joint Standing Committee on the NDIS, Report on Transition Arrangements for the NDIS (2018) Recommendation 24 and Report on Provision of services under the NDIS for people with psychosocial disabilities related to a mental health condition (2017), Productivity Commission, National Disability Insurance Scheme – Costs (2017) 36; Australian National Audit Office, National Disability Insurance Scheme—Management of the Transition of the Disability Services Market (2016–2017) 27;

³⁷ Vikram Patel, Mental health in low- and middle-income countries, *British Medical Bulletin*, Volume 81-82, Issue 1, 2007, Pages 81–96, <https://doi.org/10.1093/bmb/lbm010>; also USA longitudinal study found an association of mental disorders with low income compared to higher income, and a decrease in household income was associated with risk of mood, anxiety or substance use disorders compared with those whose income was unchanged. Sareen J, Afifi TO, McMillan KA, Asmundson GJG. Relationship Between Household Income and Mental Disorders: Findings from a Population-Based Longitudinal Study. *Arch Gen Psychiatry*. 2011;68(4):419–427. doi:10.1001/archgenpsychiatry.2011.15

neighbourhood level.³⁸ A review by CSIRO on the economic impact of mental health also found that “A mental illness reduces the likelihood of: completing school, getting a full-time job, having a highly paid professional career and good quality of life. The findings suggest that people with psychotic illness have substantially poorer physical health than the general population and remain at considerably greater risk of higher levels of obesity, smoking, alcohol and drug use.”³⁹

Individual mental illness and inability to participate in the labour market has been found to reduce income by 73- 78%, reducing taxation paid to government while receiving more in government payments⁴⁰. has a knock-on negative effect on taxation returns through intermittent or low level participation and early retirement. Long term unemployment is associated with mental illness and that employment created self-esteem, social identity and networks.

Poverty can be both a determinant and consequence of poor mental health⁴¹, and those with smaller income are more likely to suffer rental stress (pay more than 30% of their income in rent).

The Productivity Commission recently produced an issues paper on the economic losses to Australia due to our approaches mental health. It summarises the problem thus:

*“Studies on Australian samples have shown that psychological distress is associated with unemployment (Reavley et al. 2011), low income (Enticott et al. 2018; Reavley et al. 2011), low social capital (Phongsavan et al. 2006), low social connectedness and social support (Atkins et al. 2013; Levula, Harré and Wilson 2018); workplace characteristics (Considine et al. 2017); poor quality diet (Hodge et al. 2013; Nguyen, Ding and Mihrshahi 2017), limitations on physical functioning (Atkins et al. 2013; Byles et al. 2014) and physical diseases (Byles et al. 2014). There may be limits on how much change [mental health] treatment can produce where such risk factors are present and persisting. Dealing with these risk factors may require a greater emphasis on prevention (Jorm 2014) and on social factors that lie outside the domain of mental health services (Mulder, Rucklidge and Wilkinson 2017). (Jorm 2018, p. 1061)”*⁴² The Commission is due to provide its report to the Australian Government on 23 May 2020.

³⁸ Kevin M. Simon, MD Michaela Beder, MD Marc W. Manseau, MD, MPH, Addressing Poverty and Mental Illness, *Psychiatric Times*, Vol 35, Issue 10, pages

June 29, 2018

³⁹ Christopher M Doran and Irina Kinchin, Australian Health Review, 2019, 43, 43-48
<https://www.publish.csiro.au/AH/pdf/AH16115> citing Morgan VA, Waterreus A, Jablensky A, Mackinnon A, McGrath JJ, Carr V, Bush R, Castle D, Cohen M, Harvey C, Galletly C, Stain HJ, Neil A, McGorry P, Hocking B, Shah S, Saw S. People living with psychotic illness 2010: report on the second Australian national survey. Canberra: Commonwealth of Australia; 2011. Available at: [http://www.health.gov.au/internet/main/publishing.nsf/content/717137a2f9b9fcc2ca257bf0001c118f/\\$file/psych10.pdf](http://www.health.gov.au/internet/main/publishing.nsf/content/717137a2f9b9fcc2ca257bf0001c118f/$file/psych10.pdf) [verified 17 October 2017]

⁴⁰ Deborah J Schofield, Rupendra N Shrestha, Richard Percival, Megan E Passey, Emily J Callander and Simon J Kelly The personal and national costs of mental health conditions: impacts on income, taxes, government support payments due to lost labour force participation *BMC Psychiatry* 2011 11:72

⁴¹ Vijay Murali & Femi Oyebode, Poverty, social inequality and mental health, *Advances in Psychiatric Treatment* (2004), vol 10, 216-224, at 217

⁴² Productivity Commission, *The Social and Economic Benefits of Improving Mental Health*, January 2019
<https://www.pc.gov.au/inquiries/current/mental-health/issues>

Homelessness is strongly linked with mental health issues. Only 18.2 percent of Australians have a mental health condition⁴³, but this cohort are over represented in those seeking help from homelessness services (30% of those over ten seeking help reported mental health diagnosis⁴⁴.

People who experience housing insecurity are also more likely to suffer from mental health conditions and their illness is exacerbated or prolonged. A 2011 study of 4,291 homeless people in Melbourne found the isolation and trauma associated with rough sleeping can also precipitate mental illness⁴⁵. It found that 15 per cent of the sample population had mental health issues prior to becoming homeless, and a further 16 per cent had developed a mental illness since experiencing homelessness. The authors found that ‘for some people, homelessness seems to cause mental health issues, particularly anxiety and depression’.

Housing can be a pre-condition for mental health care, and some mental health care models recognise this. Housing First seeks to first establish housing and then manage any issues or health conditions faced⁴⁶. While this is used in the European applications of Housing First, it has not been the practice in Victoria. Short or long term assistance may be required to help those with episodic mental health conditions. In Victoria private rental subsidies have been successfully used for short term or crisis housing⁴⁷.

Renting and Mental Health

Poverty associated with mental ill-health is likely to exclude many from much of the private rental market, and access to public housing is limited. These renters may be forced to live in poor quality, substandard private rental properties, rooming houses or caravan parks.

Rooming houses and caravan parks can be the last resort for tenants seeking to avoid homelessness.

Rooming Houses

Tenants Victoria has long worked with Rooming House residents, as this group of tenants are a particularly vulnerable cohort. Despite the minimum standards established by the Public Health and Wellbeing Regulations 2009 and the Residential Tenancies (Rooming House Standards) Regulations 2012, the requirement that premises be registered (by local councils) and proprietors be licensed (pass a fit and proper person test), horror stories abound on the poor state of properties, the intimidation of and unfair treatment of this group.

Case work by Tenants Victoria through our Rooming House project⁴⁸ indicates that many rooming house residents are or have been suffering from mental health issues, and that homelessness is a common reality. For example, data collected by one metropolitan mental health service over a two-month period found that of 925 separations, 272 (29%) were

⁴³ Australian Bureau of Statistics, 2015, 4159.0 – General Social Survey: Summary Results, Australia, 2014, Table 03. State and Territory

⁴⁴ Australian Institute of Health and Welfare, 2018, Specialist Homelessness Services Collection 2016-17

⁴⁵ Johnson, G and C Chamberlain, Cl, 2011 *Are the Homeless Mentally Ill?*, Australian Journal of Social Issues, Volume 46, Issue 1, p.36

⁴⁶ Pleace, N., 2016, Housing First Guide Europe, FEANTSA the European Federation of National Organisations working with the homeless, p.12; supports provided are listed at p.40 as regular monitoring of housing situation, ensuring good relationships with neighbours, practical advice and assistance with home to make it suitable, budgeting assistance, and other flexible supports as needed.

⁴⁷ Victorian Government, 2018, *Family Violence Housing Blitz Evaluation; executive summary*

⁴⁸ <https://www.tuv.org.au/news/outreach-providing-vital-service-states-vulnerable-tenants/>
<https://www.tuv.org.au/advice/housing/public-housing/rooming-house-residents-handbook/>

homeless⁴⁹. Of this group 31% had “no fixed abode” and 26 had been blacklisted by housing providers including private providers, supported accommodation providers, unregistered rooming house providers and Centrelink.

Rooming house accommodation is very expensive, with rates varying between \$180-\$250 per week for a room (but more commonly between \$200 – 250 per week), leaving very little for a Newstart or benefit recipient after rent⁵⁰. This accommodation is classed as ‘homeless’ by the Housing Register. However, access to secure housing, through the Housing Register can also be uncertain. Housing Front Doors strongly encourage the people they see to apply for private housing, and the initial assessment does not result in an application to the Housing Register. In Tenants Victoria’s experience it is common for rooming house residents not to be on the Housing Register, as emergency and transitional housing providers are not required to help residents apply.

Under the Victorian system, only organisations given an External Party Register Identification Number (EPRIN) by DHHS can put forward individuals for Priority Housing, and not all housing support organisations are registered with DHHS to provide this service. Those presenting with mental illness would likely require assistance to complete an application. Tenants Victoria’s experience is that Housing Front Doors commonly tell their clients that people over 55 have a better chance of priority housing in the public housing system, thus discouraging or dashing the hopes of clients.

Some housing services refer clients to unregistered rooming houses (citing lack of alternative accommodation), and use Housing Establishment Fund (HEF) to provide for rent or set up costs. Residents in these premises are extremely vulnerable, as these properties do not comply with minimum standards in Victorian regulations governing rooming houses and are often unsafe (in some cases because of other resident’s uncontrolled mental health or addiction issues). Housing providers, whether due to lack of dedicated funding or for other reasons, don’t as a matter of course follow up clients once they have been referred to a rooming house, so there is no systemic means to gather information about the clients’ situation. Tenants Victoria is aware of many instances where clients immediately left the illegal rooming house due to feeling unsafe or the poor conditions. In one instance for example the resident, having had 1 week paid for by HEF, immediately left and slept in his car.

Rooming house operators must be registered following the application by CAV of a “fit and proper” person test, while the rooming house property must meet certain standards and be registered with the local municipal council. There is a register of the properties and a separate register of rooming house operators accessible on the CAV website⁵¹, however it is often not possible to cross reference these. Tenants Victoria is aware of several cases where an operator, despite having personally been registered, maintains several illegal unregistered rooming houses and avoids registering these due to the costs of bringing them up to minimum regulated safety and quality standards. It is not clear that information is shared between these two regulators, and therefore enforcement is lacking.

⁴⁹ North Western Mental Health, Data snapshot on homelessness/risk of homelessness, 7 February 2019

⁵⁰ Newstart for a single person is \$455.20 per fortnight or 227.60 per week;

⁵¹ <https://www.consumer.vic.gov.au/licensing-and-registration/rooming-house-operators/public-register>

Private housing

Where renting in the private sector is possible, a mental health crisis can result in homelessness or a housing issue can cause admission to mental health treatment.⁵²

Tenants Victoria does not have figures on housing discrimination by property managers relating to mental illness or perceived mental illness, however the ability to obtain information about a prospective tenant is currently unlimited and commonly includes requests for irrelevant or excessive data (e.g. 3 months bank statements disclosing much more information than is needed by the property manager to assess ability to pay rent).

Other issues relating to tenancy include allegations of “nuisance” or breaching other tenant’s or rooming house resident’s right to quiet enjoyment. Recent amendments to the Residential Tenancy Act will allow VCAT to consider the effect on others of a tenant’s behaviour and likelihood of recurrence when considering applications for orders of possession⁵³, however until clear and consistent practice is established by VCAT, tenants will remain at risk of legal action and eviction because of their mental illness.

Tenancy Law Context – law and policy

The *Residential Tenancies Act 1997* (the RT Act) governs tenancy in Victoria. While the RT Act has recently been amended (*Residential*

Tenancies Amendment Act 2018) full implementation of these reforms will only occur once regulations are proclaimed and is due to become operative no later than 1 July 2020. This submission will refer both to the existing law and the potential glimpsed in the revised RT Act.

The Director of Housing (DOH) manages public housing in Victoria, providing housing for many vulnerable individuals and families. Priority for public housing allocation does not specifically list mental health as a consideration unless the applicant requires support to live independently⁵⁴, however the guidelines warn officers that “a decision will be unlawful if it is

A, an assistant manager, came to Tenants Victoria after receiving a 120 -day Notice to Vacate. A has bipolar disorder, is supporting 2 children, one whose disability requires air conditioning. A received an inheritance and used this to get ahead on rent but mistakenly deposited into incorrect account and arrears accumulated. A became ill, and did not act on arrears. A’s attempts to find new accommodation have been hindered by Real Estate Agent’s refusal to provide positive references due to Breach of Duty notice for arrears.

At a recent visit to a rooming house, a resident described the death of another young woman. She overdosed and collapsed in the hallway. She fell over at an awkward position and it looked like her airways might have been blocked off. She was blue when found by other residents in the house. Residents called an ambulance immediately. They worked on her for a long time (in the hallway) and they could not resuscitate her. She died in the hallway. The resident has been traumatised by this and has felt unable to use the bathroom since the death.

⁵² Ibid – The North Western Mental Health data showed the main reasons for admission as relapse 41%, housing issue 13% and situational crisis 7%.

⁵³ S.245 *Residential Tenancies Amendment Act 2018* inserts new s330A in *Residential Tenancies Act 1997* requiring VCAT to consider whether it is “reasonable and proportionate to make a possession order”. This amendment has not commenced but the Act has a default commencement of 1 July 2020.

⁵⁴ <https://housing.vic.gov.au/social-housing-eligibility#priority-categories>

made contrary to the Charter and may be unlawful if it is made without having specific regard to the individual circumstances of each case".⁵⁵

The Director (through Department of Health and Housing) has developed extensive policies and guidelines to manage tenancies and continues to refine these. It is bound by the Human Rights Charter and also obliged to apply the Model Litigant Guidelines. These protections were not sufficient to create good practice by DOH, as evidenced by the Victorian Ombudsman's investigation into the Management of Maintenance Claims Against public Housing Tenants in October 2017.⁵⁶ This report has resulted in changes to policies and DOH procedures, and new staff training regime to effect culture and policy change. The report, noted that it was the department's policy to take account of factors giving rise to damage to property such as mental and physical health issues or family violence. However, as Tenants Victoria submitted "as many tenants in public housing have mental health and or physical health issues, and some also are impacted by family violence, the department culture came to regard this as the norm and therefore not an issue for consideration"⁵⁷. Changes have now been mooted to operational guidelines to allow greater discretion in housing officers so that compensation claims against tenants will now consider the cause of the damage (e.g. by non-tenant or member of household with mental health condition). This is expected to greatly improve the situation of public housing tenants.

One of the DOH policies supporting public housing tenants or residents with mental health issues not found in community housing or private tenancy is the Temporary Absence Guidelines, that allows a tenant in psychiatric, physical, drug or alcohol rehabilitation to maintain a tenancy during an extended absence while paying \$15 pw⁵⁸.

However, community housing is increasingly being used by state governments instead of state owned and managed public housing,⁵⁹ providing fewer policy protections and oversight to these tenants (e.g. no access to Ombudsman, no automatic application of Model Litigant Guidelines or the Human Rights Charter). The complaint pathway for community housing tenants is limited to an internal complaint, and application to VCAT, which in exceptional circumstances may lead to a Supreme Court Review! The Registrar of Housing has recently published guidance⁶⁰ for community housing providers to mandate web publication of a minimum list of their tenancy policies, however few providers have complied. Assisting tenants with mental health issues does not appear in any policies reviewed by Tenants Victoria.

Navigating the rental system

Renting in Victoria is regulated by complex legislation and requires dealing with property managers or private landlords. Where tenants have a low income their choice of properties is very limited and housing stress (payment of over 30% of income in rent) is commonly

⁵⁵ DHHS, Public housing allocations operational guidelines: 1. Legislative framework and decision making principles, p.10 <https://providers.dhhs.vic.gov.au/public-housing-allocations-operational-guidelines>

⁵⁶ <https://www.ombudsman.vic.gov.au/getattachment/cb264274-236b-4c26-a4ac-9aff6ecc5b11>

⁵⁷ Loc cit, para 132, page 32

⁵⁸ DHHS, Temporary Absence Operational Guidelines V12 September 2018, p10

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

⁵⁹ The Housing register now includes applicants for community and social housing; the first four properties being rejuvenated Public Housing Renewal Program will be managed by a Community Housing provider Housing First and tenants are encouraged to accept this management rather than remain under the auspices of the DOH.

⁶⁰ <http://www.housingregistrar.vic.gov.au/How-we-regulate/Guidelines-for-agencies>

reported. While DOH operates a bond loan scheme (for low income tenants to gain access to housing), Tenants Victoria is aware of property managers withdrawing offers of rental property once they learn the tenant is using this scheme. The issues commonly faced by tenants of short inspection times (inability to identify latent defects such as damp, poor heating or ventilation), and competition for properties may become greater hurdles for those with mental illness. Managing the detailed checking of property condition, maintaining records of property manager dealings and being judged on your cleaning skills can be challenging for any tenant, but arguably more so for those enduring a bout of mental illness. Negotiations for repairs are difficult (if unsuccessful mean involving VCAT) and tenants currently face receiving a Notice To Vacate without any reason being given⁶¹.

Tenants may not be aware that they can contest a Notice to Vacate, or be intimidated by this Notice and leave the property. If tenants are unwell and leave personal property behind, this is often disposed of by the landlord as it is considered of no monetary value. Amendments to the RT Act and supporting regulations will simplify the “goods left behind” framework by 1 July 2020, however in the interim, tenants are losing their possessions.

VCAT - arguing for your rights

Tenancy rights and breaches are dealt with in VCAT. There is a significant power imbalance in the tenancy relationship. While this tribunal was designed as a low cost dispute resolution method where self-representation is the norm, this may not be practical when navigating a complex Act. Many tenants choose not to appear when matters are brought against them by their landlord, or do not use it to assert their rights. Successfully managing a matter at VCAT requires organisation and the ability to self-represent. Access to assistance is very limited, Tenants Victoria provides phone and website advice through its 6 phone lines, and a limited case service, while Tenancy Assistance Advisory Services have non-lawyers who can also help. Any tenant is up against a property manager or landlord who either has professional experience in the jurisdiction or whose appearance is supported by a tax deduction. The gap between a novice and experienced applicant is evident for tenants whose first language is English, and even more so for CALD or other more vulnerable tenants or those suffering mental ill health. Missing a hearing due to an episode of ill-health or other systemic issues include lack of transcript or written reasons⁶², so review rights are more difficult to enforce than in more formal jurisdictions.

Rooming house resident on social security benefits and fell into rent arrears and received Notice to Vacate, but missed the hearing. R alleges receipts not given for some rent payments, and mail interfered with by Rooming House Operator previously. R sought review by VCAT. R called VCAT and was advised hearing was that day (no notification received by mail), and called Tenants Victoria. R having anxiety attack, and attending clinic that morning for treatment. Unclear if R would be able to obtain medical report on mental health disability needed with evidence of interference with mail sufficient to obtain review due to reasonable excuse for non-attendance, so given advice about eviction.

⁶¹ This will be limited to a notice at the end of the first term of a tenancy after commencement of Residential Tenancies Amendment Act s. 91ZZD

⁶² Written reasons for decision are available on request but VCAT asks that parties request reasons at the beginning of the hearing, or when the decision is made. Proceedings are recorded but only transcribed on application and payment e.g. Auscript quotes \$61 per 15 minutes' audio for 5-day turnaround, and \$59 for per 15 minutes' audio for 10 day turnaround.

What does it mean – what makes it hard for people to experience good mental health and what can be done to improve this?

Poverty and exclusion from the labour market means that the choices of those suffering mental illness, whether episodic or continuing, are limited. As set out above, unless they are supported by friends or family, they have limited access to stable housing. The housing they may access in the private rental market is likely to be of a low standard, and in some instances (such as rooming houses) unsafe. The instability and chaotic nature of many rooming houses is not conducive to positive mental health and can exacerbate illness. Moving frequently and housing instability can result in lost community connections or severing relationships with health services. Discrimination (overt or subtler bias) and fear can prevent entry into housing, or help cause a quick exit from an otherwise stable home.

Maintaining a tenancy can be difficult in the face of mental illness. Enforcing rights at VCAT is complex and confusing, and there is very little support available to those with mental illness seeking assistance at VCAT, and a quasi-court is difficult to navigate.

Leaving care (of any type) without a home to go should be avoidable, but it isn't clear that mental health facilities and hospitals make sure that discharge cannot occur without stable housing. It is also clear that keeping patients in residential settings because there is nowhere for them to go is an expensive business⁶³.

This issue can also be created on admission, as staff may be unaware of the patient's circumstances. If admission staff asked the housing status of the patient, and asked if the patient had advised their landlord of absence and offered to send an email on behalf of the patient, this could avoid abandonment claims terminating tenancy.

⁶³ A UK study looking at 2014/15 data found significant economic benefits of improving housing options for mental health acute inpatients to reduce delayed discharge, as only 42% of inpatients had stable accommodation. David McDaid & A-La Park, 'Potential economic benefits of improved transitions along the acute care pathway to support recovery for people with mental health needs', Personal Social Services Research Unit, London School of Economics and Political Science

<https://www.hact.org.uk/sites/default/files/uploads/Archives/2016/09/Mental%20Health,%20Housing,%20and%20the%20Potential%20economic%20benefits%20of%20improved%20transitions%20along%20the%20acute%20care.pdf>

RECOMMENDATIONS:

1. **Increased supply of Public Housing.** Tenants Victoria restates its call for the Victorian Government to build an additional 3000 public housing homes per annum each year for next 10 years to help deliver housing for those who need housing – and reduce homelessness.
2. **Greater protection for community housing tenants** – Community housing tenants are at a disadvantage compared to public housing tenants because of disparity in policies, lack of application of the Carter of Human Rights, and failure to apply the Model Litigant guidelines. This is not tenable where Government policies continue to transfer its responsibility to provide housing to the community housing sector. Community housing tenants should have the same protections as those afforded to public housing tenants. State government grants or other funding should only go to community housing providers that commit to apply the Model Litigant Guidelines and declare themselves bound by the Victorian Charter of Human Rights. In addition, the Victorian government should mandate adoption of model policies to protect vulnerable tenants. – e.g. policies re absence, abandonment etc.
3. **Community housing providers must be required to adopt a Housing First approach.** A housing first approach would help maintain vulnerable tenants in their homes, giving consideration to the ill-effects of disruption and homelessness on those suffering mental illness or psychosocial disability, and recognising the importance of stability to maintain treatment regimes, a healthy lifestyle as well as connection to community supports.
4. **No admission without investigation of housing circumstances and no discharge from health facility or custody into homelessness.** If admission staff asked the housing status of the patient, and asked if the patient had advised their landlord of absence and offered to send an email on behalf of the patient, this could avoid abandonment claims terminating tenancy. Hospital admission processes should include referrals to support services to ensure tenancies are not disadvantaged by a hospital stay.
5. **Making it a contract condition that housing services do not use Housing Establishment Fund monies for clients to enter unregistered rooming houses** Tenants Victoria's experience is that state government Housing Establishment Funding is used to provide initial rent or establishment costs for clients moving into unregistered rooming houses, thereby supporting an industry that exploits vulnerable tenants.
6. **Information sharing between housing front doors and social workers and Outreach into rooming houses to assist people with mental health conditions.** Housing Establishment Funding is often used to pay for entry into rooming houses or other emergency accommodation, but after this transaction occurs, no contact is maintained by the service with the individual placed in these properties. Rooming houses are insecure and a common catchment for people with mental health conditions, but there is little support for these people to connect them to medical, financial or tenancy support. In addition, the prevalence of mental health issues in rooming houses can cause trauma for residents. Housing front doors should be required to share information with support services so these vulnerable people can be connected with suitable support services. Assertive outreach by social workers or similar workers into registered and unregistered rooming houses would help support these individuals and promote moves into more stable housing. Similarly, these workers could assist those negatively affected by co-residents with mental health issues.

- 7. Information sharing between CAV and Municipal Councils to increase enforcement of Rooming House Regulations.** Failure to share information about rogue rooming house operators or rooming houses puts vulnerable residents such as those suffering mental health conditions at risk of harm. Lack of enforcement effort in a market where rental property is in high demand means that unsafe or unsanitary properties continue to be rented to vulnerable tenants.
- 8. Information sharing between VCAT and CAV to encourage enforcement of offences under the Residential Tenancies Act.**
- 9. Reviewing VCAT rules and procedures with a “mental health” lens.** VCAT rules and procedures are complex and difficult for non-lawyers and many others to navigate. These should be reviewed with a view to simplifying them, and making VCAT more accessible for those with mental illness.
- 10. Educating VCAT staff and members on mental health.** Individuals working in VCAT especially decision makers must be required to undergo training to recognise and deal sensitively and empathetically with parties with mental health issues or where cases are affected by the mental health of others, e.g. nuisance, damage and bond claims, termination and possession matters.
- 11. Providing referral pathways through the VCAT registry.** Referrals by VCAT staff to appropriate services would help it to better manage matters and support tenants with mental health issues who seek assistance or appear before the Tribunal.
- 12. Duty lawyers should be available for all Residential Tenancy matters at VCAT.** The Residential Tenancy Act is long and complex and with the commencement of amendments made in September 2018 and implemented by July 2020 this will become more complex. Given the importance of maintaining a home to sound mental health, investment in duty lawyers is a small price to pay.
- 13. Internal VCAT appeals.** Currently a VCAT decision must go to the Supreme Court on appeal. This is extremely costly and time consuming and well beyond the resources of most individuals. Tenants Victoria, along with other advocates has long called for an internal appeal mechanism.
- 14. Ensuring bond loans are not a barrier to renting.**
- 15. Mandatory sensitivity training for Estate Agents and Property Managers.** The way in which property managers and estate agents deal with tenants can have a significant effect on the experience and outcomes for tenants. Vulnerable tenants, such as those with mental health issues are entitled to be treated fairly and with respect. Training estate agents and property managers