

Improving housing and health outcomes

Understanding
and addressing
barriers to VCAT
attendance

WEST
HEIDELBERG COMMUNITY
LEGAL

A service of
 Banyule
Community Health

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Acknowledgement of Traditional Owners

Banyule Community Health acknowledges the traditional custodians of the land, the Wurundjeri Woi-wurrong People as the traditional custodians of the land where Banyule Community Health is based and works.

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All hearings – 500	44
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Snapshot

Project overview

Aim Understand the barriers and enablers to, and impacts of, **tenant attendance at VCAT** from a health-justice perspective.

➤ SEE PAGE 4

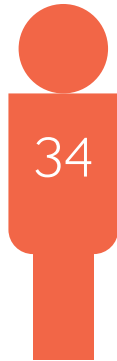
Observed

500

tenancy hearings at **VCAT** Preston

➤ SEE PAGE 44

34 project clients recruited ➤ SEE PAGE 31



with 46 dependent children ➤ SEE PAGE 30



90%

of project clients were at risk of eviction and **homelessness**

➤ SEE PAGE 30

COMPLEX NEED

"...their situations, was more like a ball in which the clients, particularly those with a large number and intensity of legal, health and social problems, seemed to be tumbling around in..." Prof. Mary Ann Noone

➤ SEE PAGE 13

Client profile – VCAT attendance

➤ SEE PAGE 31

Social, health or legal needs	Clients – all (34)	Clients – missed a hearing (17)
Not in paid employment	76%	64%
Had accrued rental arrears	76%	76%
More than 1 concurrent legal problem	70%	76%
Mental health diagnosis	62%	71%
Physical health diagnosis	65%	71%
Alcohol and/or drug use ('AOD') – current or past	50%	71%
Dual diagnosis (co-existing mental health condition and AOD use)	38%	59%

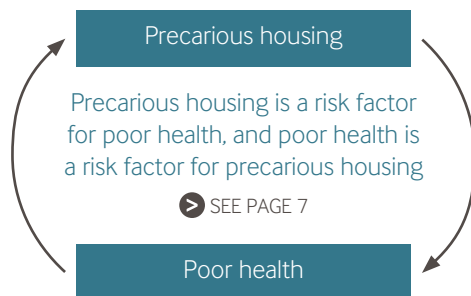
Health and housing justice



"The tendency for **poor health, multiple legal problems and precarious housing** to co-exist is now widely recognised."

➤ SEE PAGE 7

"... holistic service delivery can increase the likelihood of vulnerable and marginalized tenants participating in VCAT's processes." ➤ SEE PAGE 29



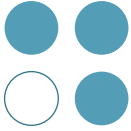
Clients are more likely to approach a non-legal source about their legal problem.

➤ SEE PAGE 20

PROJECT OUTCOME

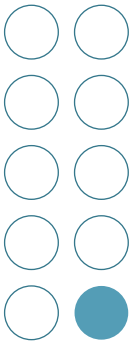
The **Housing Stress Screen** is now widely used by health practitioners at Banyule Community Health. ➤ SEE PAGE 41–42

Tenant attendance & VCAT outcomes



Nearly 3 in 4 of observed landlord applications to VCAT were **undefended**

➤ SEE PAGE 49



In 2017-18 only around 1 in 10 applications to VCAT were **tenant initiated**

➤ SEE PAGE 8

VCAT processes reflect, rather than redress, the underlying power imbalances in the landlord-tenant relationship. ➤ SEE PAGE 8

Landlord success in determined landlord applications

➤ SEE PAGE 47

25%
of hearings
when the tenant
attended

85%
of hearings
when tenant
did not attend

"[There is a] substantially increased likelihood of a landlord obtaining a successful outcome where the tenant does not attend."

➤ SEE PAGE 49

PROJECT OUTCOMES

70%

of project clients **preserved their tenancy**

+2

further cases **extended their tenancy**

➤ SEE PAGE 30

74%

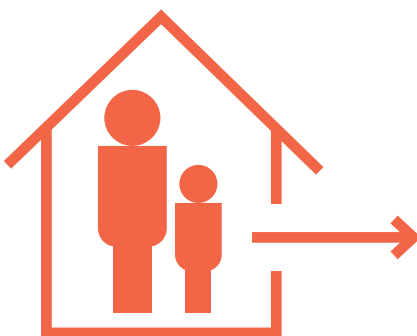
VCAT **attendance rate** of project clients

➤ SEE PAGE 29

Housing type & tenure

"It's your life, your house."

Project client ➤ SEE PAGE 5



A new profile of **vulnerable private rental tenants** is emerging who are at high risk of homelessness. ➤ SEE PAGE 36

Average tenancy length – housing tenure

➤ SEE PAGE 35

The **strongest predictor** of whether a client would sustain their tenancy was whether they were a **public housing tenant** or not. ➤ SEE PAGE 35

13
YEARS

Public
(14)

3.4
YEARS

Private
(13)

3.6
YEARS

Community
(15)(5)

1. Introduction

West Heidelberg Community Legal Service (WHCLS) is a community legal centre that provides assistance to vulnerable and disadvantaged people in the City of Banyule. For almost 40 years, WHCLS has operated a unique integrated legal service delivery model through its co-location with Banyule Community Health. On 1 July 2014, WHCLS formally merged with and became a program of Banyule Community Health (BCH).

1 VCAT Annual Report 2016-17.

The provision of advice and assistance in respect of tenancy matters comprises a significant proportion of the service's caseload. In March 2015, we commenced the project: *"You'll never know if you never go: improving housing and health outcomes for tenants by understanding and addressing barriers to VCAT attendance"* (the project). The project ran for two years, and focused on tenant attendance at the Victorian Civil and Administrative Tribunal (VCAT). The project was funded by the Victorian Legal Services Board Grant Program.

Annually, VCAT's Residential Tenancies List (RT List) hears and determines more than 50,000 tenancy disputes. It is the busiest list at the busiest Tribunal in Australia. VCAT describes the RT List as "... a high-volume, fast throughput list".¹

These VCAT decisions about important legal rights and responsibilities affect tens of thousands of Victorian tenants every year. However, the majority of these decisions are made in the absence of the affected tenant. Poor tenant engagement with VCAT is widely acknowledged across the legal assistance sector, within government and VCAT itself.

The project aimed to gain an improved understanding of the barriers and enablers to tenant attendance at VCAT from a health-justice perspective. It operated under an integrated practice model involving service delivery collaboration between a lawyer and social worker in a community health setting. The project is premised on the following assumptions:

- tenants are more likely to attend VCAT hearings when they have access to legal and social work support;
- attendance at a VCAT hearing increases the likelihood of tenants obtaining a positive legal outcome related to their housing i.e. improved housing security; and
- housing security contributes to improved health outcomes.

The project operated in accordance with an action research framework; a methodology that pursues action and research outcomes at the same time. Action research is a reflective process of progressive problem solving to improve the way issues are addressed and problems are solved. The research methodology involves actively participating in a change situation whilst simultaneously conducting research so as to better understand the situation.

2. Health, housing and VCAT

“It’s like they can take over. It’s your life, your house.”

Project client describes finding out her landlord was taking her to VCAT.

2.1 Social model of health

The **social model of health** is a method for understanding health. It seeks to improve health by addressing the social and environmental determinants of health as well as the biological and medical factors. The **social determinants of health** are the conditions in which people are born, grow, live, work and age. They are shaped by social arrangements for the distribution of resources, wealth and control within a given society.²

The social model of health is premised on an argument that health inequities – being differences in health status – found within and between population are avoidable; and that indicators of population health are more than a measure of the presence or absence of disease but are a measure of social and economic justice.³

“There is no difficulty in convincing medical and health personnel that health is important — that is what we do. It is more challenging, but necessary, to convince policy makers and others that the health of the population is important precisely because it is a measure of whether, in the end, a population is benefiting as a result of a set of social arrangements.”

Michael Marmott, ‘Social determinants of health inequalities’.⁴

2.2 Housing and health

It is universally accepted that housing is a social determinant of health. Adequate housing is protective of physical and mental health. Poor housing arrangements are linked to poor health outcomes. Thus, social arrangements that provide widespread access to adequate and appropriate housing are a key element of effective health promotion.

There is a significant body of evidence, in both Australian and international contexts, that detail a range of links between housing and health.

After undertaking a synthesis of existing research, the term **precarious housing** was coined by Foster *et al* to describe housing that has a negative impact on health outcomes.⁵ Precarious housing is the absence

² World Health Organisation and United Nation’s Children’s Fund, *Report of the International Conference on Primary Healthcare* (September 1978).

³ Michael Marmott, ‘Social determinants of health inequalities’ (2005) 365 (1099) *Lancet*, 1103.

⁴ Ibid.

⁵ Georgia Foster, Hellen Gronda, Shelley Mallett and Rebecca Bentley, *Precarious housing and health: research synthesis* (2011), Australian Housing and Urban Research Institute, Hanover Welfare Services, University of Melbourne, University of Adelaide and Melbourne City Mission, 5.

of adequate housing and is defined by the presence of one or more housing characteristics (listed in the table below) that can be linked to worse health outcomes.⁶

The elements making up the indicators of precarious housing are varied and inter-related but can be grouped broadly in the following way.

Indicators of precarious housing

Unsuitable housing	Housing that is: <ul style="list-style-type: none"> • of a poor physical quality; and/or • without adequate space or privacy; and/or • poorly located.
Unaffordable housing	High or rising rent relative to income.
Insecure housing	Insecure tenure and being subject to forced moves.

The incidence and impacts of precarious housing are not distributed evenly among the population.⁷

Groups more likely to experience precarious housing

Unsuitable housing	<ul style="list-style-type: none"> • Public tenants • Aboriginal and/or Torres Strait Islander people • Lone parents and single people • Culturally and linguistically diverse community members
Unaffordable housing	<ul style="list-style-type: none"> • Young people and older people in private rental • Lone parents and single people • Unemployed people
Insecure housing	<ul style="list-style-type: none"> • Lone parents and single people in private rental • Aboriginal and/or Torres Strait Islander people in private rental • Unemployed people in private rental

6 VicHealth, *Housing and health: Research summary* (2011), Victorian Health Promotion Foundation, 2.

7 Shelley Mallett, Rebecca Bentley, Emma Baker, Kate Mason, Deborah Keys, Violet Kolar, Lauren Krnjac, *Precarious housing and health inequalities: what are the links?* (2011), Australian Housing and Urban Research Institute, Hanover Welfare Services, University of Melbourne, University of Adelaide and Melbourne City Mission, 34-41.

Mallett *et al* used the precarious housing framework to examine the connection between poor health and housing. They found clear links between health and housing.

Key findings of their research included:

- People in poor health were more likely to be in precarious housing than those in good health.⁸
- A correlated relationship between precarious housing and health; as an individual's health worsened, the likelihood of living in precarious housing increased.
- Self-reported health status declined for individuals who experienced more indicators of precarious housing, and who experienced these indicators for a longer period of time.
- There was a clear association between mental health status and the experience of insecure housing, particularly "forced moves".⁹

Relying on the substantial body of evidence compiled in their report, Mallett *et al* concluded that:

*"It is not simply that good housing and good health are merely associated or go together. For people to attain and maintain sustainable housing they need adequate, coordinated and timely support for their health. Equally, to maintain good health people need to be in affordable, adequate, secure dwellings."*¹⁰

As well as being associated with worse health status, an analysis of legal needs consistently shows that people living in precarious housing are more likely to experience legal problems, and often more than one problem concurrently. The tendency for poor health, multiple legal problems and precarious housing to co-exist is now widely recognised; as is the compounded detriment caused by the simultaneous experience of multiple social and legal problems.

2.3 Housing rights and VCAT

Tenancy laws and associated dispute resolution mechanisms (i.e. VCAT processes in Victoria) form part of the social arrangements for the distribution of resources, in this case housing, in any given jurisdiction. In Australia, specific legislation regulates the relationship between residential tenants and landlords ('the laws').¹¹ The passage of legislation and the establishment of specialist tribunals to hear tenancy disputes was a product of a recommendation of the 1972 Commonwealth Commission of Inquiry into Poverty, chaired by economist R.F. Henderson and widely known as the 'Henderson Inquiry'.¹²

⁸ Ibid, 42.

⁹ Ibid, 12.

¹⁰ Ibid, 16.

¹¹ *Residential Tenancies Act 1997* (ACT); *Residential Tenancies Act 2010* (NSW); *Residential Tenancies Act 1995* (SA); *Residential Tenancy Act 1997* (Tas); *Residential Tenancies Act 1997* (Vic); *Residential Tenancies Act 1987* (WA).

¹² Anthony Braybrook, 'The Rights and Duties of Landlords and Tenants Under the Victorian Residential Tenancies Act', (1981) 13 (159) *Melbourne University Law Review*, 159.

The laws were a social reform conceived as a means of remediating the imbalance between landlords and tenants in their economic and contractual bargaining positions.¹³ Prior to their introduction, tenancy legislation was archaic, and largely reflected the common law presumption that individuals were free to agree, with little distinction drawn between residential and commercial tenancies. The reforms implicitly recognised that the operation of market forces alone were inadequate in ensuring stable and secure rental housing, particularly for those experiencing poverty or social dislocation. They represented an attempt to resolve, by legislative compromise, the fundamental tension between the characterisation of housing as a commodity, and the social need to secure shelter for all.

When the laws were introduced, there was debate as to whether the laws adequately protect housing rights for tenants.¹⁴ The adequacy of the current Victorian legislative framework remains the subject critical consideration today.¹⁵ The longstanding debate concerns the extent to which the law sufficiently recognises and redresses the weaker position of the tenant in the landlord-tenant economic and legal relationship.

The recent passage of a substantial suite of amendments to Victorian tenancy law has, in part, been characterised as reflecting the “need to rebalance the market through additional protections for a diverse population of renters”.¹⁶ With most changes not taking effect until 1 July 2020, it will be some time before the impact of the reforms can be measured.

Current data shows an entrenched and a significant disparity in the rate at which landlords and tenants pursue remedies, enforce rights and defend their interests at VCAT. This is a compelling indicator that the framework of existing tenancy laws (and associated dispute resolution mechanisms) reflect, rather than redress, the underlying power imbalance in the landlord-tenant relationship.

Tenants are rarely the **applicants** to the Tribunal. VCAT performance data shows that tenant initiated applications account for a small – though growing – fraction of all applications lodged in the Residential Tenancies List (11.37% in 2017-18; 9.5% in 2016-17; 7.1% in 2015-16 and 6.6% in 2014-15).¹⁷

It is also understood that tenants often fail to appear at VCAT when they are the **respondent**. However, there is limited evidence as to the scale of this problem or its impact on outcomes for tenants. VCAT does not routinely publish data on the numbers of applications that proceed without an appearance by or on behalf of the respondent. Despite this, VCAT has publicly acknowledged that the Tribunal has “been very successful at delivering access to justice to landlords, but tenants are not exercising their rights to the same extent”.¹⁸

The social arrangements for the provision of shelter in Victoria include the legal mechanisms for the protection of housing rights at VCAT. Hence, the widespread disengagement of tenants suggests that these social arrangements are inadequate or unsatisfactory; a sign that existing measures do not sufficiently empower tenants to access justice.

13 Anthony Moore (Ed.) (2008), *Commercial and Residential Tenancies*, Sydney: Thomson Law Book Co., 339.

14 Above n.8, 159-197.

15 Victorian Government, *Fairer Safer Housing Review of the Residential Tenancies Act 1997*.

16 Victorian Government, *Outcomes of the Review, Fairer Safer Housing Review of the Residential Tenancies Act 1997*.

17 Victorian Civil and Administrative Tribunal, *Annual Report, (2017-18); (2016-17) (2015-16); (2014-15)*.

18 Hon. Justice Kevin Bell, *One VCAT. President's Review of VCAT* (2009), 25.

When the tenant is not present or represented at a hearing, it is difficult for the Tribunal to play any role other than an “eviction court”. Without the tenant’s attendance the Tribunal has limited scope to scrutinise evidence offered in support of the landlord’s application. Further, without hearing evidence from the tenant, the Tribunal’s ability to exercise its discretion in favour of the tenant is significantly constrained. Under the *Residential Tenancies Act 1997 (Vic)*, a number of important discretionary powers are reserved for the Tribunal, particularly in applications for possession of a rented premises. These powers are protective in nature and enable the Tribunal to avoid or delay an eviction where it is satisfied of certain factual matters related to the circumstances of the tenant.

19 *Residential Tenancies Act 1997 (Vic)*, s 331(1)(b).

20 *Ibid*, s 352.

For example –

Under current laws:

- In the case of an application for possession of the rented premises on the basis of rental arrears, the Tribunal can adjourn the landlord’s application if it “considers that satisfactory arrangements have been or can be made to avoid financial loss to the landlord”.¹⁹ In practice, this means that the tenant can avoid eviction for rental arrears if they can satisfy the Tribunal that they have the capacity to repay any outstanding arrears within a reasonable period.
- In the case of many applications for possession, even when the basis for the landlord’s application is established and an order is granted, the Tribunal has the power to prevent the landlord from obtaining a warrant for possession for a period of up to 30 days.²⁰ In practice, this means that the tenant can obtain extra time in the rented premises if they can satisfy the Tribunal that they will suffer hardship if not given additional time.

3. Health-justice partnership in Banyule

“We used health as the peg to hang a lot of other services on... a whole lot of things that wouldn’t usually be regarded as health services but which actually addressed the issues that affect people’s health.”

Jim Pasinis, Banyule Community Health CEO (1990-2016), *40 Years of Banyule Community Health*.

3.1 City of Banyule – pockets of high and complex need

The City of Banyule begins 7kms from central Melbourne where the Yarra River and Darebin Creek merge. It sprawls north-east between the two waterways and covers an area of 63km. It takes in 20 suburbs,²¹ including some that rank among the most affluent in Australia and some that sit far below state and national benchmarks.

The rolling parklands along the Yarra River accommodate the wealthier suburbs of Ivanhoe East, Eaglemont, Heidelberg, Viewbank and Lower Plenty; while the flat expanse to the west includes the low socio-economic areas of West Heidelberg, Heidelberg Heights and Bellfield. To the north are the modest, working class suburbs of Bundoora, Watsonia and Greensborough with a combination of older long-term residents and newer developments.

According to the Socio-Economic Index for Areas (‘SEIFA’) Index of Disadvantage, West Heidelberg, Bellfield and Heidelberg Heights are among the most disadvantaged areas in Australia.²² These suburbs are characterised by their high concentration of public housing stock, most of which is in poor condition, having long passed the nominal date of structural obsolescence.²³ More than 30% of households in West Heidelberg, Bellfield and Heidelberg Heights are renting their premises from the Director of Housing, a figure that has remained steady and is roughly ten times the state-wide average.²⁴

However, also notable in these suburbs is a marked growth in the proportion of households renting privately. The proportion of households renting privately has grown from around 14% in 2006 to just over 19% in 2011, a growth rate that outstrips the state-wide increase.²⁵ Given the well-documented shortage of affordable housing in the private rental market,²⁶ these dynamics indicate that in the poorest areas of Banyule a growing number of vulnerable and low-income tenants are forced into obtaining unaffordable housing from the private rental market.

Indeed, the diminishing role of public housing in the provision of stable, secure and affordable housing in Victoria is evident across the state. As a proportion of all housing stock, public housing has retracted year on year for more than two decades.²⁷ There are currently more than 40,000 households on the public housing wait list. Nearly 23,000 Victorians are experiencing homelessness.²⁸

21 Bellfield, Briar Hill, Bundoora, Eaglemont, Eltham North, Greensborough, Heidelberg, Heidelberg Heights, Heidelberg West, Ivanhoe, Ivanhoe East, Lower Plenty, Macleod, Montmorency, Rosanna, St. Helena, Viewbank, Watsonia, Watsonia North and Yallambie.

22 Australian Bureau of Statistics (2011), SEIFA by Local Government Area, Australian Government, Canberra.

23 Victorian Auditor-General’s Report, *Access to Public Housing* (2012), 7.

24 Australian Bureau of Statistics (2011), *Census of Population and Housing, compiled and presented by .id the population experts*.

25 Ibid.

26 Anglicare Australia, *Anglicare Australia Rental Affordability Snapshot* (2017), 23.

27 Australian Bureau of Statistics (2011), *Housing assistance for renters*, Australian Government, Canberra.

28 Australian Bureau of Statistics (2011), *Census of Population and Housing: Estimating Homelessness*, Australian Government, Canberra.

3.2 West Heidelberg Community Legal Service & Banyule Community Health

Banyule Community Health ('BCH') is a mainstream stand-alone community health service. It employs around 200 staff and works across a number of sites to deliver multiple modalities of care and support in the primary health and welfare sector.

BCH's services include:

- general medical practice;
- allied health (occupational therapy, podiatry, speech therapy, dietetics);
- dental;
- drug and alcohol services;
- health promotion;
- social work;
- community and mental health nursing;
- midwifery;
- counselling;
- Gamblers' Help;
- Aboriginal health services; and
- care co-ordination support.

BCH also hosts a number of co-located programs including Olympic Adult Education, Berry Street Northern Family & Domestic Violence Service and Austin Health specialist services.

West Heidelberg Community Legal Service ('WHCLS') is a small generalist practice that provides free legal assistance to residents in the City of Banyule who otherwise would not have access to a lawyer. The legal service targets its services to members of the community who are most in need, including those experiencing poverty, chronic illness, mental health issues, disability and refugees or asylum seekers. WHCLS offers legal help in a range of areas including minor criminal matters, tenancy, infringements, divorce and intervention orders. It also partners with La Trobe Student Union to operate its student legal service.

3.3 Australia's longest running health-justice partnership

Origins

West Heidelberg Community Legal Service and Banyule Community Health share their origins in the impetus for social reform surrounding the Henderson Inquiry. As part of the Inquiry, local social worker Mary Morgan compiled a research report identifying West Heidelberg, particularly the Olympic Village, as a "District of Special Need". The area was identified due to the high levels of poverty experienced by many residents and their limited access to critical social services.

The need to establish "a high standard, low cost, integrated health/welfare service" in West Heidelberg was described as urgent. Morgan suggested that such a service would address the material needs of those living in the area and "[raise] the dignity and spirit of the community". Notably, the report recommended that the health/welfare centre also "set up a Legal Aid Centre".²⁹

Foreshadowing that sectional concerns about the preservation of professional boundaries and hierarchies may be a barrier to the service integration envisaged, Morgan insisted:

*"The effectiveness of the Centre will depend on the commitment of the professional workers to the project and on their ability to co-operate with one another. ... In the Health and Welfare Centre the social and welfare aspects of the Centre's operation are as important as the medical, and therefore there must be more equality between professions."*³⁰

The centre opened in 1975. The co-location of the legal and health services has been a key feature of the centre's services in the 40 years since, and is Australia's longest running health-justice partnership. This relationship was formalised on 1 July 2014, when the West Heidelberg Community Legal Service merged with and formally became a program of Banyule Community Health.

The merger of the two organisations reflects a shared belief that community need is best met by a holistic and seamless service response. BCH's commitment to integrated practice arises from its grounding in the social model of health. The BCH Constitution articulates its organisational intention to "promote a multi-disciplinary approach to community health through teamwork and co-operation with other health and welfare providers".³¹

²⁹ Mary Morgan, *A Study of the Heidelberg (Victoria) Community* (1976), Australian Government Commission of Inquiry into Poverty, Australian Government, Canberra, 22.

³⁰ *Ibid.*, 75.

³¹ Banyule Community Health Constitution, cl 2.1.3.

3.4 Making a health-justice partnership work

What existed

Prior to the merger between WHCLS and BCH, the integrated service delivery model based on the co-location of the two services was the subject of a substantial research report undertaken by Prof. Mary Anne Noone.³² Her report was based on data obtained from a variety of sources including interviews and surveys of clients and staff, staff diaries and existing policies and procedures.

Noone's findings about the legal service's clients correlates with other research about the multiple and interlinking nature of legal, health and social problems stemming from poverty and dislocation. Most legal service clients surveyed reported that they were experiencing more than one problem, with some identifying a link between their problems.³³ Clients also associated their legal problems with their health problems, particularly feelings of stress and anxiety.

“Participants did not usually perceive their problems as single entities or even linear problems with a definable beginning and end. Rather the way they described their situations, was more like a ball in which the clients, particularly those with a large number and intensity of legal, health and social problems, seemed to be tumbling around in, and attempting to manage bit by bit.”

Prof. Mary Anne Noone, *Improving Access to Justice: The Key Features of an Integrated Legal Services Delivery Model*.³⁴

In evaluating the extent to which the co-location of the health and legal services was an effective response to the complex needs of clients, Noone found:

- the connection between the legal service and health service was uneven and influenced heavily by discipline. In particular, a client in contact with a counselling or community programs team (i.e. social work, counselling, community nursing etc.) had a greater chance of also being connected with the legal service than did a patient of a medical, dental or allied health team.³⁵ Self-reported referral practice data also indicated that health workers involved in clinical services (medical, dental and allied health) were less likely to refer clients to the legal service than other BCH programs.³⁶
- the benefits of co-location were evident to clients and staff even where no direct referrals were made between the services. Legal service clients reported being familiar with the health service and many had been told about the health centre by community members, indicating a broad community awareness about the integrated service.³⁷

³² Mary Anne Noone (2010), *Improving Access to Justice: The Key Features of an Integrated Legal Services Delivery Model*, Rights and Justice Program, School of Law La Trobe University.

³³ *Ibid.*, 67.

³⁴ *Ibid.*, 76.

³⁵ *Ibid.*, 80-81.

³⁶ *Ibid.*, 117.

³⁷ *Ibid.*, 82.

- lawyers were more likely to be aware of a client’s non-legal problems and their non-legal supports when the client was connected with other services within BCH.³⁸ **38** *ibid.*, 92.
- clients were more likely to talk to their lawyer about other problems (legal and non-legal) when the client was connected with other services within BCH.³⁹ **39** *ibid.*, 94.
- co-location alone did not result in an integrated service. The examples of effective integrated practice found during the research were underpinned by proactive relationships developed over time. These relationships were built *with* clients so that multiple problems could be uncovered, and *between* different professional disciplines so that clients developed trust in the service as a whole.⁴⁰ **40** *ibid.*, 185-97.

A new model

The directly integrated service delivery model implemented by the project was a change from the traditional co-location model that had defined the relationship between BCH and WHCLS, as distinct entities, over their 40-year history.

The project design saw the employment of a health worker (BCH social worker) *within* the legal service where they would work collaboratively with a lawyer in the delivery of a joint holistic service. In the context of BCH, the implementation of this model was a pilot approach to the long-standing health-justice partnership.

Objectives

The aims of the model were to:

- facilitate access to the legal service by vulnerable tenants;
- increase attendance at VCAT tenancy hearings;
- improve legal outcomes relating to housing; and
- address non-legal issues impacting housing and health.

The model required each service to play a specified role and to actively collaborate. The defined roles and relationships of the model were:

- The lawyer provided direct legal assistance related to tenancy (advice, negotiation and representation at VCAT) and facilitated active referrals for assistance with other identified legal issues.
- The social worker completed psychosocial assessment and provided appropriate (short-medium term) interventions as required (i.e. accessing rental and utility brokerage, Centrelink advocacy, DHHS advocacy), facilitated referrals and supported connections to appropriate housing and health services and engaged in follow up activities.

- The lawyer and social worker worked collaboratively with each other to ensure that legal and social work support was responsive to the clients' needs.
- The lawyer and social worker, where appropriate, worked collaboratively with other BCH staff to ensure a fuller integration of client care.

Working together – ethical practice

The potential for health-justice partnerships to improve client outcomes is now widely acknowledged. As varied practice models are piloted in Australian contexts, a greater understanding has formed about the challenges associated with this method of practice, and the strategies which support the effective and ethical integration of multiple professional disciplines and their attendant responsibilities.

Underpinning a cohesive collaboration between a lawyer and a social worker should be an approach which balances the goal of holistic service delivery with a recognition of the boundaries of their respective professional obligations. Getting this balance right is not only important for the professional practice of the workers involved, but is also the foundation of positive outcomes for clients that access a holistic service.

Coinciding as it did with the merger of the BCH and WHCLS, the project's holistic service model was impacted by the broader organisational change associated with a legal service becoming a program of a community health service.

As part of the merger, and the period immediately after its formalisation, the legal service:

- developed a Client Information Barrier Policy to maintain the separation of client legal records and information from BCH health programs to protect the clients' legal professional privilege;
- in conjunction with the BCH Quality Coordinator (Research, Evaluation and Development) reviewed and amended the agency's 'Your Health Rights' information brochure that is provided to all new patients of the health service to ensure it accurately reflected legal service obligations in relation to the "care co-ordination" approach fostered across the health service;
- in conjunction with BCH Quality Coordinator (Risk and Clinical Governance) began a review of BCH policies and procedures. This process was conducted to ensure the policies and procedures were of ongoing relevance to the new amalgamated entity and accurately reflected WHCLS practices and processes.

The particular model piloted by this project intentionally engaged a social worker within the legal service who was an existing employee in the BCH community program’s social work team. During the project, she continued her role in community programs on those days she was not engaged within the legal service.

Very quickly after the implementation of the pilot model, the anticipated benefits of engaging a BCH social worker as the project social worker were realised. However, it became evident that while there were clear benefits associated with the approach, there were also challenges:

Benefits	Challenges
Strong existing professional relationships between the social worker and other BCH health workers	Greater attention needed to maintain the information barrier between the legal service and BCH health care teams
The social worker had experience working with the local community and had developed trusting relationships with community members	Increased risk of clients being confused about the social worker’s role in legal service as distinct from the role as a social worker in the health service. This was particularly the case for clients already connected with the health service
The social worker had established relationships with local housing providers/DHHS office and existing connections to external support service networks	Less clarity about the legal and professional obligations binding the social worker as an employee of a health service who was working within a legal service team, as opposed to a social worker employed by a standalone legal service
The social worker had a well-developed understanding of the organisational context of the relationship between WHCLS and BCH	Greater complexity explaining to clients the nature of legal professional privilege and the impact of the client information barrier

In consultation with the Principal Lawyer and the BCH Quality Coordinator (Research, Evaluation and Development), the lawyer and social worker developed the project’s assessment tools and client intake documents. These included a ‘client engagement letter’ and ‘project consent form’ outlining the context of the project and describing the holistic service model. Additionally, a ‘social worker assessment and health screen’ was developed for the social worker to collect client information.

Reflective practice – improving the model

The lawyer and social worker trialled a number of methods of collaborative practice before settling on an approach which became typical for the project.

Initially, the joint holistic service was provided in accordance with what could be described as the “formal full partnership”⁴¹ model involving:

- sharing an office space;
- jointly conducting the initial client interview; and
- undertaking client-centred work (legal and social work support) in a fully integrated manner with open communication, information exchange and mutual access to client records (electronic and physical).

It quickly became apparent that the “formal full partnership” model, though providing clients with a seamless holistic service, heightened the possibility of a conflict arising between the (sometimes) competing ethical and professional obligations of the lawyer and social worker. There was particular concern in relation to confidentiality, legal professional privilege and disclosures to third parties including government agencies. Where a tension arose between their professional frameworks in this context, it was more likely that a resolution would involve one of the disciplines perceiving that their professional obligations were compromised.

Further, informed client consent, though important in any client engagement, was an inadequate mechanism alone to resolve the tensions of the model. Vulnerable and disadvantaged clients lack few, if any, alternative avenues of support and cannot genuinely exercise a choice to opt in or out of a proposed model of assistance.

⁴¹ Margaret Castles, ‘Possibilities for Multidisciplinary Collaboration in Clinical Practice: Practical Ethical Implications for Lawyers and Clients’ (2008), *Monash University Law Review* (34) 116, 131.

Amy's story

The story of a client engaged with the project in its early stages highlights where tensions may arise, particularly when assisting clients with multiple and complex needs.

Amy has sole care of two children (10 and 12 years old). She was referred to the legal service by a mental health support worker at the health service after she received a Notice to Vacate from her landlord. Amy had accrued significant arrears, had missed a number of VCAT hearings regarding her tenancy and was at risk of eviction.

Amy was engaged with multiple workers at the health centre (GP, mental health support worker, mental health practice nurse and social worker) due to a severe mental illness which often prevented her from leaving her house.

Amy was assisted by the lawyer and the social worker at the legal service and was supported to attend the legal service by the mental health support worker and mental health nurse from the health service.

Amy did not have a phone and often did not open her mail. She consented to the social worker and lawyer working collaboratively. She asked the lawyer and social worker to contact her through the mental health support worker or the mental health nurse. She also consented to the lawyer and social worker discussing her case with her mental health workers.

As the social worker worked with Amy, she became aware that the severity of Amy's mental health symptoms were affecting her ability to manage day to day tasks like paying rent and bills, and having money for food. Her daughters were not attending school, and the family was at high risk of homelessness.

In the middle of Amy's engagement with the legal service, the social worker was informed by one of the other workers assisting Amy and supporting her engagement with the legal service, that due to protective concerns, they had anonymously made a notification to DHHS (Child Protection) about Amy. They had also identified the social worker to DHHS as another health professional working with Amy and provided the department with her contact details.

The social worker conveyed this information to the lawyer, not knowing that the lawyer might then be obliged to tell Amy that a notification had been made and the identity of the notifier.

Around this time, Amy also told the lawyer that she hadn't been speaking to her mental health workers for days and didn't want to have anything else to do with them. She said that she didn't want the lawyer to talk to them about her.

The lawyer stopped discussing Amy's case with workers in the health service while the social worker maintained some, more limited contact. After a few weeks, it was reported that Amy was engaging with the mental health workers again. However, the lawyer did not discuss Amy with any health workers until she was able to get instructions about this directly from Amy. This process took some time because it was difficult to contact Amy without speaking to her mental health workers.

While Amy's engagement with the project presented a particularly complex set of circumstances for the lawyer and social worker to navigate ethically, the issues that arose were certainly not unique to her case. The questions raised by the experience of delivering a joint holistic service to a highly vulnerable and disengaged person led to a review and reconsideration of the model being piloted. Adjustments were made early in the project and were informed by consultation with other community legal services (i.e. Justice Connect – Homeless Law) experienced in delivering services based on the integration of legal and non-legal professionals, particularly lawyers and social workers.⁴²

42 WHCLS has also actively participated in the Victorian Integrated Legal and Social Support Network since the commencement of the project.

The project's adjusted joint holistic service model was more closely aligned with an open collaborative model, involving:

- sharing an office space;
- separately conducting client interviews; and
- undertaking client-centred work (legal and social work support) in an open collaborative manner, with information exchanged where appropriate, but limited cross-access to client records (electronic and physical).

This model became the typical model for the project. Where necessary, there were some deviations from the model in order to effectively respond to client needs such as where a client requested social work support in a meeting with the lawyer. Similarly, a number of clients were difficult to contact and regularly missed booked appointments. To engage with these clients the lawyer and social worker jointly undertook home visits, met clients outside the legal service or arranged to sit in on a consultation with another health worker at BCH.

As the project progressed, information sharing practices and client intake practices were regularly reflected on and changes were introduced where necessary. For instance, after review, specific client engagement and intake documents were developed for clients referred to the legal service from within BCH so that the client information barrier and the distinct role of the social worker in the legal service could be fully explained.

4. Improving access through the partnership

4.1 Tenant identification and engagement – the challenge

We know that tens of thousands of tenants fail to attend VCAT hearings every year (“non-attending tenants”). Though large in number, this group is defined by its disengagement from the justice system and accordingly presents as a difficult cohort for the legal assistance sector to reach.

In particular, traditional legal service delivery methods, even those used to target legal assistance to the people most in need such as offering a duty lawyer service, are of limited utility in engaging this group. For example, in 2012, the Public Interest Law Clearing House (Vic) Inc. (‘PILCH’) (now Justice Connect), published a report on a duty lawyer service offered to tenants at Moe VCAT.⁴³ The duty lawyer clinic was a limited term project offered as part of PILCH’s exploration of options to meet the need for free civil law services evident among vulnerable and disadvantaged people living in rural and regional Victoria. While noting a number of positive outcomes from the operation of the clinic, the report concluded that low tenant attendance rates undermined the value of the duty lawyer service as a method of extending tenancy advice and representation to the target group. Specifically, of the 78 applications listed for hearing when a duty lawyer was present, the clinic was able to assist just 12 tenants (around 15%), because so few tenants attended their listed hearings.⁴⁴

4.2 Tenant engagement – the evidence

According to legal needs research undertaken by the Law and Justice Foundation of NSW in 2012:

- *Only around half of all people experiencing a legal problem seek help about it; and*
- *Those that do seek help are more likely to approach a non-legal source about their problem.*

The initial six-month phase of the project was focused on devising and implementing a **proactive** and **multi-pronged** client engagement strategy. The project’s engagement approach was informed by evidence showing that the most effective way to ensure that those who need legal help can access it is to integrate the offer of legal assistance with other services or organisations that disadvantaged and marginalised people are already in contact with.⁴⁵

⁴³ Chris Povey, *Rural and Regional Duty Lawyer Service – Moe, Project Report* (2012), PILCH Homeless Persons’ Legal Clinic.

⁴⁴ *Ibid*, Section 6.

⁴⁵ Christine Coumarelos, Zhingang Wei, Albert Z Zhou, *Justice Made to Measure: NSW Legal Needs Survey in Disadvantaged Areas*, (2003) The Law and Justice Foundation of NSW, 93.

In order to reach the greatest number of clients and facilitate early legal intervention where possible, the project's target group was framed to include:

- tenants who had *missed* their VCAT tenancy hearing; and
- tenants identified as being *at risk* of missing their VCAT tenancy hearing because of one or more indicators of disadvantage or vulnerability (e.g. serious mental illness, substance use issues, CALD background etc.).

Both sub-sets of the target group were also limited to tenants as **respondents** to VCAT proceedings where there is a risk of eviction or other significant negative outcome such as having a compensation or compliance order made against the tenant.

4.3 Tenant engagement – the strategy

A number of approaches were trialled in order to reach tenants at various pre and post-hearing points. Ultimately, we worked toward five objectives and took specific actions in an effort to pursue them. These are outlined in the table below.

Objective 1

Better integrate the offer of legal assistance with other BCH services and co-located services

Actions

Identified key healthcare teams likely to see at risk tenants:

- **BCH:** community social work; counselling; mental health practice nurses, maternal and child health nurses; financial counsellor; Aboriginal health team; medical clinic, service access (intake and assessment).
- **Co-located:** Gambler's Help Northern; Berry Street Family Services and Family Violence Program; NEAMI – Mental Health Partner's in Recovery Program.

Attended team meetings of key healthcare teams and co-located services to discuss the legal service, integrated practice models and the referral process.

Arranged meetings with members from key healthcare teams and gathered information about their knowledge of and experience assisting people with tenancy issues, and feedback about their experiences working with the legal service.

Developed project-specific contact and referral process, which enabled contact directly with project lawyer via any method convenient to health worker (email, telephone, office visit) for secondary consultation about tenancy legal issues or client referral.

Developed information handouts and flyers about the issue of VCAT non-attendance, the project and how to refer clients.

Developed Housing Stress Screen in consultation with BCH health providers and health promotion staff.

Built rapport and trust with healthcare workers through provision of information, delivery of training about tenancy law, and encouraging contact with legal service team through multiple means (phone, email, hallway conversation).

Presentations made to staff, executive team and board.

Publication in Community Health Matters newsletter and BCH Quality of Care Report (BCH's annual report to the local community).

Objective 2

Build and strengthen existing relationships with external health and community service providers in Banyule and raise awareness about tenant disengagement from VCAT processes and WHCLS capacity to assist with tenancy legal issues.

Actions

Identified key external service providers likely to assist tenants at risk of homelessness:

- Banyule Housing Support
 - Haven; Home, Safe
 - NEAMI (Heidelberg)
 - Launch Housing
 - Aborigines Advancement League
 - Banyule Support and Information
 - Diamond Valley Community Support
 - Berry Street Family Violence Support Service
-

Arranged outreach visits to services, distribution of (service provider aimed) project flyers, provision of information about legal service, project partnership and project specific referral process.

Gathered information about social services sector knowledge of and experience assisting people with tenancy issues.

Encouraged workers and volunteers to contact project workers – follow up every 6 months.

Objective 3

Raise community awareness about WHCLS capacity to assist vulnerable and disadvantaged tenants with legal issues, particularly relating to VCAT.

Actions

Identified relevant local community groups, neighbourhood hubs and cafés:

- Living Well Group (women who have experienced family violence)
 - Women of West Heidelberg
 - Alice House
 - Neighbourhood Houses
 - Laundromats
 - church café
-

Identified registered rooming houses in Banyule LGA and medium/high density community housing sites.

Community outreach to identified groups and services and distribution of (service-user aimed) project flyers, provision of information about tenants' rights and WHCLS capacity to assist.

Direct outreach to 11 registered rooming houses in Banyule LGA and 1 medium density community housing buildings.

Objective 4

Strengthen communication with housing providers and stakeholders, and explore opportunities for local DHHS office and community housing providers to refer tenants at risk of homelessness for legal and health support.

Actions

Met with DHHS representatives from Preston housing office, explained project aims and obtained agreement to trial a six month targeted outreach strategy involving housing officers including a project information flyer with all Notices to Vacate sent to tenants in postcode 3081.

Developed, in consultation with housing office team leader, an information flyer offering legal help for VCAT tenancy hearings for inclusion with Notices to Vacate.

Followed up with housing office team leader about use of leaflets – at 1 and 6 month points after trial started.

Met with representatives from Yarra Community Housing and Haven; Home, Safe and obtained agreement for tenancy workers to include a project information flyer with all Notices to Vacate sent to tenants in Banyule LGA.

Objective 5

Reach tenants who may not be connected with health or social services but have missed a VCAT hearing.

Actions

After consultation with VCAT, including local registry staff, developed and implemented a VCAT observation outreach program in which 500 tenancy hearings at VCAT (Preston) were observed over 78 separate days between March 2015 and January 2017.

Sent 93 letters to non-attending tenants within Banyule LGA and Darebin LGA.

4.4 Tenant engagement – process and outcomes

Overall client numbers for this project confirmed that the target group is difficult to engage. However, evaluation of client access pathways showed which aspects of the client engagement strategy best facilitated access to legal and social work support for tenants. Around 80% of clients accessed the project via a pathway established by the project's engagement strategy.

Referral source	
Internal (BCH or co-located healthcare team)	15 (44%)
External (health, legal or social support service)	2 (6%)
Self-referral (related to community outreach activity)	5 (15%)
VCAT outreach	5 (15%)
Self-referral (not related to specific project activity)	7 (20%)

Internal vs external access points

Referral from BCH or co-located healthcare teams was the most common access point into the project. Notably, 80% of clients referred into the project from within BCH were dealing with a tenancy issue that was at the pre-hearing stage. This increased the opportunity for the tenant to receive timely legal and social work support.

Most BCH referrals came from community program teams (i.e. social work, counselling, community midwives) rather than clinical services.

A number of tenants accessed the project after seeing the project flyer or receiving information about the project at a community centre or neighbourhood hub. However, very few tenants were actively supported to access the project by an external service provider. Based on feedback received by health and social support workers at external agencies about their experiences helping people with tenancy issues, low referral numbers likely do not correlate to low levels of need. Rather, they are an indication that it is more challenging to establish fruitful and lasting referral pathways *between* services than it is to build connections *within* services, particularly in the context of a time-limited project such as this.

However, it was not proximity alone which underpinned the links made between the BCH health care teams and the legal service during the project. While the location of the legal service within the health service provides a ready basis to establish strong collaborative relationships between health and legal professionals, co-location is no guarantee of holistic service delivery. Effective and sustained health-justice partnerships require ongoing and deliberate effort.

While the pilot model implemented by the project was new to BCH, as discussed above, it was implemented in the context of a health-justice partnership that had existed for many years. Hence, it was critical

to investigate the dynamics of the existing partnership, including understanding how healthcare teams perceived the legal service, in order to make the integrated practice model work.

Significantly, discussions with workers from key healthcare teams, including teams identified in Prof. Mary Anne Noone's research as most likely to refer to the legal service (community programs, counselling, etc.), revealed that their current referral practice is informed by what they perceived to be a negative past experience attempting to connect a client with the legal service.

From the perspective of these workers, the hurdles to service integration fell into the following categories:

- **Confusion about legal service intake and assessment procedures**
i.e. areas of law covered, physical catchment and intake requirements for evidence of disadvantage such as a health care card;
- **Difficulty obtaining a particular type of legal assistance for client**
i.e. legal representation as opposed to legal advice; and
- **Lack of understanding about reasons for the legal service's particular legal and professional obligations**
i.e. conflict checking procedures, confidentiality, client information barrier etc.

In responding to the feedback received, it was important to dedicate significant resources to strengthening relationships between the legal service and key healthcare teams and workers. The aim was to provide healthcare workers with the tools to recognise a tenancy related legal need, know that support is available for the client and have the confidence to access that support at the legal service. All of this needed to occur in the context of community healthcare delivery by teams that are often operating under pressure and at capacity.

Each healthcare team was approached separately and contact was made on multiple occasions during the project's initial phase. Formal interactions (i.e. attending team meetings, tenancy law information sessions etc.) led to and were supplemented by informal or incidental interactions between the lawyer/social worker and health care staff (i.e. hallway conversations, contact at organisation-wide training sessions, office drop-ins etc.). This engagement strategy was probably enhanced by the deliberate selection of an internal BCH social worker for the project's social worker role, expediting the relationship building that would have otherwise been required.

Initially, in this process the social worker acted as a "bridge" (as described by one healthcare worker) between the healthcare teams and the legal service. It was clear that some of the trust and confidence other healthcare workers had in the social worker was transferred to the project lawyer and to the legal service more broadly. However, deep connections between the health and legal service could not be made through the social worker alone. Accordingly, it was important that the partnership between the lawyer and the social worker was emphasised,

hence whenever possible, contact with healthcare teams was jointly made by the social worker and project lawyer.

To overcome what some healthcare workers perceived as barriers to connecting clients with the legal service, the project established a “no wrong door” approach. The lawyer in particular was available to be contacted directly by any method convenient to the healthcare worker to discuss potential client referral, to make a referral, or for secondary consultation about tenancy or broadly related legal issues. The lawyer and social worker pro-actively facilitated the client intake process where appropriate and, with consent, made contact with tenants identified by healthcare workers as requiring assistance.

While recognising that these kinds of malleable and proactive intake processes are resource intensive and may not be feasible across an entire service, for the project, having the capacity for flexibility and responsiveness was key to strengthening the connection between the health and legal services. It could also be considered a foundational requirement for ensuring that the hard to reach and difficult to engage target clients could access support at a pace and frequency they could manage.

A ‘housing stress screen’ was the key tool developed by the project to help healthcare workers recognise when a legal tenancy issue may be impacting a person’s health and what to do if they identify such an issue (see Appendix A). It is now widely used across BCH programs and services.

Innovative outreach trials – VCAT and housing providers (DHHS and community housing)

At the commencement of the project, it was anticipated that innovative outreach methods, and particularly the VCAT outreach trial, would be an important avenue for the project to engage the target group. In fact, neither of the trialled outreach approaches proved particularly effective as methods of facilitating access to legal and social work support for tenants at risk of homelessness.

Housing providers (DHHS and community housing)

During consultation with DHHS about implementation of the six-month outreach trial, the Preston housing office indicated that it serves approximately 40 Notices to Vacate on tenants in the Banyule LGA each week. Though the housing office could not estimate the number of Notices to Vacate served on tenants within postcode 3081 (the trial catchment), based on the high proportion of public housing in 3081 in relation to other parts of Banyule, it was reasonable to assume that a significant proportion of the 40 Notices served weekly were served on tenants within postcode 3081.

However, the project did not have contact with any tenants who indicated that they accessed the legal service after receiving an information flyer with a Notice to Vacate. The lack of tenant engagement suggests that public and community housing tenants may require more active support to access legal help.⁴⁶ For vulnerable

tenants dealing with a tenancy issue that may lead to homelessness, even highly targeted and timely information may not be enough to empower them to access the help available.

VCAT

The VCAT outreach model involved observing tenancy hearings listed at VCAT's Preston venue and attempting to contact non-attending tenants when:

- the tenant was the respondent;
- the rented premises were located within the project's physical catchment (Banyule – all tenancies; Darebin – public and community housing tenancies); and
- there was evidence that the tenant remained in possession of the rented premises.

Observations were predominantly undertaken by Deakin University law students participating in West Heidelberg Community Legal Service's Legal Internship Program. Students recorded details about the observed hearings on a template document, and after reviewing recorded hearing details, mailed targeted letters and project information to project-appropriate non-attending tenants. The strategy relied on VCAT members identifying the address of the rented premises in the course of the public hearing. This occurred frequently, though not uniformly, and resulted in observers obtaining the address of 93 non-attending tenants (in respect of approximately 60 tenancies) over the period that the observations were conducted.

As a result of the sent letters, 5 tenants whose landlords had obtained a possession order accessed the project and received legal and social work assistance to prevent or delay eviction.

The observational data recorded by students was also collated and analysed by the project lawyer. The sample size of 500 hearings was considered large enough to enable the project to make valuable quantitative findings about the rate of tenant non-attendance at VCAT hearings and the impact non-attendance has on legal outcomes (see Appendix B).

Descriptive statistics obtained from the data confirmed that when the tenant was the respondent, the majority did not attend tenancy hearings and that those who did not attend were at significantly greater risk of eviction or other negative legal outcomes associated with their housing.

5. Understanding barriers to VCAT attendance and improving outcomes through support

“You both saved my life. I thought I was losing my house, my bags were packed and I was looking for other housing. I couldn’t find any other services to help me.”

Project client

⁴⁷ Victorian Civil and Administrative Tribunal Act 1980 (Vic), s 120.

5.1 Complex needs requiring holistic response – overview

The joint holistic service delivery model provided integrated legal and social work assistance to 34 clients over 37 separate legal cases (3 clients returned for help with a new tenancy issue or a recurrence of a previous issue). Of these:

- 13 clients had missed a VCAT hearing *prior* to engaging with the project.
- 21 clients were identified as being *at risk* of missing a VCAT hearing.

VCAT attendance

The lawyer represented 29 of these clients at a total of 34 hearings at VCAT. A further 12 hearings were listed at VCAT but were not attended by any clients. The lawyer was present at these hearings but did not appear on the tenants’ behalf in order to preserve their entitlement to seek a review of any orders made in their absence.⁴⁷

The VCAT attendance rate of clients, assisted by the project, was 74%. This is significantly higher than the general tenant attendance rate which is commonly understood to be approximately 20%. Within the parameters of this modest project, these figures confirm that tenants are more likely to attend VCAT when they are receiving legal and social work assistance that relates to their tenancy problems.

Demographic data collected from clients indicates that the project engaged tenants whose legal, social and health status contributed to health inequalities, social disadvantage and a high incidence of precarious housing. The client group had multiple stressors, as well as often urgent and competing health, social, financial and legal needs. In light of these dynamics, this client group could be expected to fall squarely within the cohort of tenants who are least likely to attend a VCAT tenancy hearing where their interests are affected. In this context, the VCAT attendance rate of project clients provides evidence that holistic service delivery can increase the likelihood of vulnerable and marginalised tenants participating in VCAT’s processes.

Improving outcomes at VCAT

Nearly 90% of clients (30) were at **risk of eviction** due to their tenancy related legal problem.

Twenty-one of these clients, or 70% of clients at risk of eviction, preserved their tenancy and remained in their rented premises at the time the lawyer closed their legal file. In a further 2 cases where eviction was not avoided, the tenants were able to obtain additional time in the rented premises with the assistance of the lawyer.

5.2 'Tumbling around in a ball of problems' – client profile

Half (17) of the clients engaged with the project missed a VCAT tenancy hearing:

- 4 of these clients missed a hearing *during* their engagement with the project.
- 13 missed a hearing *prior* to their engagement with the project.

Women were much more likely to engage in the project than men, making up 80% of client numbers.

Half of the clients who were helped had **dependent children** in their care. Of these, 65% were living in female-headed sole parent households. A total of **39 dependent children** under the care of these clients were at risk of homelessness due to a tenancy legal problem. A further 7 adult children, who remained dependent to some degree because of disability or financial insecurity, were also at risk of homelessness.

Multiple legal needs

Most clients were dealing with multiple legal issues:

- 11% of clients (4) had multiple concurrent **tenancy related legal problems**, i.e. had received more than one notice which could lead to eviction.
- 24% of clients (9) were dealing with a tenancy related legal problem which was a **recurrence** of an earlier problem.
- 70% of clients (24) were dealing with more than one legal problem. These clients were dealing with a combined total of 38 **other legal problems** in addition to the tenancy problem/s for which they had initially sought help.
 - Commonly encountered legal problems related to family violence (7), child protection (6) and criminal charges (12).
 - Other legal problems included: infringements, utilities disputes, personal injury, family law, VOCAT and uninsured motor vehicle accidents.
 - 3 clients also had a history of incarceration.

Financial insecurity

More than 90% of clients experienced **financial insecurity**. Most of these (26) were solely reliant on a Centrelink entitlement as income. Of the additional eight who were connected to paid employment, however, only two were engaged in permanent full-time employment with leave entitlements. The remaining six were precariously employed and/or unable to work regularly due to injury and were at risk of homelessness because they had accrued rental arrears.

Support to address financial hardship was the most common social work intervention during the project. In particular:

- 50% of eligible clients were provided help to access rental brokerage.
- 65% of clients were provided with emergency relief financial assistance for essential items.
- 70% of clients were provided help with utilities arrears or referred to BCH's financial counsellor for assistance with bills and debt.

Health and social problems

Most clients presented with multiple and complex health and social problems.

Client profile – VCAT attendance

Social, health or legal needs	Clients – all (34)	Clients – missed a hearing (17)
Not in paid employment	76%	64%
Had accrued rental arrears	76%	76%
More than 1 concurrent legal problem	70%	76%
Mental health diagnosis	62%	71%
Physical health diagnosis	65%	71%
Alcohol and/or drug use ('AOD') – current or past	50%	71%
Dual diagnosis (co-existing mental health condition and AOD use)	38%	59%

Eighty-eight percent of clients reported a concurrent experience of two or more of the above issues.

During detailed psycho-social assessments, a significant proportion of clients identified stress and anxiety as a current concern. These clients were likely to associate those anxious feelings with their tenancy related legal issue. Many recognised that their feelings of fear, anxiety and/or hopelessness influenced their decision on whether to attend a VCAT hearing.

Robin's story

Robin has lived in her public housing property for 20 years. She lives with and cares for her adult son who has a disability. Robin attended the legal service requesting assistance after being given information about the project at a local neighbourhood hub.

She had received two Notices to Vacate – alleging 'illegal use' and 'rental arrears'. She had not yet missed a VCAT hearing but was assessed as being at a high risk of not attending VCAT because of the fear and anxiety she described. Robin was also dealing with other legal issues, had a history of substance use and disclosed that she had recently experienced family violence.

When the lawyer and social worker first met with Robin she was highly agitated and distressed about the possibility that she may lose her house. She said that she was living with her "boxes packed" ready for the police to turn up at her door and that she felt "powerless, scared and confused."

Robin's legal tenancy issue was complicated and her legal file was open for more than 12 months. During this time, Robin and the lawyer attended a number of hearings at VCAT and engaged in protracted negotiations with the local housing office about her matter.

Robin was supported by the social worker to access health and mental health supports, financial counselling and emergency relief, assistance with Utility Relief Grants, safety planning for family violence risk, and at times immediate support for suicidal ideation related to mental and emotional despair at her complex tenancy situation.

After her legal case was successfully resolved and the threat of eviction was no longer present, Robin spoke to the social worker about her experience being helped by the project. Looking back, she said: "I was terrified, I was suicidal and had lost weight ... I felt there was no way out". She described feeling more settled and less stressed once her tenancy problem was resolved.

Robin said she felt supported in dealing with her mental health issues through her GP at the health service and that anxiety was no longer an issue for her. She said that she had also learned to "fight for my rights" as a result of the positive legal outcome that she obtained.

Considered within the social model of health framework, the demographic profile of project clients supports the proposition that indicators of disadvantage frequently co-exist and can detrimentally impact health status. The evidence shows that the longer people live in stressful social and economic circumstances, the greater the health impact over the course of their lives. Housing in particular "goes to the heart of people's lives and functioning".⁴⁸ It is therefore unsurprising that legal problems relating to housing are associated with stress-related illnesses.

Evaluation of the client profile points to a strong link between this group's complex health needs and social disadvantage and their increased likelihood of disengaging with legal processes related to their housing.

48 Pascoe Pleasance and Nigel Balmer, 'Mental health and the experience of housing problems involving rights' (2007), *People, Place and Policy Online* 4, 5.

5.3 Tracking client outcomes – the connection between health, housing and VCAT

Mental health and AOD use (dual diagnosis)

Most (nearly 60%) of the clients who missed a hearing had a dual diagnosis. This is significantly higher than the figure of 38% for the whole client group (see 'Client Profile – VCAT attendance' table above). In fact, 77% of project clients with a dual diagnosis missed a VCAT hearing. Clients who missed a hearing were also notably more likely to report a current or past history of AOD use than the whole client group.

Although there were other differences between the demographic profile of non-attending tenants and the whole client group, these were not significant. This suggests that the experience of mental health problems and substance use issues, particularly when they co-exist, is a significant barrier to tenant attendance at VCAT.

The connection between substance use, mental health conditions and homelessness (single episode and recurrent) is supported by research showing that more than half of people experiencing homelessness are AOD dependent. More than half also have a comorbid psychiatric disorder.⁴⁹

During the project's joint holistic service delivery, tenants with a dual diagnosis were the most challenging to consistently engage. Contact with the lawyer and social worker tended to be sporadic and often clustered immediately around a particular crisis point. Contact generally declined after the urgent legal or other problem was temporarily addressed or deferred. To maintain even sporadic engagement levels with these clients, the lawyer and social worker worked flexibly and responsively. For instance, these clients would be seen whenever they attended the health centre, regardless of whether an appointment with the legal service had been arranged or missed.

⁴⁹ L. Topp, J. Iversen, E. Baldry, L. Maher, 'Housing instability among people who inject drugs: results from the Australian needle and syringe program survey' (2012), *Journal of Urban Health: Bulletin of the New York Academy of Medicine*, Vol. 90, No. 4.

Jim's story

Jim is a public housing tenant who was referred into the project by the BCH medical clinic after he received a Notice of Hearing. Jim's landlord was applying for possession of his rented premises because he had accrued substantial rental arrears over a significant period.

He had also missed multiple VCAT hearings regarding his rental arrears and had broken a number of 'payment plans' to repay the money owed. Jim informed the social worker and lawyer that, due to other legal issues that he was dealing with, he expected to be sent to jail shortly.

Jim had been a long-term client of BCH. He had been diagnosed with multiple physical and mental health problems and identified as a current ice user (dual diagnosis). He also had a long history of other substance use and had disengaged from addiction treatment.

Jim initially engaged with the lawyer and social worker about his tenancy problems. Immediately prior to his VCAT hearing, however, he ceased responding to calls and did not attend his hearing. His landlord obtained a possession order but the legal service was unable to contact Jim after his hearing.

Subsequently, Jim re-presented to the health service and approached the social worker in the foyer asking for help to avoid eviction.

By this stage Jim's landlord had purchased a warrant of possession and had set a date to change the locks at his house. The lawyer, social worker, general practitioner and financial counsellor helped Jim apply to VCAT for a review and rehearing of the possession order. They also helped Jim re-engage with his AOD counsellor and criminal lawyer.

Jim continued to be difficult to contact and frequently missed appointments arranged with the legal service. However, he attended his review hearing and entered into another 'payment plan' to repay the outstanding arrears.

Through a flexible and coordinated approach Jim was provided with help to maintain his tenancy, seek treatment and address other issues affecting his life. By the end of Jim's involvement with the project, he remained in his housing but continued to struggle with many complex health and social issues.

Housing tenure

The tracking and evaluation of clients' legal and housing outcomes showed a significant correlation between housing tenure type and housing outcome.

Clients in the private rental market had a similar health and social needs profile as clients living in public housing (see 'Client Profile – housing tenure' table). However, clients renting privately were significantly more likely to be evicted from their rented premises if they missed a VCAT hearing.

Client profile – housing tenure			
Social, health or legal needs	Public (15)	Private (14)	Comm* (5)
Not in paid employment	87%	64%	80%
Mental health diagnosis	67%	50%	60%
Physical health diagnosis	80%	50%	60%
Alcohol and/or drug use ('AOD') – current or past	40%	43%	60%
Caring for dependants living at home	47%	57%	40%
More than 1 concurrent health or social need	87%	93%	80%

Legal outcomes[^] – housing tenure			
Social, health or legal needs	Public (14)	Private (13)	Comm* (5)
Missed a VCAT tenancy hearing (before or during project)	57%	46%	60%
Tenancy preserved – when legal case closed	100%	46%	60%
Tenancy preserved – when last contact made by social worker	100%	21%	20%

* includes transitional housing provided by community housing landlords

[^] excluded 2 matters (1 public, 1 private) where tenancy ended prior to client engaging with project and legal assistance was not directed towards preserving a tenancy

Average tenancy length – housing tenure		
Public (14)	Private (13)	Comm (15)(5)
13 years	3.4 years	3.6 years

Public housing tenants were more likely to report physical and/or mental health issues than private tenants. They also had lower incomes and were more likely to be unemployed. In fact, 87% of clients living in public housing required active and often ongoing interventions from the social worker. These findings support the widely accepted proposition that access to public housing is increasingly limited for the most marginalised and disadvantaged in the community.

Nevertheless, the project data (see 'Client profile – housing tenure' table) demonstrates that clients living in private rental accommodation also experience high levels of health and social need, as do those in housing provided by the community housing sector. Project results suggest that there is a growing section of the population that has multiple, complex needs but is unable to access public housing.

This project's finding bears out current research-based reports relating to the emergence of a new profile of vulnerable private rental tenants.⁵⁰ Research by the Australian Housing and Urban Research Institute demonstrates an increase in private tenancies among people with moderate to low incomes who have minimal resources to "buffer" major life events or changes to the rental market. Researchers concluded that this group was likely to have unstable tenancies and was at risk of homelessness. The report supports findings from the project which show that clients living in private rental housing had, on average, shorter tenancies than clients living in public housing.

In addition, evidence from the project indicates that tenants living in housing provided by the community housing sector experience similar levels of health and social need as public housing tenants. However, the likelihood of our clients' community housing tenancies ending was similar to that for the private tenant cohort. The average length of tenancy in this sector was also close to the average length of private tenancy (see 'Average tenancy length – housing tenure' table). Although overall project numbers are not high, these results indicate that community housing tenants have less secure tenancies and are more likely to be evicted if they fail to attend a VCAT hearing. This is despite private tenants having a similar health and social need profile to public tenants.

50 Wendy Stone, Andrea Sharam, Ilan Wiesel, Liss Ralston, Sanna Markkanen and Amity James, *Accessing and sustaining private rental tenancies: critical life events, housing shocks and insurances* (2015), Final Report (No. 259), Australian Housing and Urban Research Institute at Swinburne University of Technology at The University of New South Wales at Curtin University.

6. Recommendations

Health-justice partnership

In light of findings suggesting a connection between dual diagnosis (co-occurring mental health and addiction issues) and risk of non-attendance at VCAT tenancy hearings, WHCL should scope opportunities for further collaboration with mental health and alcohol or other drug support services at Banyule Community Health.

Banyule Community Health and West Heidelberg Community Legal should maintain and strengthen their health-justice partnership by building on the enhanced connections, open communication and strong collaborative practices established during the project.

Government and other funders should fund programs which can deliver flexible, integrated and holistic assistance to tenants with varying and complex needs. The offer of such assistance, if it is to effectively reach this priority cohort, should be integrated with services already trusted and accessed by people experiencing marginalisation, poverty and/or crisis.

VCAT

In consultation with stakeholders, VCAT should develop a performance measure for tenant attendance rates at VCAT hearings and implement an improvement strategy to achieve the target.

VCAT should improve its capacity to measure and report on indicators of tenant access to VCAT, and engagement with dispute resolution mechanisms. Specifically, VCAT should routinely publish data about:

- tenant attendance rates at VCAT hearings (where tenant is the respondent), including data about the landlord and application type
- tenant representation rates at VCAT hearings, including data about the type of representation
- community housing landlord application data, including application type

Housing

The data shows a correlation between housing tenure type and housing outcomes, supporting other research which has found that a public housing tenancy is a strong protective factor minimising the risk that an individual will experience homelessness. In light of this, there must be a significant and rapid investment in the expansion (via purchase or new construction) of public housing in Victoria. A planned and well-resourced public housing growth strategy would recognise the critical role a thriving public housing sector could play in ensuring access to secure and affordable housing for all.

There should be further research into the relationship between community housing tenancy and housing outcomes in the context of a tenancy dispute. If a difference is found between community housing and public housing tenure types, the reasons for such variance must be explored.

7. Appendices

7.1 Appendix A: development of the housing stress screen

One of the key deliverables for the project was the development of a "Housing Stress Checklist". The checklist was to be used by health services at BCH as a screening tool to assist health professionals to identify legal tenancy needs.

Development of the checklist began in the first month of the project, and started with three key objectives:

- to support health care workers to identify tenancy issues;
- increase internal referrals for tenancy advice; and
- strengthen the health-justice partnership.

Consultation with BCH health staff, including GPs, nurses, social workers and counsellors, indicated that to be an effective tool the checklist needed to be:

- "easy to use";
- "quick"; and
- "not too much extra work".

The general practitioners, in particular, said that if they were to use such a tool it needed to fit into their 15 minute patient consult and not impact their treatment time.

The draft checklist developed with this in mind was as follows:

Housing Stress Screen

Things to consider if your client may be at risk of eviction or the landlord is in the process of applying to take a tenancy matter to VCAT.

Current ' Possession Order ' in place?	
<ul style="list-style-type: none"> • Is there a VCAT ordered debt repayment plan in place for rental arrears? • Have you been told you are to be evicted? • Have Police contacted you about eviction? 	
Received legal correspondence?	
<ul style="list-style-type: none"> • Have you received any letters from VCAT (Victorian Civil and Administration Tribunal)? • Have you received any letters saying 'Notice to Vacate'? • Have you received a 'Breach of Duty Notice'? • Have you received a 'Notice to Tenant'? 	
Has there been any previous attendance, or requests to attend, VCAT regarding housing issues?	
Are there any current rental arrears, or past arrears requiring repayment agreements?	
Current or past debts for property damage?	
Other debt issues?	
Other legal issues, police involvement, or criminal proceedings?	
Damage, hoarding or squalor issues notes at the property; or letters sent by landlord or Banyule Council regarding damage, rubbish or public health issues?	

**Is your client in rental stress?
Do they need a referral for legal assistance?**

Do they mention things like?

- Problems with their landlord?
- Owing Rent or having Rental Arrears?
- Worrying about eviction?
- Going to court for housing issues?

Received legal correspondence?

- Letters from **VCAT (Victorian Civil and Administration Tribunal)?**
- Letters saying: **'Notice to Vacate'?**
'Breach of Duty Notice'?
'Notice to Tenant'?

Keywords

Eviction	VCAT
Possession Order	Debt
Compliance Order	Rental Arrears
Warrant of Possession	Court

DRAFT – for consultation.

Prepared: 2.4.2015

Project: *'You'll never know if you never go: improving housing and health outcomes for tenants by understanding and addressing barriers to VCAT attendance.'*

Prepared by: Bec Millard, Project Social Worker, Legal Service at BCH, bec.millard@bchs.org.au
Approved by: Pierina Morano, Principal Lawyer, Legal Service at BCH.

Housing Stress Screen – For Service Providers

Feedback on the draft developed after the initial round of consultation included:

- “too much reading”;
- “too crowded”; and
- “not a checklist – not enough time”.

The healthcare workers stated that in order to be useful, the tool needed to be “eye-catching” and “practical”. Further, the healthcare workers stated that they did not have time to go through a checklist as such, but wanted something to catch their attention and act as a prompt.

Based on this feedback and consultations with the Project Steering Committee and the BCH Quality Co-ordinator (Research, Evaluation and Development), the second draft was developed and trialed throughout BCH in 2015. At first, the screen was displayed in the treatment rooms of GP’s, clinic nurses’, and community midwives, as well as consultation rooms used by counsellors and social workers.

Is your client in rental stress? Do they need a referral for legal assistance?

WEST HEIDELBERG
COMMUNITY
LEGAL SERVICE



ASK questions	1. Are you behind in rent? 2. Are you having problems with your landlord?	
LOOK at forms	VCAT (Victorian Civil and Administration Tribunal) 'Notice to Vacate' 'Breach of Duty Notice' 'Notice to Tenant'	
LISTEN for keywords	Eviction Possession Order Compliance Order Warrant of Possession	VCAT Breach Rental Arrears Court

Feedback after the trial was generally positive with GPs and nurses stating they found it useful and practical. Specific feedback included comments such as:

- “not too complex, and easy to follow”;
- “easy to understand and helped me refer a client for help”; and
- “I keep it in my eye-line to remind me”.

Counsellors also reported that they were using it with clients to help them self-identify the need for support.

This housing stress screen is now used widely across BCH and is displayed in most clinical staff treatment rooms and offices. It is also displayed in spaces accessed by the community, as well as in photocopy areas and staff rooms.

The development of the screen has been the subject of a presentation at a meeting of the Victorian Health-Justice Partnership Network. The screen has also been distributed among other health-justice partnerships.

7.2 Appendix B: VCAT observation data

Glossary

An **application** is a claim or request lodged at VCAT for determination under the Residential Tenancies Act 1997 ('the RTA') and may be considered at one or more hearings.

A **review** is a request brought under s.120 of the Victorian Civil and Administrative Tribunal Act 1998 ('VCAT Act') to re-open and re-hear an order previously made by VCAT.

An application is **determined** when orders are made addressing the substance of the application i.e. a possession order determines an application but an adjournment on procedural grounds does not.

An applicant is **successful** when they obtain the order their application sought in the case of a non-monetary order i.e. a possession order; or when they obtain an order for more than half of any sum claimed in the case of a monetary order.

Landlord and **tenant** also refer to rooming house operators and rooming house residents respectively.

Tenant attendance includes instances in which the tenant did not personally appear but was represented by a person other than a professional advocate i.e. a friend or family member.

7.3 Appendix C: Summary

Over 78 separate days between March 2015 and January 2017, the project observed 500 tenancy hearings. Observations were predominantly undertaken by Deakin University law students participating in West Heidelberg Community Legal Service's Legal Internship Program. Students recorded details about the observed hearings on a template document.

The observational data recorded by students was collated and analysed by the project lawyer. The sample size of 500 hearings was considered large enough to enable the project to make valuable quantitative findings about the rate of tenant non-attendance at VCAT hearings and the impact that non-attendance has on legal outcomes.

Data collected from the observation of 500 tenancy hearings at VCAT's Preston venue confirmed that when the tenant was the respondent, the majority did not attend the tenancy hearing. Those who did not attend were at greater risk of eviction or other negative legal outcomes associated with their housing.

51 Includes 23 hearings (5% overall) which were for a tenant's application under s.120 of the VCAT Act for a review of an earlier VCAT order made in favour of the landlord.

All hearings – 500

Who applied to VCAT?

Landlord	89% (446 hearings)
Both (cross-applications)	2% (11 hearings)
Tenant	9% (43 hearings) ⁵¹

The observed proportion of hearings where the application was made by the tenant is higher than that published in VCAT's performance data.

Which landlords?

Private	66% (300 hearings)
Public	29% (132 hearings)
Community	5% (25 hearings)

The proportion of observed hearings in which the applicant was the Director of Housing (the DoH) is higher than the comparative figure published by VCAT for all venues. In 2015-16 VCAT reported that 23% of all landlord applications were made by the DoH and in 2014-15 the figure was 24%.

The higher DoH figure recorded during the project's observations might be explained by the number of local government areas within Preston VCAT's catchment area with a higher proportion of public housing properties than the state average (i.e. City of Darebin and the City of Banyule).

VCAT does not publish data identifying the proportion of applications made by community housing landlords.

What orders did landlords seek?

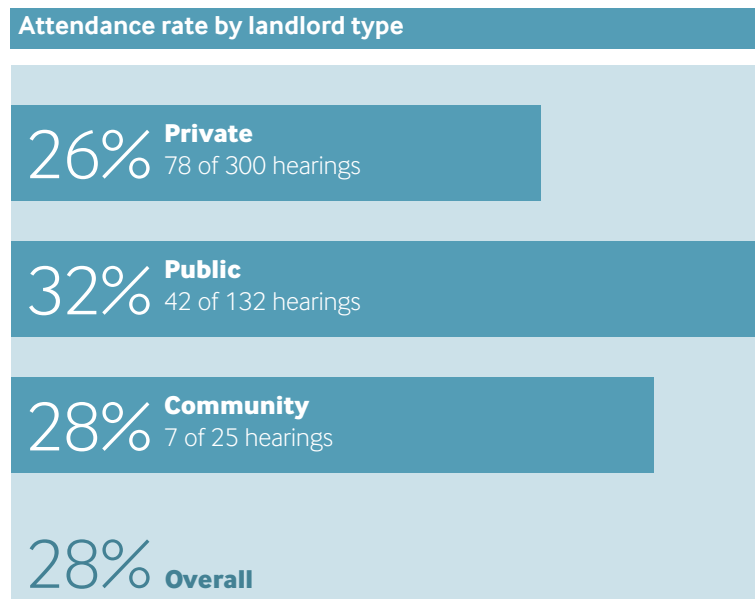
Possession	50% (228 hearings)
Bond or bond & compensation	29% (133 hearings)
Compensation	14% (63 hearings)
Declaration of abandonment	3% (12 hearings)
Termination after death	1% (5 hearings)
Other or unclear	3% (16 hearings)

The vast majority (94% (215 hearings)) of applications for possession related to rental arrears.

Tenant attendance

When the tenant was the respondent, the overall tenant attendance rate was **28%**. However, there was a variation in tenant attendance rates when considered by landlord type:

52 Attendance data separated by hearing type only where there were >20 hearings observed of any one hearing type.



There was also significant variation in tenant attendance rates when considered by application type,⁵² and within that further variation could be assessed when divided by landlord type:

Tenant attendance rate by application type & landlord type				
Application type	All landlords	Landlord type		
		Private	Public	Comm
Possession	30% (68 of 228 hearings)	25% (31 of 124 hearings)	37% (31 of 84 hearings)	30% (6 of 20 hearings)
Bond or bond + compensation	34% (45 of 133 hearings)	34% (45 of 133 hearings)	N/A	N/A
Compensation	21% (13 of 63 hearings)	18% (5 of 28 hearings)	23% (7 of 31 hearings)	25% (1 of 4 hearings)

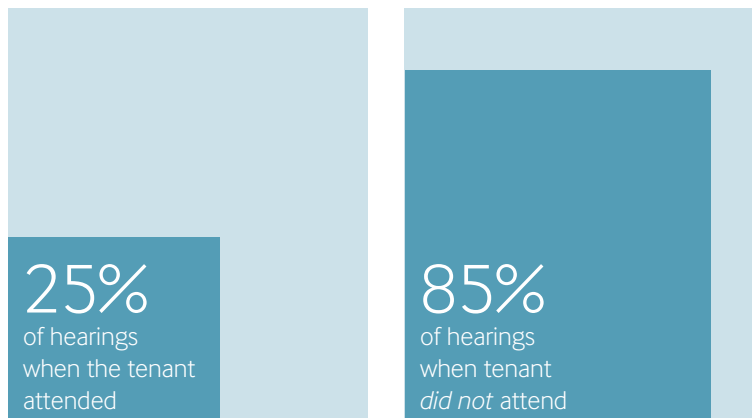
Impact of attendance

More than three quarters (**77%** (387 hearings)) of landlord applications were determined at the hearings observed.

Of all determined landlord applications, the landlord was **successful** in:

53 The observation data recording template used by student observers did not require that they particularly identify whether the full claim was awarded. The observations records were subsequently analysed by the project lawyer to reach the figure cited.

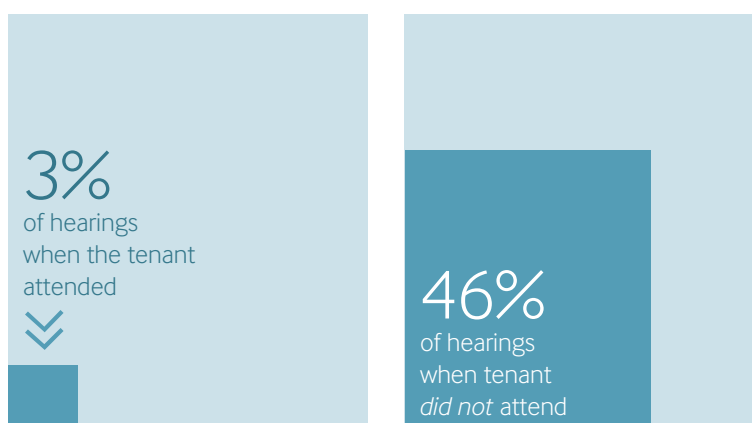
Landlord success in determined landlord applications



Looking only at applications for a monetary order i.e. bond; bond and compensation; and compensation (196 hearings), our data⁵³ suggests that the landlord was awarded their full monetary claim:

- in **3%** of hearings when the tenant attended; but
- in **46%** of hearings when the tenant *did not* attend.

Landlord awarded full monetary claim



Public housing – 141

The DoH was a party to 141 hearings observed, or 28% of all hearings. Most of these (94% (132 hearings)) involved the DoH as the applicant.

Eighty-six percent (113 hearings) of DOH's applications were determined at the hearing observed.

What orders did the DoH seek?

Possession	64% (84 hearings)
Compensation/reimbursement for repairs	23% (31 hearings)
Compliance	5% (7 hearings)
Declaration of abandonment	≈2% (2 hearings)
Termination after death	≈2% (3 hearings)
Other or unclear	4% (5 hearings)

Impact of attendance?

	Tenant attended	Tenant did not attend
Possession	3%	78%
Compensation/reimbursement for repairs	50%	92%

Discussion

Regular participants in VCAT processes (i.e. lawyers, tenant advocates, real estate agents, and DHHS officers) know from experience that the tenant non-attendance figure is very high. However, the only widely available evidence to support this is a tenant non-attendance rate cited by Justice Iain Ross in a 2010 discussion paper, *Transforming VCAT*. Justice Ross, then VCAT President, referred to a tenant non-attendance rate of approximately 80%. Despite now being 7 years old, this approximate figure remains the usual reference point for discussion on tenant non-attendance at VCAT hearings. The 2010 figure was only cited in passing, without any accompanying detail about the impact of non-attendance on hearing outcomes or whether VCAT's data shows any correlation between application type and tenant attendance.

Our project's observation findings provide a useful evidence-based insight into the problem through its analysis of tenant attendance data at one inner-city VCAT venue.

Nearly three-quarters of observed landlord applications to VCAT were undefended.

The overall observed tenant attendance rate of 28% is higher than the figure of "about" 20% cited by Justice Ross in 2010. This might indicate that there has been some improvement in tenant attendance since 2010. If this is the case, it will be reflected in figures from other VCAT venues. Further analysis of a broader data set could confirm this.

However, looking only at Preston, the higher than average proportion of hearings involving the DoH is a factor which can be expected to have influenced the overall tenant attendance rate. The observation data shows that public tenants are more likely to attend a VCAT hearing than private tenants (26% private vs 32% public). Based on this, it should be expected that overall attendance rates will be lower at venues where a smaller proportion of applications involving the DoH are heard.

However, the private tenant attendance rate of 26% is itself higher than the figure cited by Justice Ross. While this might provide evidence of a modest improvement in tenant attendance rates since 2010, consideration of more data is needed before a firm assessment can be made.

Of all application types, tenants were least likely to attend compensation-only hearings.

As could be anticipated, the data clearly demonstrates that there is a substantially increased likelihood of a landlord obtaining a successful outcome where the tenant does not attend.



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