

Victorian Civil and Administrative Tribunal Submission to the Royal Commission into Family Violence

1. Residential Tenancies Act 1997 (Vic) – Suggested Amendments

Victims of family violence regularly appear at the Victorian Civil and Administrative Tribunal ('VCAT') primarily in the Residential Tenancies List. VCAT receives applications for both the termination and creation of tenancy agreements where intervention orders have been made.

As articulated in the Royal Commission into Family Violence ('RCFV') issues paper, there is a direct correlation between family and domestic violence, and the need for women and children to leave their home. This can result in the vacation of premises, and resulting breach of lease.

There are numerous options available to assist tenants who are experiencing domestic violence in Queensland and New South Wales that are not available in Victoria. These options are detailed at Appendix A.

South Australia has recently proposed amendments to its residential tenancy legislation, including:

- protecting victims of domestic violence from being required to pay for damage caused to the property by the perpetrator;
- stopping a tenant's personal information from being listed on a Residential Tenancy Database where it is determined domestic violence has occurred;
- allowing the Tribunal to "split" the bond, and make an order for compensation against a single tenant in a co-tenancy agreement; and
- empowering the Tribunal to terminate a tenancy and make a new tenancy agreement (taking into account submissions from the landlord).

The drafting of these amendments is to occur in consultation with South Australia Police, the South Australian Aboriginal Advisory Council and the Department for Communities and Social Inclusion Housing South Australia.

It is clear that other States have adopted, or are in the process of adopting, provisions which allow for orders to be made in situations where violence has occurred, but a protection order (let alone a 'final order') is not in place.

By contrast, VCAT's jurisdiction under s 233A of the *Residential Tenancies Act 1997* (Vic) ('RT Act') to respond to family violence is much more restricted, applying only if there are 'final orders'. 'Final orders' is defined in subsection (1) to mean:

- (a) a final order within the meaning of the *Family Violence Protection Act 2008* (Vic); or
- (b) a final order within the meaning of the *Personal Safety Intervention Orders Act 2010* (Vic).

Subsection (2) of the RT Act limits the operation of s 233A further:

- (2) this section applies if -
- (a) a tenant is excluded from rented premises under an exclusion condition included in a final order; and
 - (b) a protected person under the final order
 - (i) is also a party to a tenancy agreement for the rented premises; or
 - (ii) has been residing in the rented premises as the protected person's principal place of residence but is not a party to the tenancy agreement.

Orders are able to be sought under subsection (3) only if a final order is in place which includes an exclusion clause against the perpetrator. This is an entirely reactive regime, and is predicated on the existence of a final order of this nature. The conditions on the exercise of jurisdiction very significantly limit the capacity of VCAT members to respond to family violence when this is evident in cases before them.

Suggested amendments to the RT Act

Changes might be considered along the following lines:

Section 233A – application for a new tenancy agreement because of family violence

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- (1) A tenant to a tenancy agreement may apply to the Tribunal to have another person removed from the tenancy agreement because that other person (whether a tenant or person residing at the rented premises as their principal place of residence) has committed an act of family violence.
- (2) In considering an application under subsection (1), the Tribunal may take into account:
 - (a) whether the tenant has applied for a family violence intervention order or a personal safety intervention order;
 - (b) if an application was made, whether an order was granted and/or is still in place;
 - (c) if an order was granted, whether an exclusion condition exists between the other person and any minor children residing at the rented premises;
 - (d) anything else the Tribunal considers relevant.
- (3) If the Tribunal grants an application under subsection (1), the exterior locks to the premises are to be changed at the expense of the landlord.
- (4) If the Tribunal grants an application under subsection (1), the Tribunal may make an order against the other person for rent arrears (in whole or in part).

Section 233B – termination of a tenancy agreement because of final family violence intervention order -

- (1) A tenancy agreement between a tenant and a landlord will be automatically terminated upon the tenant being excluded from a rented premises under an exclusion clause in an interim or final family violence intervention order.
- (2) This section does not affect a tenancy agreement between a landlord and a protected person under the final family violence intervention order operating in subsection (1).

Section 233C – application to terminate a tenancy agreement because of family violence –

- (1) A tenant to a tenancy agreement may apply to the Tribunal to terminate the tenancy agreement because another person (whether a tenant or person residing at the rented premises as their principal place of residence) has committed an act of family violence.
- (2) if the Tribunal grants an application under subsection (1), the Tribunal is to make an order removing the tenant from the tenancy agreement.
- (3) If the Tribunal grants an application under subsection (1), the Tribunal may make an order against the other person for rent arrears (in whole or in part).

2. Support for victims of family violence at VCAT

VCAT employs a Family Violence Support Worker (VPS 3) ('VCAT support worker') attached to the Residential Tenancies Division who is available to work across all lists in the Tribunal. The position was established in response to the enactment of the *Family Violence Protection Act 2008* (Vic), and the subsequent addition of family violence provisions to the *Residential Tenancies Act 1997* (Vic).

In 2013-14 across Victoria, some 35,135 family violence intervention order applications were finalised¹. It is not known how many of those resulted in final intervention orders being made. During the same period at VCAT, there were 39 applications for the reduction of a fixed term tenancy agreement because of an intervention order and 13 applications for the creation of a tenancy agreement because of an intervention order. The discrepancy in the numbers indicates that victims of family violence may not be aware of their rights in relation to reducing or creating a tenancy agreement. It also reflects the restricted nature of the jurisdiction available to VCAT at present.

The primary role of the VCAT support worker is to provide support to people accessing the Tribunal who have experienced family violence. This support includes:

- non-legal advice and information with respect to VCAT processes and available community services;
- referrals to community service providers; and
- direct support and assistance at the time of hearing to ensure safety.

The VCAT support worker undertakes an assessment of immediate safety risks, coordinates requests for additional security through the Courts Security Group, and coordinates the use of the remote witness facility available at VCAT's main venue at 55 King Street Melbourne. In addition, the VCAT support worker networks with other support organisers and maintains a database.

3. Referral Pathways

The majority of referrals for support are identified internally through customer service and registry staff. In some cases, an intervention order is included with the application form. Sometimes the client specifically requests support on the application form itself or when speaking to customer service registry staff. Once this is identified, the registry staff immediately refer the matter to the VCAT support worker who makes direct contact with the victim.

Referrals for support also come to VCAT's attention through community legal services, Magistrates' Court applicant support workers, and other family violence support services.

¹ Paragraph 20, Issues Paper – Royal Commission into Family Violence.

Other than direct client requests for assistance and referrals from external agencies, VCAT has no other way of cross checking applications to determine whether there are any family violence issues impacting on a proceeding. As a consequence, there may be applications that come to the Tribunal where family violence is not detected.

VCAT has made a significant effort to promote the types of support available at VCAT for victims of family violence. VCAT meets regularly with key stakeholders, provides targeted information on its website and has enhanced internal processes to ensure registry staff and Tribunal members know to redirect people to the VCAT support worker.

Contact is made usually via telephone as soon as the VCAT support worker receives a request for support. Typically this occurs within two working days following referral.

Following initial contact, an assessment of the clients' current support and safety needs is undertaken and appropriate referrals discussed. As part of this initial contact, the VCAT support worker clarifies VCAT's processes and details the safety arrangements available at VCAT. Safety needs are determined having regard to a common risk assessment framework and any potential risks that may occur at the hearing. The VCAT support worker is responsible for listing the matter to ensure availability of the remote witness room and other supports.

Not all cases require continual case management support until hearing. A referral to community legal centres or community support services maybe all that is needed. Each matter is managed based on individual needs.

4. Service provision and security measures at 55 King Street

Parties attending a hearing at 55 King Street have access to a dedicated client office and a remote witness room on the Ground Floor. Hearings listed at 55 King Street will if possible be attended by the VCAT support worker. VCAT is also supported by Court Network volunteers.

VCAT has security screening at its main entrance staffed by four Wilson security guards. These security guards are not able to respond to specific security events but the security screening allows for weapons detection and the security guards' presence acts as a deterrent. In addition, there are two dedicated Protective Service Officers stationed at 55 King Street, Melbourne. VCAT has recently installed CCTV covering a number of public areas.

Where there are hearings that may pose a safety risk, additional security is requested via the Courts Security Group (CSV). Protective Service Officers are provided details of the safety risk on the day of the hearing. Security requests are a standard procedure if the remote witness room is required. Security requests are also submitted as a precautionary measure for matters where there is a current intervention order in place. In 2015 to date, 44 security referrals have been made.

There is an overall upward trend in the use of the remote witness room at 55 King Street. In 2014, there were 28 instances of use. In 2015, to date, there have been 14 instances of use. It is anticipated that that this figure will continue to rise with further awareness of this facility. The extension of family violence staff support to all Magistrates' Courts, and the piloting of video conferencing for family violence related matters would be significant forward steps.

5. VCAT hearings at suburban and regional venues

VCAT hears matters at suburban and regional Magistrates' Courts. VCAT also hears residential tenancy matters at the Global Learning Centre at Broadmeadows, the Intercultural Centre at Preston (the old Preston Court House), the Neighbourhood Justice Centre at Collingwood and at the Moe Town Hall.

Limited VCAT staff resources are available at suburban and regional venues. The need for the required skills and training and lack of resources restrict VCAT's capacity to support victims of family violence at these locations. VCAT has access to the safety arrangements provided by the Magistrates' Court. However, access is limited by the availability of these facilities for VCAT's use given the priority that may be needed for Magistrates' Court proceedings.

People who request support and are located in regional areas are contacted by the VCAT support worker and given telephone support prior to, and following the Tribunal hearing. Where they require support at the VCAT hearing itself, they are referred to a local community support agency. There is also the option to attend the hearing by telephone. VCAT records show that in 2015 there have been eight instances of appearance at a hearing by telephone in regional areas.

Where there is an urgent suburban matter requiring use of the remote witness facility, VCAT ordinarily redirects the matter to 55 King Street, Melbourne. If this is not feasible then a security request is made to the Courts Security Group. This is managed by the VCAT staff member at the suburban venue. The VCAT support worker provides telephone support prior to, and following the Tribunal hearing.

6. Elder abuse and abuse of people with disabilities and carers

The Guardianship Lists deals with victims of family and domestic violence. Elder abuse, carer abuse and issues related to the care of those with a disability are complaints that arise often in the context of physical, mental and economic abuse. The existence of family violence is not immediately evident in guardianship proceedings and often does not emerge until the parties are well into a hearing.

Guardianship hearings regularly consider systematic financial abuse and exploitation of people with a disability, including the elderly, as well as physical violence, seclusion and restraint of vulnerable people by carers, assault and abuse of carers, and high levels of aggression and tension between family members.

Currently, the Guardianship List at VCAT is not fully funded and does not have the resources to adequately case manage prior to a hearing. Case management of applications involves contacting the parties, ensuring that all relevant people are aware of the application and the hearing, and identifying any issues of concern, including any background of abuse, violence or exploitation.

Consequently, it is not currently possible to ensure that parties are appropriately supported, that an appropriate level of security is in place, and that adequate time is allowed for a hearing where family violence is an issue. Hearings must be listed within 30 days after the application is made, and are usually listed for 45 minutes only, due to resource constraints. In the pressured situation of a 45 minute hearing, there is little or no opportunity for preparation or planning. Family violence issues can emerge and place parties, members and staff at risk.

The introduction of the new *Power of Attorney Act* in September 2015 will increase activity in the Guardianship List, increasing frequency of fraught family relationships and bringing a heightened risk of family and domestic violence.

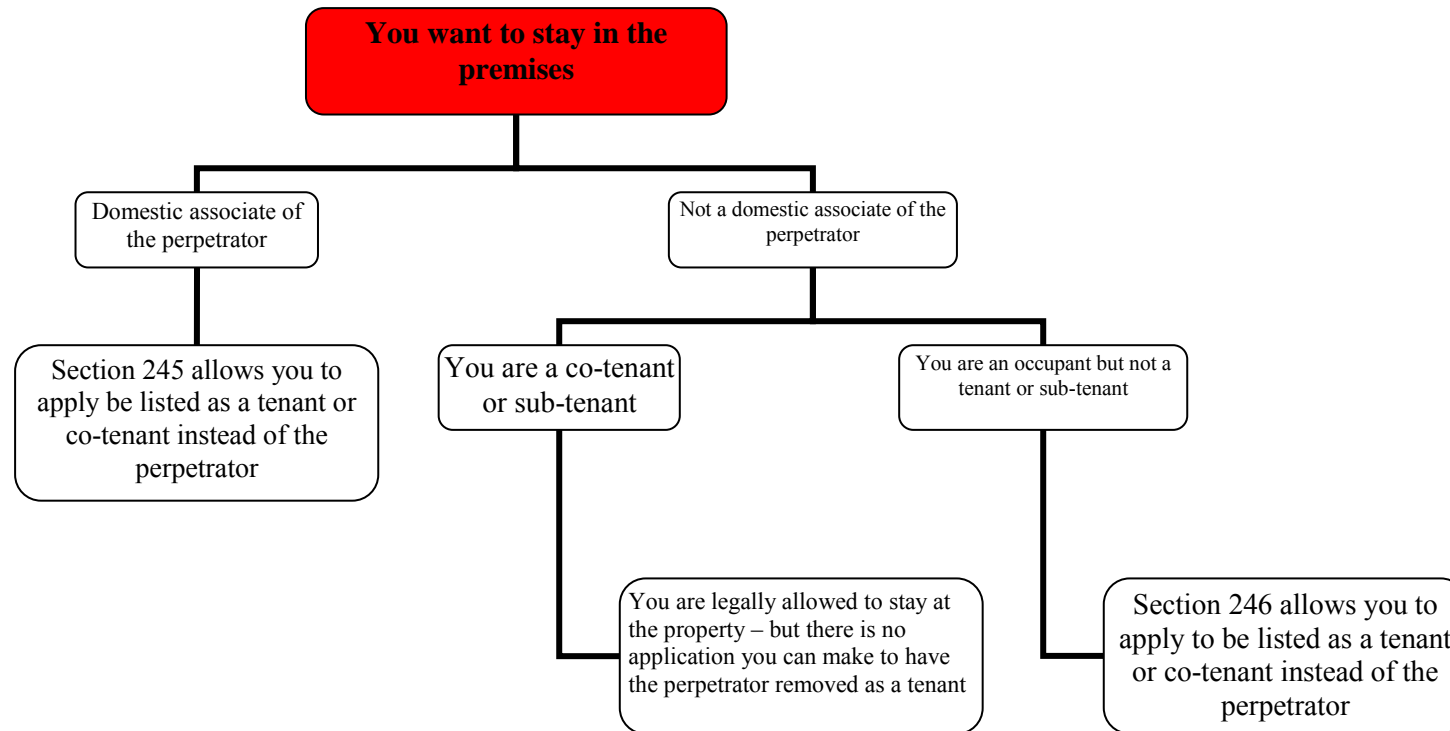
7. Recommendations

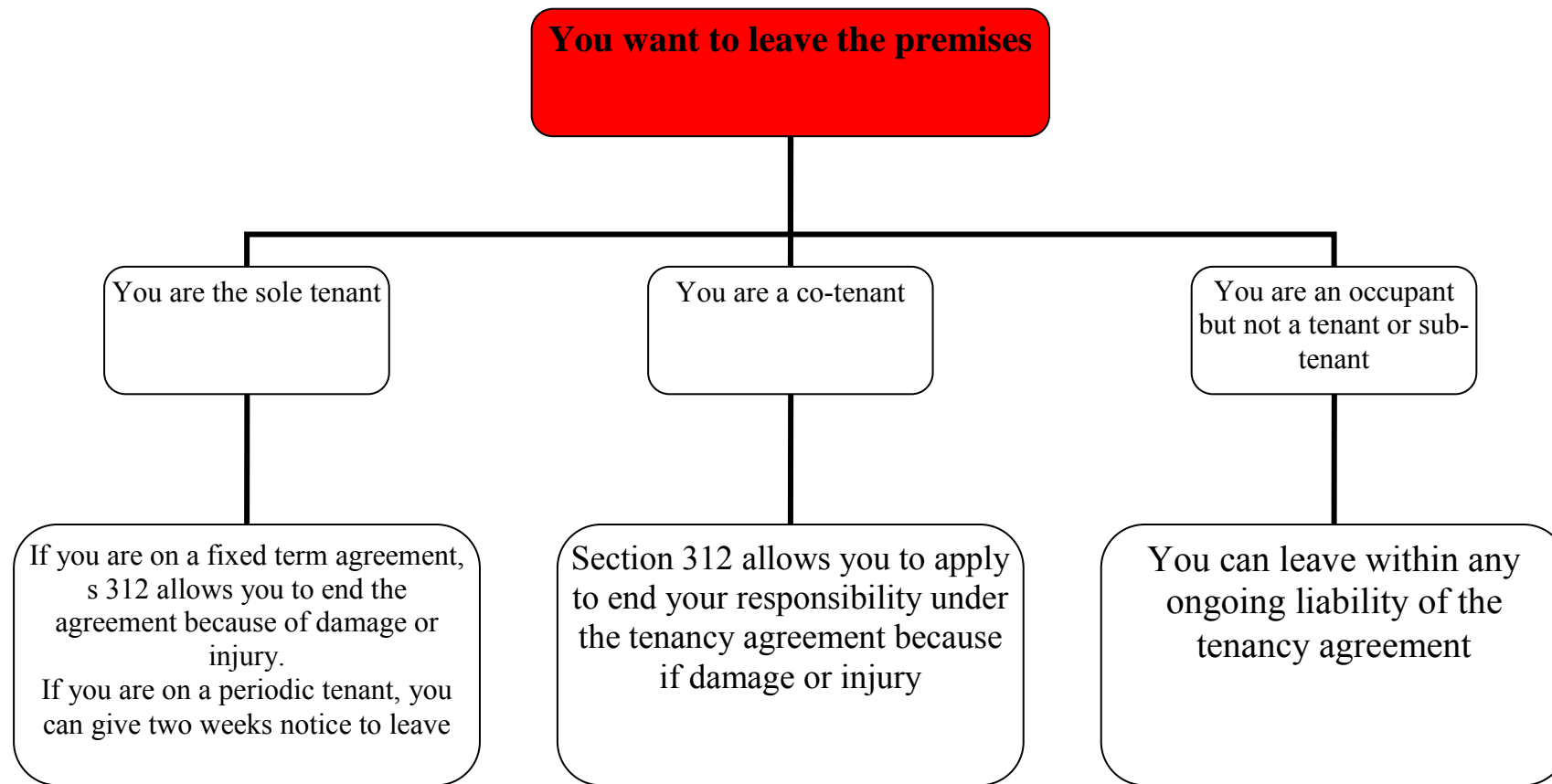
- Amend the *Residential Tenancies Act 1997* (Vic) to increase the available options, and enhance the safety and protection of tenants who are experiencing domestic violence provision, in line with other States.
- Develop a referral system integrated with an intervention order process that ensures affected family members are aware of their options and rights in relation to a tenancy agreement.
- Develop a training module to increase skills and capabilities of regional and metropolitan staff and judicial and non-judicial members to recognise and support victims of family violence. This could be a CSV and JCV training module as it would have application across all jurisdictions.
- Develop an integrated approach to the use and access of services and facilities such as remote witness rooms and video conferencing facilities in suburban and regional Magistrates' courts to ensure all jurisdictions can access these services.
- Adequately fund the Guardianship List at VCAT to enable case management of Guardianship and Power of Attorney matters so that VCAT can identify and provide essential and specialised support for victims of family and domestic violence.

Appendix A

Residential Tenancy provisions in Queensland and NSW

Queensland:





New South Wales:

