

Transcript for Renters' Rights Rundown: Making sense of evictions

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Deb Fewster:

Good morning everyone, thanks for joining us. My name is Deb Fewster and I'm the Director of Policy and Advocacy at the Victorian Council of Social Service, also known as VCOSS. I'd like to start by acknowledging the traditional owners of the land where I am today, the people and pay respects to elders past and present and to emerging leaders and to any Aboriginal people joining us today. This is our third Renter's Rights Rundown event for 2023. Whether this is your first Triple R event or whether you've seen many, really like to welcome you, we're so pleased that you're able to join us to learn more about or refresh your memory on Victoria's Renting Rules, which are set out in the Residential Tenancies Act 1997, also known as the RTA. Many of you'll know that over 130 changes to the RTA were introduced in March, 2021. These changes were long planned after years of advocacy by the community sector. So the people, all of you on the call today, they aim to address the rental market power imbalance and make renting fairer and safer for all Victorians the third of all Victorians who rent their homes. But we know that right now renters are facing possibly the toughest conditions we've ever seen in the rental market, set against a backdrop of a global cost of living crisis. So in this context, it's more important than ever for renters and for you, workers who support renters to be aware of the laws that curb the effects of these rental market pressures and advocacy strategies to support renters to assert their rights. Today's session focuses on the provisions in the RTA that provide renters with stronger protections against evictions and aim to help renters stay safely and securely housed. So a really important and timely session for all of us presenting this critical information. Today we have two special guests. The first is Jemma Donaghey from Justice Connect Homeless Law, and Jemma's going to talk through legal protections around evictions. She'll be followed by Angela Kyriakopoulos from the Council to Homeless Persons, also known as CHP. Angela is going to share some strategies for workers helping renters to sustain their tenancies. After the presentations, we'll have a Q and A session and we have plenty of time allocated for audience questions. So how will the Q and A sessions work? Well, the way they work is that you can submit a question at any time through the Q and A box at the bottom of the zoom window. So important to note the Q and A box, so not the chat box. If you can use that Q and A box, the team here behind the scenes, you will be able to have a look and grab your questions. The questions will be moderated as we expect that we'll get some similar questions about similar topics throughout the day. So we'll kind of theme those together where that's the case. Please note that the panel won't be able to answer questions about individuals or specific individual circumstances. We will be able to get through as many questions as possible, in the event that we don't get to them all, what we will do is take unanswered questions on notice and we will follow them up for you. An important point to note is that we won't just get back directly to the person who's asked the question. We know that you'll all be kind of interested in and invested in all of the questions and all of the answers. So we will circulate those answers to questions that we take on notice to all registered participants today. We'll also ask you to do a quick exit survey that will pop up in your browser at the end of the event. Really encourage you to just hang around online. Just take that few seconds to complete that quick exit survey because that helps shape future events that we run so we can be really responsive to your information needs and priority topics. So thanks in advance for your input. So now let's get stuck in. I'd like to welcome Jemma from Justice Connect Homeless Law. Thank you Jemma.

Jemma Donaghey:

Thanks very much Deb. I'll just start by sharing my screen and let's hope this goes smoothly. Okay, so hopefully you can all see that first page there. So like Deb, I would like to begin by acknowledging the traditional custodians of the land where I'm joining from today, the Wurundjeri people of the Kulin nation. I acknowledge that sovereignty was never seated and it always was and always will be aboriginal land. So as Deb has explained, I'm a lawyer from Justice Connect Homeless Law and I'm here today to talk you through the process for eviction under Tenancy Law in Victoria, including the five strike process for rental arrears matters and the reasonable and proportionate test which were implemented with tenancy reforms in 2021, which really introduced a large array of reforms in the tenancy space. So a bit of a reminder, because I'm a lawyer and we love caveats, this is legal information only and not advice. So I do want to begin by looking at this flow chart that we've created on the general eviction process. So I think this is really helpful to get an idea about how eviction matters generally progress and you can see that it's a fairly linear process. So starting at the top of the flow chart here with the black rectangle, the eviction process begins with a trigger event. And this is essentially the reason that the rental provider wants the renter to move out of the property and it needs to be one of the reasons that are clearly set out in the tenancy law. So it might be, for example, the rental provider alleges that the renter has seriously damaged the property or that the rental provider intends to sell the property. So the rental provider can then give the renter a notice to vacate and that's the required form to start the eviction process. Then moving on to the box below, if the renter doesn't move out by the end day on the notice to vacate, the rental provider's able to apply to VCAT for a possession order and VCAT sends out hearing details to the parties and at present, possession order hearings are generally being held by telephone or video conference, not in person as they were prior to the pandemic. And it's really important for your client to know that if they want to stay in the property, then they're in the best position to do so by attending the hearing and putting their case forward. So at the VCAT hearing, there's a number of options that are available to the VCAT member and these are set out in the pink boxes in the black box here on the screen. So VCAT might dismiss the application and this could happen for a number of reasons, including for example that the notice to vacate is invalid or that VCAT does not think that it is reasonable and proportionate to make a possession order. VCAT might also adjourn the application to a later date and this could be VCAT adjourning the matter for an extended period of time to allow the renter who is in rental arrears to enter a payment plan. Or they might adjourn it for a short time like a couple of weeks to enable something specific to happen, like for the renter to get some legal advice. VCAT might also make a compliance order and this is essential comply with certain obligations under the act and this can only happen in certain circumstances. And finally, VCAT could make a possession order and this is the order renter needs to move out of the property. So this is generally what we're trying to avoid when we're seeking to sustain tenancies for our clients. So if a possession order is made, then the rental provider can request a warrant of possession from VCAT and the warrant generally needs to be executed within 14 days of being issued by the police. And in this context, when I use the term executed, what that means is that the police can go to the property, remove any occupants from the property and change the locks. Now on closer inspection on this slide, you will see that there's this little speech bubble that says Review Application on a number of the boxes. And so a review application is available to a party that doesn't attend or isn't represented at a hearing and it's really important to know about that 'cause it can have a huge impact for a client. I'll talk about that in a couple of these other stages in more detail as we progress. So one of the real key takeaways from this session today is that the notice to vacate is only that first step in the legal process as we've seen from the flow chart. So rather than simply move out, the

renter is entitled to stay and to challenge that notice to vacate and to have the matter decided at VCAT because it's ultimately up to VCAT whether the renter needs to move out or not. So for your information here, I have provided some of the common reasons that a rental provider can issue a notice to vacate and I won't read through them but you can obviously come back and look at these as you'll have the slides. I do want to flag, there are some reasons that a rental provider can give an immediate notice to vacate and these matters. They still need to go to VCAT but they move really quickly because they're based on serious allegations or serious safety concerns. And so I think as a support worker, it's important to know that and to refer your client quickly for some assistance if they've got a notice to vacate on one of these grounds. I also want to mention that with the reforms implemented in 2021, a rental provider can no longer issue a no to vacate without grounds and this is a really huge win for the sector. A rental provider can however issue a notice to vacate at the end of the initial fixed term lease and we thought it was quite controversial what this new provision meant as this was introduced or this was slightly amended with the amendments in 2021. However, we have had one VCAT member who found that this provision didn't simply refer to the first fixed term tenancy agreement on a rental property. We think this was clearly the wrong interpretation of the law, a fortunately that decision wasn't published by VCAT. So we're hoping that this decision or this interpretation won't be followed by any other VCAT members. So if the matter does progress to VCAT, then a possession order, a VCAT must make a possession order if they're satisfied, first off, that the notice to vacate is valid and in order to determine if a notice to vacate is valid, there's a number of things VCAT needs to consider, including things like whether the rental provider has given the correct amount of notice under tenancy law and that timeframe varies depending on the reason for the notice. They also need to consider whether the required documentary evidence has been provided and there's a number of other things as well. Second, the rental provider needs to be entitled to issue the notice to vacate and they need to have made out those allegations on the notice to vacate to the relevant standard. And then finally, VCAT will consider whether it is reasonable and proportionate to make a possession order. And so this is the exciting new reasonable and proportionate test that you might have heard about and that was implemented with the reforms. So in determining if it is reasonable and proportionate, VCAT needs to consider the impact on all of these parties that you'll see listed on the slide in orange. And then a number of factors which are set out in the law, which we'll look at on the next two slides. So I won't speak to all of the factors because there are quite a few, but some of the key factors that VCAT needs to consider are the nature, frequency and duration of the renter's behavior and whether that's been a reoccurring breach under the rental agreement. And so actually what you'll notice here is that many of the considerations are only applicable or need to be considered where the possession order application is based on allegations about the renter's behavior. So they're not always going to be relevant. VCAT also needs to consider whether the renter has made an application for an intervention order and if so, whether it was in force at the time of the allegations and if it contained an exclusion order. VCAT also needs to include all of the factors on this slide, including whether the renter has soon have capacity to remedy the breach and comply with their obligations under the rental agreement. And this is a really great consideration because it's future focused. So it allows this opportunity to set out a proposed approach to, dealing with the breaches that are flagged by the rental provider rather than having to have resolved those issues at the time of the hearing. VCAT also needs to consider whether any other order or course of action is reasonably available instead of making a possession order. So again, a really positive consideration because we think there's always going to be some compelling arguments to be made regarding a more reasonable course of action. And finally, VCAT can consider any other matters it considers relevant and this essentially enables us to put forward any information about a client's circumstances that make them a vulnerable renter and support an argument against them being evicted. So I want to talk you through a couple of examples of the

reasonable and proportionate test in action so you can get a bit of an understanding about how it's being applied but also see that it's very much determined on a case by case basis. So we'll begin by looking at Lodden Mallee Housing Services, LTD and OBG. So in that matter, the rental provider was seeking possession following violent and intimidating conduct by the renter against neighbors which had resulted in criminal charges and an intervention order. The renter had a psychiatric condition which caused the dangerous behavior and the rental provider operated apartments which they would rent out to vulnerable people at risk of homelessness. The question for VCAT was whether it was reasonable and proportionate to make a possession order. Ultimately, VCAT decided that it was not reasonable and proportionate, having regard to the fact that the renter was receiving treatment for the psychiatric condition and they showed signs of improving and were expected to improve further, they also considered that if the renter was rendered homeless because of a possession order, then that would destabilize the treatment that they'd received. So VCAT ordered the application for possession to be adjourned to a later date with the opportunity for the rental provider to renew the application if the renter failed to comply with certain conditions. In comparison, if you look at Lynch and Manion, in that case the rental provider sought possession as they wanted to sell the property. So the renter was opposing the eviction as she'd lived at the property for six years. She was a pensioner and unable to pay for a removalist and she was incapable of moving due to physical and mental health issues. Again, the question for VCAT was whether it was reasonable and proportionate to make a possession order and VCAT decided it was reasonable and proportionate to make a possession order. Having regard to the following, they considered that the renter's physical injuries weren't completely prohibitive to her moving. They also considered that she had just a few possessions and so the move wasn't going to be too difficult and they acknowledged that there were several cheaper properties available in the area nearby, so it was unlikely she'd be rendered homeless if a possession order was made. They also considered that while the rental provider had no immediate need to sell the property, they had already waited for five months and they were ultimately entitled to sell the property if they wished to. They found that while it was reasonable for the rental provider to take advantage of the current rental market to get the best price to selling it vacant, rather than with the renter in there. Now it's interesting to look at that case in comparison with Danrell and Morris. So in that case, the ongoing housing crisis was a real significant factor in the tribunal's determination. So again here, the rental provider wanted to sell the property with vacant possession and they'd also provided evidence that they were struggling to pay their mortgage. VCAT however, ultimately determined that their need to do that and their desire to do that did not outweigh the negative impact on the client if a possession order was made because the client had actually been trying to secure other accommodation in the area and they'd been unable to and because of this housing crisis that was going on, particularly in that local area where there was very few affordable properties, then there was a very significant risk that the client was going to be homeless if a possession order was made. So I hope that provides a little bit of an illustration about how the reasonable and proportionate test works and that it's very much this balancing act for VCAT to consider all of those factors that we've covered over on the previous couple of slides and the impact on all of those parties. So the renter, the rental provider, and then also neighbors. So with that in mind, I wanted to provide some guidance on how you can help to support your client at VCAT in the context of the reasonable and proportionate test because I think there's really more opportunity than ever for support workers to have an impact for clients at VCAT hearings. So if your client is facing alleged breaches that were actually caused by someone else, then it's really helpful if you can provide evidence of any steps that have been taken to reduce the risk of future breaches. So that might be, for example, police reports that have been filed or an intervention order. It's also really helpful if you can provide evidence of the impact that a possession order will have on your client. So for example, whether it's likely that they'll be made, if they are made homeless, what

impact that will have on mental health or physical health issues that they're living with. It's also important to flag any reasons why that particular property is important and why that particular property is their home. So flagging things like support services that they're engaged with in the local area, any cultural links that they've got to the local area, modifications that have been made to a property due to their disability. Obviously it can be quite a stressful time going to VCAT as well. So practical tip, it's obviously helpful be there with your client physically if they want that when they've got a hearing. And as I flagged earlier, these are generally tele hearings so it could also be helpful if you were able to provide a quiet space for them to perhaps join in and take part in the hearing. So I do want to touch on a couple of things just before we move on to the five strikes process. So many of you aware of what adjournments are, which is essentially postponing a hearing date and VCAT will agree to an adjournment but only really where there's good reason to do so. So they're not particularly generous in accepting adjournment requests. There are two different ways that you can seek an adjournment. First off, it can be done in writing, with two clear business days ahead of the hearing and ideally this is done with written consent of the rental provider, where you've got that written consent from the rental provider, it's very likely that VCAT is going to adjourn because if everyone else is happy to push the hearing date back, why would they want to proceed with it? The other way you can request an adjournment is in person at the hearing. And so as a support worker, you can absolutely request an adjournment for your client, but a bit of a red flag and something that I do want you to be careful about is knowing that you'd want to be careful if you're appearing at a hearing without your client there. And this is because it will likely remove their right to lodge a review application. So a review application is available if your client has missed a hearing and they weren't represented and when they lodged that application, they're essentially asking VCAT to rehear the matter. And so this could lead to a different outcome, which is obviously very significant if a possession order has been made. So to make the review application, the applicant will also need to show that they've got a reasonable excuse for not attending the hearing and also that they've got a reasonable case to argue in relation to the subject matter. And this essentially means they've got a bit of extra information that might make VCAT make a different decision to one they'd initially made. So if it's a rental arrears matter for example, a reasonable case to argue would be, it would likely be sufficient enough to say, I can enter a payment plan and this is how I could pay off the arrears. And so this application should be lodged within 14 days of the applicant becoming aware of the order, but there is the option for VCAT to extend this timeframe as well. Now unlike adjournments, VCAT is generous in considering these applications. So we always say that if someone didn't attend and they weren't represented, it's worth giving it a go and lodging that application. So one thing that I really want you to know as well is that this application can operate to put a pause on eviction proceedings. So even if the police have come to your client's property and they've said we're coming back in three days to execute this warrant of possession and change the locks, if your client turns around and lodges this review application, then that puts a pause on the police being able to do that to allow for a new hearing. It's really important obviously to act quickly in this situation because once the locks have been changed under that warrant, it's too late to lodge the application as the tenancy has been legally terminated. So moving on to the five strike process for rental arrears. And so a little bit of a refresher for those who don't know, if a renter is 14 days behind in the rent, then the rental provider can give them a notice to vacate for non-payment of rent and they need to give them 14 days on that notice to move out. So under the five strike process, the renter's options depend on how many notices to vacate that received for non-payment of rent in the relevant 12 month period and the relevant 12 month period resets every 12 months from when the tenancy started. So for the first, second, third or fourth notice to vacate in a 12 month period, if the renter pays all of the rent that's owing by that end date on the notice to vacate, then the notice to vacate ceases to have effect. So that means the rental provider can't apply to VCAT for a possession order based on that notice to

vacate. If however they don't pay all of the arrears by the end date, then the rental provider can apply to VCAT for a possession order. And at VCAT, if VCAT is considering the first, second, third, or fourth notice to vacate in the 12 month period, then VCAT can adjourn the hearing and refer the renter to a financial counselor or make a payment plan if they think that satisfactory arrangements can be made to avoid financial loss to the landlord. If it's the fifth notice to vacate in the 12 month period, VCAT doesn't have those same options to make a payment plan or refer to a financial counselor and they can make a possession order if it's reasonable and proportionate to do so. So I've got a little example here because I know that that's perhaps a little bit confusing to get your head around. So we've got Jerry, Jerry's received a notice to vacate for non-payment of rent on the 4th of December, 2021. Jerry's 12 month rental agreement was renewed on the 1st of February, 2022 and he was given another vacate for non-payment of rent on the 12th of September, 2022. So because Jerry's lease was renewed on one February, only the notice to vacate he's received in September is relevant because the relevant 12 month period started again on the 1st of February. So this means the total tally of notices to vacate is one for Jerry and if he pays up all of the arrears by the end date on that notice, which is the day they're asking him to move out, oh sorry, the rental provider isn't able to apply to VCAT to seek a possession order based on that notice. Now before we wrap up, I did want to just mention Dear Landlord, so some of you might know about Dear Landlord already, it's a free self-help tool for Victorian renters to seek to avoid eviction for rent arrears. So it's essentially an interactive tool that helps renters to understand their rights and also build their confidence to take action if they have fallen into arrears. So depending on they're at in the eviction process, it can help them to draft a letter or an email to their provider and explain things like why they're fallen behind in and request an affordable payment plan. It can also help a renter generate a VCAT review application if they missed a hearing for rent arrears. So I think this can be really helpful for clients where they've got the capacity to engage and to use this tool themselves. If they don't, it's also something that you could sit down and perhaps do with them. We're also currently developing a new tool for people who are experiencing family violence in rental properties. We're in the kind of initial discovery phases with that work watch that early next year. So watch this space. Just to wrap up, I've just provided a couple of options here for assistance for tenants Legal, obviously there's us at the top Justice Connect, Homeless Law, Tenants Victoria, who are an incredible statewide set that I'm sure you're all aware of, Victorian Aboriginal Service, Victoria Legal Aid, Community Legal Services. Not all of them provide assistance with tenancy but some do and the tenant assistance and advocacy program, but they're all linked and you'll have the slides and you'll be able to access those separately. Thanks very much, I'll hand over to Deb.

Deb Fewster:

Thank you so much Jemma and you've just done an exceptional job and I just think every step of the way in that presentation you really, I guess down and made what can sometimes feel like very overwhelming information about these new RTA rules really very easy to kind of engage with and I just think that really great visual representation of that five strikes kind of process in action was very helpful. And also just want to give a big shout out for that Dear Landlord tour. I know I personally referred you know many people I know to that and it's an excellent resource. So thank you so much for the work that you and your colleagues do. It's that great presentation and people have an opportunity to pick Jemma's brain in the Q and A later in this session, but now I'd like to, so thank you Jemma, great start to the event. Now I'd like to welcome Angela Kyriakopoulos from Council to Homeless Persons. Thank you so much Angela for joining us.

Angela Kyriakopoulos:

You very much, before I start, I wish to acknowledge the traditional the owners today and pay my respects to past, present, future elders. I also like to acknowledge that this land and this is and always will be aboriginal land. So good morning all my name's Angela from the Council of Homeless Persons. So today's session's about support workers, IAP workers and case management in the specialist homeless services and how we can prevent evictions occurring when consumers get a notice to vacate. At any given time, there are over 30,000 consumers without a home and many consumers are facing pending convictions and join the long queues of trying to find a board of accommodation Victoria. Also keep in mind, renters are experiencing rental stress and spending over 30% of their income. So how can a case manager assist a consumer as they need tenancy when they appear at an access point? So the following, our programs, the specialist programs should be able to assist consumers to stop and prevent consumers from being evicted when they receive notice to vacate. They should be able to have the skill and give individual advocacy complaint mechanisms, know how to access different types of funding programs like the Private Rental Assistance Program, Housing Establishment Funds, Brokerage Funds like H to H, Family Violence and et cetera. They should also be able to be skilled in negotiations between landlords and consumers and also make payment plans with landlords real estate agents and others. So in our sector, we actually have case managers, IAP workers, support workers and specialist homelessness support workers. They should have a basic understanding of Residential Tendencies Act. Process and procedures that allow to individually advocate on behalf of consumers who receive notice to vacate and stop any pending evictions. All case managers in the specialist homelessness sector should know that there are funding options are available. They should be actually equipped and skilled the knowledge to prevent evictions at a early stage prior to them going to VCAT or contacting legal services, they should be trained and actually being resourced in how to do this. So what do we need to do as a sector, in particular with frontline workers? Understand how the Residential Tenancy Act, understand the process and procedures when a consumer is issued the notice to vacate and for what reason? Start negotiating a payment plan. Access fundings from different services to prevent evictions, if this all fails, contact VCAT. Also contact agencies like Justice Connect or Victoria Legal Services or Victoria, who can actually give you that tenancy advice. But a support worker in our sector should be able to sustain and also stop evictions occurring if they are resourced properly and able to access funding prior to any type of legal action. So what can I say for further information you can contact me. We provide community education, complaints mechanism, we also can resource workers in our sector in regard to residential tendencies, different types of mechanisms in support, where to get different type of brokerage funds and also get assistance VCAT. So thank you, that was short and sweet.

Deb Fewster:

Thank you so much Angela. Love the short and sweet, fantastic. So I'm going to invite Jemma to come back on. Jemma, if you just would like to switch on your camera and come off mute, we'll kick off our Q and A momentarily. Just a reminder to you all to pop your questions into the Q and A box at the bottom of the screen. I can see there's lots of questions coming in. Please don't be put off by that. We've got quite a bit of time to move through questions but also as I said, we'll kind of take questions on notice as well. So if you've got a question to ask, please pop it in there. I might just start, sorry Jemma and Angela, if you could just both put your cameras on, that would be fantastic, I can't see them on at my end. Oh fantastic Angela, thank you. And Jemma, I'm not sure if you are there, Jemma there. I might just keep moving along while we work out what's happening at the

other end with with Jemma. If I can just start with a question perhaps, Angela if you want to kind of kick off with some responses and when we've got Jemma.

Jemma Donaghey: I'm here,

Deb Fewster:

Sorry Jemma, fantastic. I can't see you on screen Jemma, I'm not sure if that's just me not being able to see you or not, if you just want to put your camera on but we've got your voice in the meantime which is fantastic. Might just start with, we've had a couple of questions come up about renting and family violence. We'll start with those but just to note that we will also share a link in the chat to our last renters rights rundown event which focused on renters rights in family violence situations. So Christian for both Jemma and Angela. When a client is in family violence and the partner has left their property due to an IVO, it usually leaves them in a position where they can't afford the rent. What are their options to avoid eviction? Jemma, are you able to jump in? Not sure what's going on there.

Jemma Donaghey: I'm sorry. You're freezing and cutting out a lot. Repeat the question.

Deb Fewster: Yep, sure. So when a client is in a family in family violence and the partner has left the property due to an IVO, it usually leaves them in a position where they can't afford the rent. What are their options to avoid eviction?

Angela Kyriakopoulos: Well.

Jemma Donaghey: Thanks Deb. Sorry Angela, are you going?

Angela Kyriakopoulos: You can go ahead first Jemma.

Jemma Donaghey: So they can contact your local.

Jemma Donaghey: [Jemma] Sorry, I'm having a real connection issues here and everything keeps glitching in and out. I think that that question.

Deb Fewster:

I think we're just having some glitches with with Jemma. I'm not sure whether Jemma you can move to another area where you're seated, but I might, while we sort that out at your end, Angela might throw to a question for you or Angela, did you want to start answering that question and then I've got another one one I can throw you away.

Angela Kyriakopoulos:

Okay. So if someone is experiencing family violence and left with debt et cetera, they can actually contact their local access point IAP workers who do an assessment and also referral to services and family violence and actually assist the consumer. They can also do the referral to a legal service as well, but also to VCAT, got a special unit for family violence to actually assist the consumer. So access points, IAP does the assessment, actually referred to a support worker or if it is extreme violence, consumer can actually contact Safe Steps. You can actually do quite a bit of work and do that referral for the consumer to make them feel safe.

Deb Fewster: Thank you Angela. Angela, you're on the spotlight here as Jemma leaves the session, she's rejoining to see if that fixes the technical issue. Can I ask Angela, when applying for funds for rent arrears, does the tenant have to have the ability to continue to pay the rent once those arrears have been paid?

Angela Kyriakopoulos: I mean if the arrears have been paid and they're two weeks in advance, no.

Deb Fewster: Okay great.

Angela Kyriakopoulos: And their caseworker should be able to actually support them, advise in that area as well to ensure there won't be any impending action.

Deb Fewster: Yeah, great, thanks Jemma, nice to see you back with us and sorry that you had those technical issues, let you settle in. I've got another one for Angela and then I'll open up to both of you as you kind of get your feedback under the desk, Jemma. Thank you Angela and Jemma, you might want to chime in with this one as well. Angela, if a client has been evicted in the past, over three years ago, is there a register that makes it more difficult for them to obtain a rental? So just thinking along the lines of something similar to a credit file for debts.

Angela Kyriakopoulos: Is that in regard to under black listing?

Deb Fewster: Yeah, I think that's what it's in regard to, yeah.

Angela Kyriakopoulos: Okay, that shouldn't be coming into the equation when they apply for private rental, but correct me wrong Jemma, is that black listing still ongoing?

Jemma Donaghey: Yes, tenancy databases are unfortunately still an issue for people in Victoria. There are only certain reasons that they can be listed on a tenancy database and that information can only be held for a certain amount of time. There's a number of different tenancy databases that operate, so instead of reaching out to those databases and trying to find out if they're listed, I think it's not worth doing that unless they think they are listed. So if they make an application to a property and they're told they're listed on a tenancy database, which the agent that they're applying to should give them that information, then they could follow up and see, is that information accurate, should it still be on there? Is there something they can do to have it removed?

Deb Fewster: Right, thank you Jemma, another question for you, this one is in two parts so I might just go with the first part first, which is kind of like a binary kind of yes no answer I think. And then there's a second kind of bit of the question. So the first bit of the question Jemma is can a renter break their lease at no cost prior to the end of their lease agreement if there is family violence present?

Jemma Donaghey: I love that you think it's a binary yes, no question.

Deb Fewster: I'm sorry yeah, non-lawyer.

Jemma Donaghey: Like well. There's a number of factors that come into play there and it really does depend on the circumstances but there were some great changes brought in with the reforms in 2021. One of the key issues for that person is whether the perpetrator is on the lease and if the perpetrator was also on the lease, then there's a great option for them to apply to VCAT and have the tenancy terminated and ask VCAT to make orders apportioning who needs to pay for what and saying that they shouldn't be liable for any break lease fees if they're not on the lease they can still make a similar kind of application but the law isn't quite as clear in saying that they will be released from any costs there.

Deb Fewster: Yep, okay, great, thank you and thank you for correcting me in terms of my very basic assessment that, it's a binary proposition. The second bit of the question is then, so what would be the process Jemma for a renter to seek to kind of break their lease at no cost prior to the end of that lease agreement if there's family violence present?

Jemma Donaghey: Yeah, I think, and this is why we're making this tool because I think it's an issue that's coming up more and people trying to make use of these good provisions under the tenancy

law. The process is there can be, again it depends whether the perpetrator is on the lease. If the perpetrator is on the lease, one option is all parties could reach an agreement together outside of VCAT to terminate the agreement. That's going to be hard because might not want to speak to the perpetrator. Also, parties might not agree. So the other option there is applying to VCAT and we think that's definitely preferable if you are not able to get that agreement because VCAT can make those orders around who's liable to pay for what, even if the perpetrator isn't on the lease, as I said, I still think that it's worthwhile trying to negotiate with the rental provider and if not then making that application to VCAT.

Deb Fewster: Great, thank you Jemma, another question for you. Can a landlord issue a notice to vacate at the end of a fixed term lease without additional grounds?

Jemma Donaghey: Yeah, that's essentially, I guess that's kind of the one remaining in a way without grounds that exists in the law but it's just able to be issued at the end of the fixed term lease. As I say, our interpretation of that is that it's only that first fixed term agreement. We've had one VCAT member who didn't agree with that, but they don't need to provide any other reasoning in issuing that notice.

Deb Fewster: Yeah, great, thank you. Just a question as well earlier, Jemma, in your presentation you were talking about stepping us through the application of the reasonable and proportionate test and I'm interested just to know a little bit more about the kind of the evidentiary burden like on the renter and then also I guess on the support worker as well. So for example, you mentioned, evidence of engagement with specialist services, you know evidence of like cultural links is kind of helpful. I'm just wondering, what does that practically look like in terms of the kind of evidence that is required by VCAT? Is it like for example, letters from those services or from cultural groups? Is it evidence of appointments? What does that kind of look like?

Jemma Donaghey: Great question Deb. I think letters are great and even a support and I think this varies as well. If the client has a lawyer involved and then the support worker is working collaboratively with the lawyer, the lawyer might be all over kind of gathering a lot of these bits of evidence and they might ask the support worker perhaps for one support letter that sets out kind of the impact on the renter. But otherwise there might be if the client isn't engaged with legal assistance and the case worker's kind of providing that more active assistance at the hearing. Then definitely things like letters, things like if there's certain changes that have been made to a property because of disability modifications, obviously evidence of that oral evidence is helpful. But if there's anything that you can provide in writing, whether it's just, if it's a support service that you're engaged with, a letter from them that says such and such has been attending our service for the last six months, they come here regularly, you know, they seem to benefit from it and whatever it is, depending on what it is. Obviously outlining a little bit about what their engagement, looks like, the time that they've had that engagement, the impact for the client perhaps if they weren't able to have that engagement could be helpful too. The other thing that can be helpful is like evidence around financial circumstances. Like a Centrelink statement or a bank statement if the person's employed to go, this is actually all they've got as their incoming and this is what you know the rent is. And so

we've worked out a bit of a payment plan and we've made a little table to show you what the incomings and outgoings look like. So that kind of additional, those kinds of additional documents can I think just take things over the line when VCAT is balancing these things.

Deb Fewster: Yep, great, thank you. And just to another question that's just coming in, follow up question around evidence specifically around family violence. So the comment and then a question I guess noting that for a lot of vulnerable clients, a lot of vulnerable clients identify that police are not safe for them and an application for an IVO may base people at risk of further harm. Are there other documents that would support someone like letters from people that they have personal relationships with or community supports?

Jemma Donaghey: Absolutely. The good news is that VCAT, oh sorry, when the amendments of the RT were drafted, they heard this, they, they understood that an IVO isn't always an option for people. So that isn't necessarily required for an application to terminate a lease. In the circumstance of family violence, if they're engaged with a support service and family violence worker and they've got a letter to that effect, then that can be enough to support that application.

Deb Fewster: Great, fantastic. I've got a question for Angela. I know that we've got a lot of colleagues from the Geelong region on the call today. So there's a question Angela and refers to there's some acronyms in there. I think I know what the acronyms are. I'll say them out loud. So first of all, can clients access housing advocacy services if they're in the Geelong area, what kind of resources are available there?

Angela Kyriakopoulos: In Geelong? Yeah, there is a Salvation Army, depending on what the issues are. You've got the Access Point, Salvation Army, you've also got the new, Support Services Bethany have just merged with another service. So there is a myriad of services you can actually access to get funding in particular, get the assessment from IAP workers from local salvo camp and you go from there.

Deb Fewster: Yeah, great, fantastic. And I think that one of the other questions is asking what is the SHSS program? So I think Specialist Homelessness Services System.

Angela Kyriakopoulos: Yeah.

Deb Fewster: And again for people that for whom the Specialist Homelessness Services System might be kind of a newer space, they might not have had experience with that service system before Angela and you mentioned kind of Salvos for example, as you know, Salvos Housing as an organization that is providing kind of access to resources, funding, et cetera. How does a community support worker who might not know how to navigate their way around the specialist homeless

service system, bit of a kind of like quick overview of how they might kind of find out what resources are available?

Angela Kyriakopoulos: Okay, so what you can do is contact us. We've actually got a whole lot of information at Council of Homeless Persons in regarding to Specialist Homelessness Service. We've actually got, we've got a learning hub and we've got a whole range of policies and et cetera. So if they contact me I can send them to the right direction and getting all information contacts they want.

Deb Fewster: Oh thank you Angela. It's fantastic and we're always so grateful for the expertise and support of CHP, thanks to you personally. Jemma, just some questions coming in seeking a little bit of clarification around the tenancy database, question is, can Jemma please explain the tenancy database and how it works?

Jemma Donaghey: Sure, and I should start by saying, we don't do a lot of work in the tenancy database space, but essentially when a tenancy finishes, then if certain requirements are met, a rental provider might seek to list someone on a tenancy database. And those requirements are generally that the person's owing over the amount of the bond and that they've breached the agreement in some way. So that could mean that they've fallen into arrears or there's been a possession order made against them. They should take reasonable steps to inform the person that they're going to list them on a tenancy database and that person should have an opportunity to respond, if they say at that point, hey listen, that happened in the context of family violence and here's a support letter from my family violence worker to support that, then they shouldn't list someone on a tenancy database because of that. If a renter finds out that they have been listed, in that circumstance, then they can apply to VCAT and ask for that to be taken down or varied. But so if someone is listed on a tenancy database, what that means is that they go out and they're looking for their new rental property, they put an application in and many real estate agents are members of these tenancy databases, which means they essentially pop their name in, they run it through the system and they get feedback about whether this person's been listed and if so, it's because they left owing X amount of money at the property and a possession order was made for that. I hope that provides a bit of guidance but it's always worth looking into it and finding out whether it was a lawful listing, if it's been there for too long, if it can be taken down, if they find out that they're listed.

Deb Fewster: Oh Great, thank you. Now I'm going to return to a question that I think our audience heard me attempt to kind of ask earlier. During the earlier glitchy moments. I'm going to have another go at it so you can both hear the question and just want to make sure that we answered that. 'Cause I think it was one of the first questions that came into the Q and A box earlier in the event. So the question for Jemma and Angela is, when a client is in family violence and the partner has left the property due to an IVO, it usually then leaves the victim survivor in a position where they can't afford the rent. What are their options to avoid eviction?

Jemma Donaghey: So one of the options that's available for them there is getting someone else perhaps into rent with them. So that could be someone essentially coming in as a co-tenant with

them. Obviously this isn't always an option that's available for them, but again, that's something that could be perhaps negotiated outside of VCAT. Again, probably difficult to get the perpetrator to agree to that and you need the rental provider to agree to that, but they can't be unreasonable in agreeing to that. But the other option is that if the perpetrator was on the lease and they make this application to VCAT, they can actually ask for the agreement to be terminated and they can ask for a new agreement to be created in their name. But when they're asking for that agreement to be created in their name, they do need to be able to show that they'd be able to comply with the obligations under the agreement. So if they haven't been able to, they're only going to succeed with that if they are able to pay the rent. And so really in order to do that, they'd probably be needing to get someone else into the property to contribute to the rent.

Deb Fewster: Thanks Jemma, I've got another question for you and then I'll follow up with one for both Angela and Jemma. So Jemma, this next question. We're really giving you a run for your money today. So thank you for being so responsive to these questions. We've had a question come in about selling a house with vacant possession. Can you please explain where the properties can be sold with the renter still renting and what renter's rights are in this context please.

Jemma Donaghey: A property can still be sold with the renter still renting, although what might happen in that case is obviously, or in that case what's happening. I guess there's a few things that can go on if you're talking about renter's rights in terms of people coming and viewing the property and doing inspections and things like that, it's not a space that we work a lot in because we are very much focused on that eviction prevention side of things. But with the reforms, there were a whole bunch of changes and rules brought in around open for inspections. So if your client's in that situation, it's definitely worth looking at that and finding out, I think they perhaps can't do open houses without the client's consent any longer. But again, sorry, I'm not an expert in that space, but they should definitely look into it if they're in that position. And then in relation to I guess once the new owners take over the property, then there is just the risk that perhaps the new owners might give them a notice to vacate, but again it has to be a reason that's under the tenancy law.

Deb Fewster: Yep, fantastic, thank you Angela, I'm going to throw to you now and we know Angela, you've got a lot of experience supporting renters with urgent repairs and VCAT related to mold. So one of our audience members, one of our community reps has just said they have a client that is wanting to issue a complaint to VCAT due to black mold not being fixed in her rental property for over a year. However, they're worried that the landlord may want to end the lease because they may need to fix the issue without her and the property. There's major kind of foundational work required. So what are the renter's rights and options as there's real concern about finding another affordable property?

Angela Kyriakopoulos: Okay, so count with the tenants, Victoria have actually got the Mold Clinic, which the support worker can contact on behalf of the consumer and get that information in regarding molding the property. They can also give them advice in regard to the landlord and what the landlord rights responsibilities are towards the consumer. So I would really feel that contact with

Mold Clinic at the tenants Victoria because they're currently running these clinics on behalf of consumers across Victoria in regard to mold and and landlords, yeah.

Deb Fewster: Yeah, thank you. Now just conscious that we're at time and really want to respect our colleagues' time, both our presenters and also our attendees as well. I can see that there are a lot of questions still to kind of get through in the Q and A. We'll have a look at those, we'll kind of like theme them up together will kind of come back to you with some resources post event. But also I think those questions might indicate that we might need to have kind of a follow up session, a further session on this specific topic of evictions as well. So we'll be back in touch with you around that. So thank you so much again to our guest presenters to Jemma from Justice Connect Homeless Law, Angela from Council to Homeless Persons, thank you so much as well to our colleagues at the Department of Government Services and the Victorian Property Fund. These events that we run, our Renters Rights Rundown Events are made possible with their support. I'd like to thank you all, all our committee sector colleagues for attending these events. For members of our stakeholder reference group whose insights continue to shape our sector communications on Victoria's Renting Rules. A special shout out to my colleague Karen from the VCOSS policy and advocacy team. Karen leads our work on rental fairness amongst many other things. And also special shout out to Amy Houston from the VCOSS communications team who is a magician behind the scenes pulling this event together with Karen. A reminder to please take a few moments to complete the event survey when it pops up on your screen to help us plan future renters rights rundown events. A full transcript and caption video recording of this event will be available in a few days. And we'll send you a link to the relevant section of our website where you'll find everything related to renter's rights support for renters or Triple R event resources. As I said, we'll also chase up answers to questions that we didn't get to today. Please follow us, VCOSS on social media. Sign up to our email alerts so that you can learn more about future events like this one. We'll be holding events like this regularly throughout the rest of this year. And as Jemma mentioned earlier, Dear Landlord, fantastic online resource, great tool from Justice Connect. Angela has also mentioned resources and support available from Council to Homeless Persons. So thank you so much. Really appreciate spending the time with you today. Hope you have a great afternoon. Thanks and see you again soon, bye.