



Rental Stress in the East

Eastern Community Legal Centre

This report documents the work of the
Tenancy Advice and Advocacy Program

www.eclc.org.au

Eastern Community Legal Centre

Suite 3, Town Hall Hub

27 Bank Street

Box Hill VIC 3128

P (03) 9285 4822

Suite B, 6 Floriston Road

(PO Box 747)

Boronia VIC 3155

P (03) 9762 6235

Healesville Community Link

110 River Street

(PO Box 79)

Healesville VIC 3777

P (03) 5962 1665 or 1300 79 70 88

www.eclc.org.au | [@EasternCLC](https://www.instagram.com/EasternCLC)

Table of Contents

About this report	4
Case studies	4
Acknowledgements	4
Abbreviations	5
Table of figures	5
1. Executive summary	6
2. Rental Stress in the East	8
2.1 Housing affordability	8
2.2 The need for a specialist service	9
3. Who are the clients	10
3.1 Vulnerable and disadvantaged tenants	11
3.2 Family violence	13
3.3 Lack of information	14
3.4 Disability	16
3.5 Mental health issues	16
3.6 Culturally and linguistically diverse communities	17
4. Tenancy Issues in the East	18
4.1 Notice to vacate & Rent arrears	19
4.2 VCAT attendance	20
4.3 Tenancy agreement	20
4.4 Sharehouses	22
5. Challenge and Opportunity	23
References	26
Notes	27

About this Report

This report documents the work of the Tenancy Advice and Advocacy Program (TAAP), a key program operated by Eastern Community Legal Centre (ECLC). ECLC provides free legal information, advice and casework to eastern Melbourne, - comprising of the municipalities of Manningham, Boroondara, Whitehorse, Maroondah, Knox and Yarra Ranges. For this program ECLC's tenancy catchment area extended to include the City of Monash, completing the Eastern Metropolitan Region. The combined seven municipalities span an area of 2,877 square kilometres with a total population of 1,028,573 people.

Case Studies

The case studies in this report are closely based on the real experiences of clients who utilised the Tenancy Advice and Advocacy Program. In the interests of confidentiality, however, clients' names and some identifying details have been changed.

Acknowledgements

ECLC acknowledges the Wurundjeri people of the Kulin Nations as the traditional owners of land on which we live and work. We pay deep respect to Elders past and present.

ECLC's Tenancy and Advocacy Program is funded by Consumer Affairs Victoria, Department of Justice and Regulation

ECLC's work is supported by outstanding and committed volunteers and the partnership support of many agencies and individuals.

Abbreviations

ACLFTA	Australian Consumer Law and Fair Trading Act 2012 (Vic)
ACL	Australian Consumer Law
CALD	Culturally and Linguistically Diverse
CAV	Consumer Affairs Victoria
DHS	Department of Human Services (Australian Government)
ECLC	Eastern Community Legal Centre
EMR	Eastern Metropolitan Region
RTA	Residential Tenancies Act 1997
TAAP	Tenancy Advice and Advocacy Program
VCAT	Victorian Civil and Administrative Tribunal

Table of Figures

Figure 1.	Rental stress by municipality
Figure 2.	Hours of TAAP service delivery 2012-2014
Figure 3.	Client age
Figure 4.	Accommodation types
Figure 5.	Vulnerability factors
Figure 6.	Legal intervention provided
Figure 7.	Tenancy matters

1. Executive Summary

Housing affordability is at a crisis point across Australia. Between 2002 and 2012, house prices rose nationally by 69% while average earnings increased by only 57%¹. Priced out of house ownership, the prospect for tenants was even grimmer. During this period the average nominal rent increased by 75.8% for houses and 91.8% for other dwellings (mostly flats/apartments)². Anglicare's 2015 annual rental affordability snapshot report found that 1.6 million Australians struggled to pay their rent.³

In Melbourne's Eastern Metropolitan Region (EMR), financial struggles for tenants are widespread. While Melbourne's East is sometimes perceived as affluent, four municipalities have rental stress significantly higher than Melbourne's average (24.9 %): Maroondah (26.8%), Monash (27.8 %), Whitehorse (27.8%) and Yarra Ranges (30.3%)⁴. Rental stress is defined as households in the lowest 40% of incomes that are paying more than 30% of their usual gross weekly income on rent.⁵

In response to this community need, Eastern Community Legal Centre (ECLC) established the Tenancy Advice and Advocacy Program (TAAP) in 2012 to provide free and confidential specialist information and advice for tenants that live in the EMR. Consumer Affairs Victoria (CAV) provided funding for 1 full-time Tenancy Advocate for the region that comprises 2,877 square kilometres with a total population of 1,028,573 people. Due to the size and scale of this population, ECLC divided the position into 2 part-time roles to work at the Boronia and Box Hill offices. The TAAP Tenant Advocates have over twenty years tenancy experience between them.

Since its commencement in August 2012, TAAP has assisted in more than 924 separate tenancy matters. Due to the limited resources stretched across the region, the service targets the most disadvantaged tenants facing a number of vulnerabilities. 73% of the tenants assisted were in receipt of a Centrelink income, whilst the remaining 27% reported experiencing financial hardship. The predominant vulnerability indicators as stated by tenants were a life event (such as family violence or divorce) (40%), lack of access to information (24%), intellectual or physical disability (13%) and mental health issues (12%).

For tenants facing multiple vulnerabilities this vital tenancy advocacy and legal assistance can be the difference between maintaining a tenancy and facing homelessness.

The chronic shortage of affordable housing has changed the way Melbournians live. With the rise of rental prices there has been a sharp rise in the prevalence of shared households—whether through housemates or rooming houses. These housing trends have created a number of new challenges for both tenants and landlords and the legal frameworks that exist to protect them, primarily the Residential Tenancies Act 1997 (RTA).

Issues of co-tenant disputes and rent arrears in this new economic climate, illustrate the need for immediate amendments to the RTA to reflect the issues facing tenants today.

The report outlines the work of the tenancy program in assisting vulnerable and disadvantaged clients. The data confirms that the tenants are largely reflective of the breadth of need across the region and the issues that they face. However the program is clearly operating at full capacity and there is significant concern for tenants unable to access the service.

A lack of time to even promote the service questions how even community agencies would be aware of its availability and whether the most disadvantaged tenants are therefore being denied access.

For tenants who ultimately lose their housing, the limited options are all too clear. Friends and family are generally unsustainable options leading to a real risk of homelessness, another already overwhelmed service system.

A relatively small increased investment in the Tenancy Advice and Advocacy Program would have clear benefits for these highly vulnerable members of the community in the East.

Recommendation

That the State Government expand the TAAP (Tenancy and Advocacy Program) in the Eastern Metropolitan Region to a minimum of 3 effective full-time positions in response to client demand.

2. Rental Stress in the East

2.1 The housing affordability crisis

Housing affordability is at a crisis point across Australia. Between 2002 and 2012 house prices rose nationally by 69% while average earnings increased by only 57%⁶. Priced out of house ownership, the prospect for tenants was even grimmer. During this period the average nominal rent increased by 75.8% for houses and 91.8% for other dwellings (mostly flats/apartments)⁷. Anglicare’s 2015 annual rental affordability snapshot report found that 1.6 million Australians struggled to pay their rent.⁸

In Melbourne’s Eastern Metropolitan Region (EMR), financial struggles for tenants are widespread. While Melbourne’s East is sometimes perceived as affluent, four municipalities have rental stress significantly higher than Melbourne’s average (24.9%): Maroondah (26.8%), Monash (27.8%), Whitehorse (27.8%) and Yarra Ranges (30.3%)⁹. Rental stress is defined as households in the lowest 40% of incomes that are paying more than 30% of their usual gross weekly income on rent.¹⁰

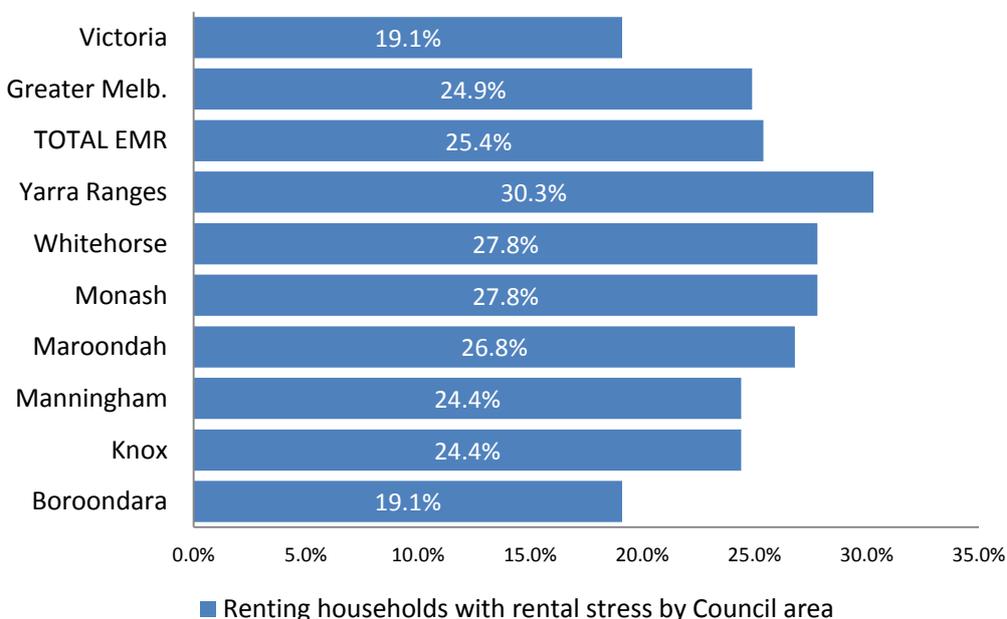


Figure 1. Rental stress by municipality

Although Boroondara has the lowest percentage (19.1%), it has the highest renting population of all municipalities and therefore has the third highest population of households with rental stress in the EMR. Similarly, Yarra Ranges has the lowest renting population of the 7 Local Government Areas, and therefore accounts for only 12% of households with rental stress within the EMR although 30.3% of renting households within the Yarra Ranges are experiencing rental stress.

2.2 The need for a specialist service

ECLC established a specialist service for tenants because it recognised a growing need in the community for assistance with a range of unique and often complex tenancy-related legal problems. It commenced the Tenancy Advice and Advocacy Program (TAAP) in 2012 to provide free and confidential specialist information and advice for tenants that live in the Eastern Metropolitan Region.

Consumer Affairs Victoria (CAV) provided TAAP funding for one full-time Tenancy Advocate for the region that comprises 2,877 square kilometres with a total population of 1,028,573. Due to the size and scale of this population, ECLC divided the role into two part-time roles to work across the Boronia and Box Hill offices. The Tenant Advocates have over twenty years tenancy experience between them.

TAAP provides the desperately needed support for the growing number of tenants that live in the East. This need is reflected in the consistent flood of referrals TAAP receives despite there being very little promotion of the program. Whilst the Tenant Advocates have undertaken some community education and outreach, particularly at the program's onset, their time has been overwhelmingly dedicated to service delivery to respond to the consistent flow of tenants seeking assistance. This is evident in the breakdown of service delivery hours over the 2-year period July 2012 - June 2014 (figure 2). Running at capacity, the program requires additional resources to begin to move beyond simply responding to the flood of contacts they receive weekly.

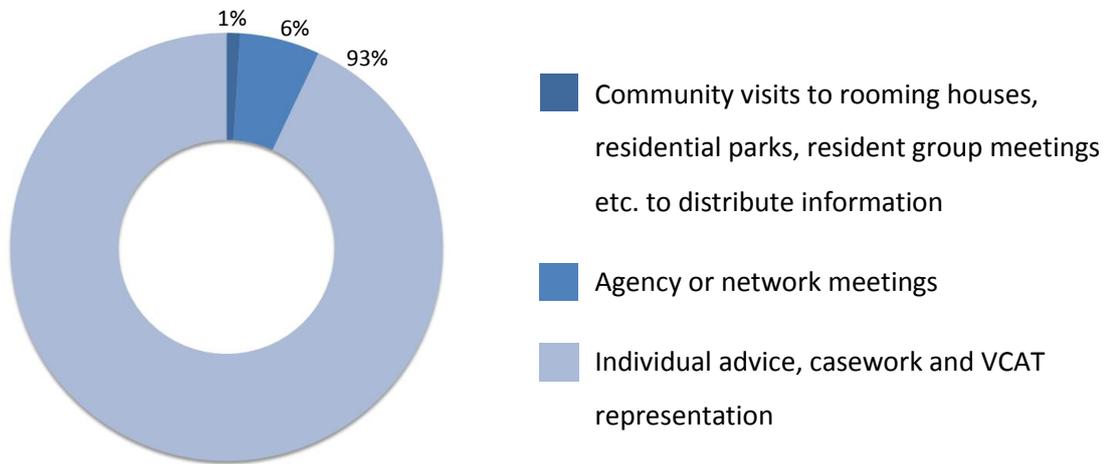


Figure 2. Hours of TAAP service delivery 2012–14

A significant number of tenants experience vulnerability and disadvantage in communities across the EMR, facing barriers such as rental stress, family violence, low English proficiency and the lack of access to information. There is real concern that despite the high numbers of tenants contacting the program, there are even more vulnerable and isolated tenants who are unaware of its existence, illustrating the importance of prioritising networking, community legal education and outreach as part of TAAP service delivery in the future. This will only be possible with additional resourcing.

3. Client Profile

Since its commencement in August 2012 TAAP has assisted in more than 924 separate tenancy matters¹¹.

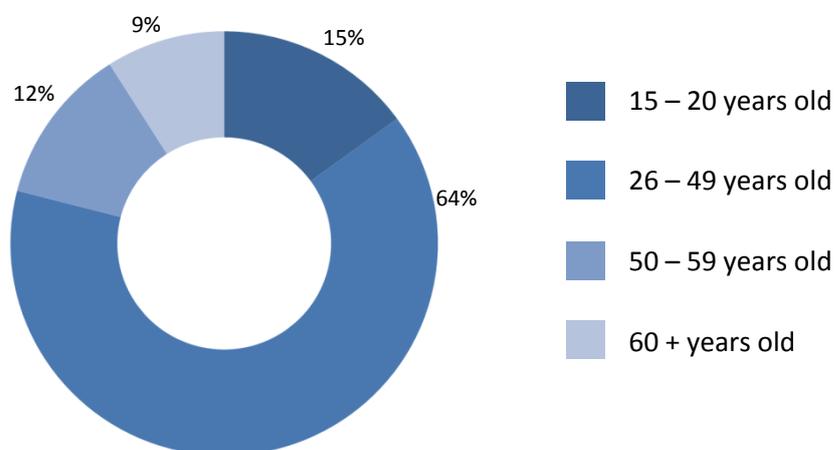


Figure 3. Client age

Tenants seeking assistance were female (57%) and male (43%) and 46% were aged 26–49 years old (figure 3). The majority were born Australia (62%), followed by China (8%), Iran (4%), New Zealand (3%) and India (2%). Overall 38 different countries were represented in the client data. 83% were renting accommodation through a private landlord, 10% were in a rooming house, 2% were in a caravan park and 1% were in social housing¹² (figure 4).

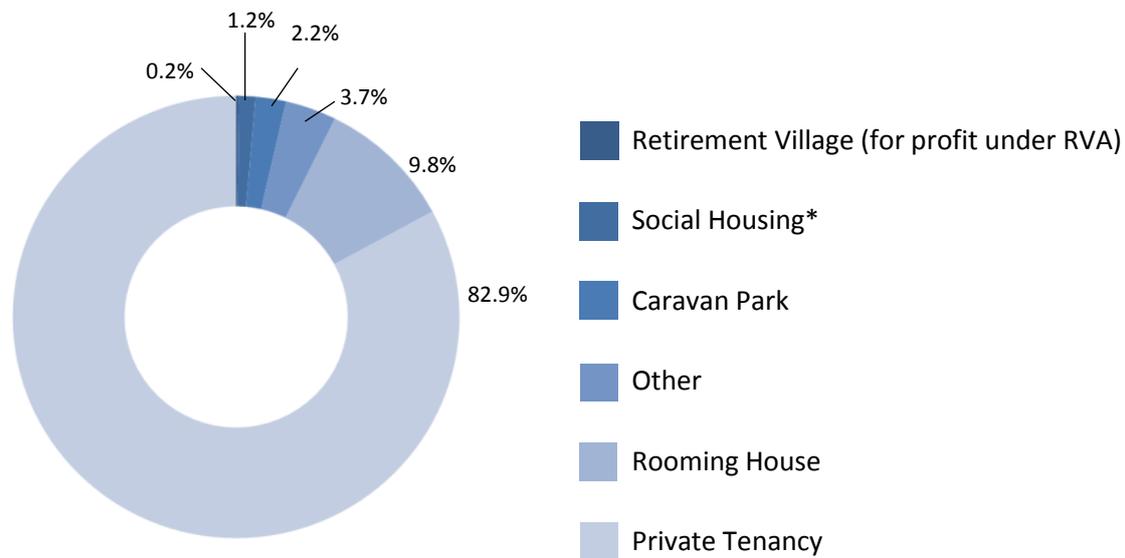


Figure 4. Accommodation types

3.1 Vulnerable and Disadvantaged Tenants

TAAP assists the most vulnerable tenants in the region. The program’s guidelines require individuals to be experiencing financial disadvantage while also experiencing another indicator of vulnerability relating to individual wellbeing (figure 5) in order to be eligible for assistance.¹³

A significant number of TAAP clients face a number of these vulnerabilities simultaneously but for the purpose of the program the Advocates identify the vulnerability that most necessitated the assistance. For tenants facing multiple vulnerabilities this vital assistance can be the difference between maintaining a tenancy and facing homelessness. 73% of the clients were in receipt of a Centrelink income, whilst the remaining 27% reported experiencing financial hardship. A significant proportion of this cohort were international

students who were ineligible for Centrelink support despite experiencing significant financial hardship.

In 2011, over 25% of renting households in the EMR experienced rental stress, a figure significantly higher than the state average of 19.1%¹⁴

TAAP has developed strong partnerships with housing services and community agencies in the region such as City Life, Community Housing Ltd and Wesley Mission. These partnerships are essential to ensure that vulnerable and disadvantaged tenants are able to access the appropriate support services quickly. To enhance access, the program piloted an outreach program at Wesley Homelessness and Support Service in Ringwood.

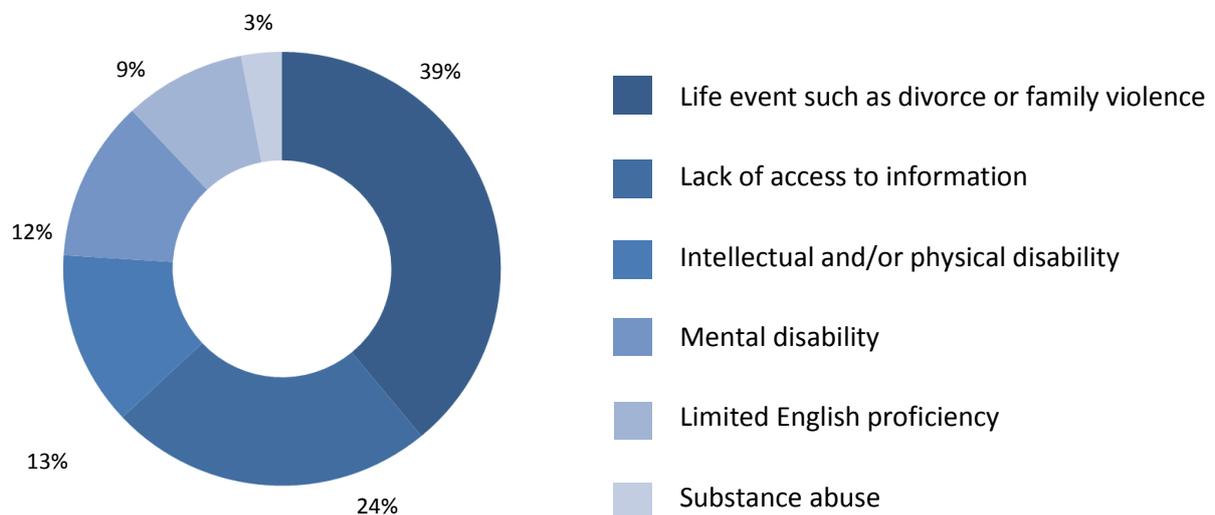


Figure 5. Vulnerability factors

Case study: Mary's story

Mary, a young mother, contacted ECLC wanting information on how to end her fixed-term lease prematurely. She disclosed she was experiencing family violence and was preparing to leave her partner. The TAAP Advocate advised Mary of her rights in these circumstances and explained that ECLC also offered a free legal advice service in family violence and family law. Mary indicated she was not yet ready to leave the relationship but was collecting information for herself and her children. The Advocate referred Mary to Eastern Domestic Violence Outreach Service for information on other supports available to her.

3.2 Family Violence

The predominant vulnerability indicator as stated by clients using TAAP (figure 5) was a life event such as family violence or divorce (40%).

ECLC has seen an increase in compensation claims and tenancy issues related to family violence. This reflects a state-wide trend discussed in “Home Safe” Justice Connect Homeless Law’s submission to the Royal Commission into Family Violence that states that almost half the 60,454 women who sought help from homelessness services in Victoria in 2013–14 cited domestic violence as the reason for their predicament.¹⁵

The housing affordability crisis has increasingly put women who are victimised by family violence at risk of homelessness. The Anglicare 2015 Australia Rental Affordability Snapshot found that on 11-12 April 2015, less than 0.1% of private rental properties in metropolitan Melbourne were affordable and appropriate for a single mother with two children who relies on a parenting pension.¹⁶

There is currently very limited protection under the Residential Tenancy Act 1997 for people experiencing family violence. There is an assumption in the Act that protected people or affected family members of an intervention order will want to stay in the property when most move out early due to safety concerns as well as due to the financial burdens of paying the rent as a renter with only one income. Many of the legal remedies (such as the determination of liability between co-tenants) can only be sought where a tenant has retained possession of the property and this does not reflect ECLC’s experiences assisting family violence victim/survivors. TAAP has seen a steady increase in applications to VCAT in relation to family violence where the aggrieved party is seeking to end the tenancy early and escape the violence without incurring additional costs that they can ill afford.

It is noted that the Tenants’ Union of Victoria provided a comprehensive submission to the Royal Commission Into Family Violence about reform of tenancy law in this area, and its recommendations are supported.

Case study: Freda's Story

Freda was referred to ECLC by her family violence support worker. Freda had moved out of her previous property because of family violence from her partner who was still living at the property. Freda had contributed half of the bond; however, the bond had been lodged entirely in her partner's name and he was not prepared to reimburse her half. Freda did not want to negotiate any further with her now ex-partner as it was causing her great distress.

Freda and her support worker attended an appointment with the Tenancy Advocate. The Advocate advised her how to make an application to VCAT and the evidence needed for the VCAT Member to make an order that Freda's share of the bond be returned. The Advocate also informed Freda about the Protected Persons' Space, the option for remote viewing facilities and the Court Support Worker at Ringwood VCAT.

Freda (assisted by her support worker) was able to make the application for the bond herself and appeared at VCAT using the remote viewing facilities without the Advocate. Freda was returned her share of the bond and felt safe and supported by the legal process whilst pursuing her rights.

3.3 Lack of Access to Information

The lack of access to information was the second most common vulnerability factor disclosed by TAAP clients. This includes a lack of internet access since throughout the EMR catchment there are approximately 54,000 households with no internet access, ranging from 11% in Manningham and Maroondah to 18% in Monash and Whitehorse¹⁷.

Australian Bureau of Statistics' 2014 Household Use of Information Technology study illustrates that internet access at home correlates strongly with the economic situation of the household.¹⁸ In 2012–13, 98% of households with household income of \$120,000 or more had internet access, compared to 57% of households with household income of less than \$40,000.¹⁹ As services are increasingly conducting their business on line, houses with no internet access (or dial up) are being left behind in the 'digital divide'.

Access to the state-wide tenancy service provided by Tenants Union of Victoria (TUV) can be challenging for some of TAAP's more vulnerable clients. While telephone advice is suitable for some, a significant number of vulnerable clients require face-to-face assistance in these matters. This can be due to an array of different issues including low English language proficiency and/or needing assistance filling out or understanding specific documents. For those tenants needing face-to-face assistance who are living in more remote areas of the EMR, the distance to the TUV's office in the inner city suburb of Fitzroy can be prohibitive.

Case study: Joan and Betty's story

Joan and Betty, both in their 70s, had been living in separate caravan parks in the Outer East for a number of years. They approached the TAAP Advocate having separately received notices from their respective caravan park managers requesting they re-locate their vans to another location in the caravan park at their own expense. This was not financially viable for either of the women as they had each invested their full retirement monies to acquire and 'fit-out' their caravan sites.

The Advocate made enquiries to find that the managers were acting on behalf of the owner of both caravan parks which was a local government council. After extensive research, they found that the reason for the relocation request was due to the caravan sites being partially located on Crown Land. Neither of the tenants had been informed about their investment being located on Crown Land as required under the Crown Land (Reserves) Act 1978.

The Advocate found that stringent and inflexible restrictions applied to sites on Crown Land, which had rendered both investments near worthless. It became clear that Joan and Betty were facing issues beyond the scope of the caravan park provisions of the RTA. The Advocate referred them to Justice Connect who approved both of their applications for pro bono legal assistance due to their matters potentially affecting hundreds of residents in caravan parks across Victoria.

This example demonstrates the importance of individual tenant assistance with far broader application.

3.4 Disability

13% of TAAP clients were identified as having a physical or intellectual disability. People with disabilities are especially vulnerable to homelessness and tenancy issues with 64% of Australian adults who had been homeless in the past ten years reporting to have a disability or long-term health condition.²⁰ Furthermore, 45% of people with disabilities in Australia live in poverty or near poverty, more than double the OECD average of 22 per cent²¹.

3.5 Mental Health Issues

12% of tenants assisted by TAAP disclosed they were suffering from significant mental health issues. People experiencing mental illness issues face multiple barriers in accessing secure and stable housing, including poverty and discrimination in the private rental market.²² Furthermore, an individual's mental health and their housing arrangements can have a harmful and mutually destructive relationship.²³ While mental health issues can cause tenancy issues, unstable housing arrangements can also contribute to the deterioration of mental wellbeing.²⁴

Case study: Josephine's Story

Single mum Josephine was referred to ECLC after presenting to a homelessness service for help to find accommodation for her and her three children after fleeing domestic violence. Josephine's former landlord was taking a claim to VCAT for compensation of just under \$4,000 for repairs and cleaning. The homelessness service suspected the landlord was not within their rights in this case and referred Josephine to TAAP.

During this time, Josephine was experiencing significant mental health issues. The Tenancy Advocate witnessed her regularly distressed, overwhelmed and under a lot of pressure. Josephine revealed that she had signed over her bond of \$1,626 after bullying tactics and threats made by the landlord exacerbated her mental health issues. She also explained to the Advocate that she did not agree with the landlord's outstanding compensation claims. The Advocate assisted the client in gathering evidence in relation to the claim including the original condition report, the 'outgoing

report' and periodic inspection reports during the tenancy. The Advocate attended the VCAT hearing with the client and was able to show the tribunal evidence that the landlord had no basis for the claim.

Due to the client's vigilant record-keeping the tribunal found that the claims being made by the landlord were pre-existing prior to the tenant taking possession of the property. Furthermore, the tribunal found that the landlord was not entitled to refund of the bond as it was an Office of Housing (OoH) bond and ordered that the bond be refunded back to OoH in full.

3.6 Culturally and Linguistically Diverse Communities

Limited English language proficiency was an issue for 9% of tenants assisted. Within the EMR 23% of residents were born in a non-English speaking country.²⁵ Of this population, 39,059 people (17%) have low proficiency in English, in that they speak English not well or not at all.²⁶ The municipalities of Monash, Whitehorse and Manningham have the highest populations of people with low English proficiency in the region. Areas with the highest percentages of people not fluent in English are also areas identified as the highest ranking in terms of disadvantage and /or rental stress within each municipality.²⁷ Low English proficiency can cause major communication barriers between tenants and their landlords or real estate agents.

Overseas student populations in the EMR have been found to be a particularly vulnerable tenant group, predominantly within the 15-25 years age group as the second highest cohort (15%) represented in the client data (figure 4). This representation is due to the number of key Melbourne tertiary education institutions located within the catchment including Deakin, Monash and Swinburne Universities and many more.

The Tenancy Advocates note that a number of international students needing assistance have misconceptions that tenancy issues will negatively impact their student visa status. There is concern that this misconception could be a barrier for other international students approaching the Centre with tenancy issues in the future.

Case study: Javed's Story

After Javed, a young international student, had moved out of his rental property, the landlord claimed that he owed her \$650 for cleaning, as well as additional compensation for damage. Javed had already hired professional cleaners to clean the house and disputed any damage. Most of the landlord's claim was unsubstantiated by evidence.

The real estate agents had stopped responding to any of Javed's phone calls and emails. As Javed did not speak English well, the Advocate assisted him with making an application for the return of the bond. At this point, the Advocate became aware that a new agent was acting for the landlord and contacted the new agent as Javed was prepared to pay \$200 to settle the matter. Javed was moving interstate and wanted a quick resolution. However, the landlord (represented by the real estate agent) did not accept this amount.

The Advocate's attendance at VCAT ensured that Javed was supported in the unfamiliar legal process where language was an additional barrier. At the hearing, the VCAT member considered all of the evidence and ordered that the landlord was only entitled to \$250 of the total bond. The Advocate's attendance at VCAT ensured that Javed obtained a just outcome.

4. Tenancy Issues in the East

Since its commencement in August 2012 TAAP has assisted in more than 924 separate tenancy matters in the East²⁸. The Advocates provide assistance to clients with a number of interventions ranging from information and advice through to direct negotiation with landlords and representing clients at VCAT.

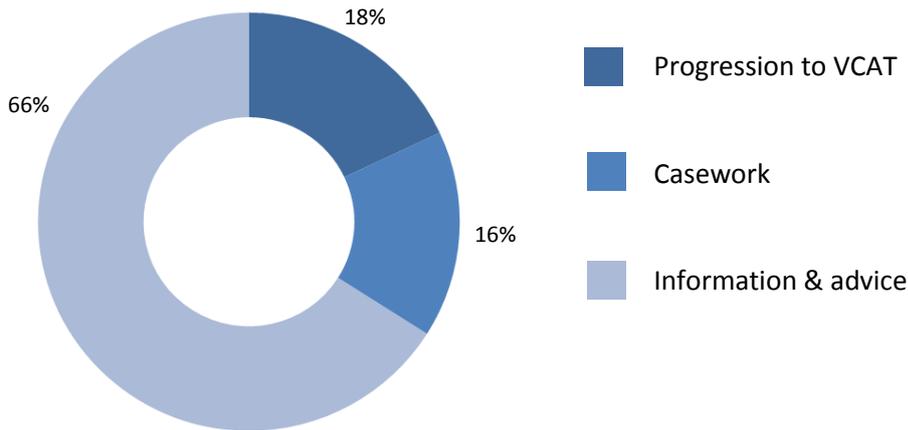


Figure 6. Legal intervention provided

4.1 Notice to Vacate & Rent Arrears

Two of the most common issues tenants seek help with are possession or Notice to Vacate and rent arrears (figure 7). These cases can be complex and time consuming as the Advocate links clients who are facing risk of homelessness in with housing services while also providing tenancy support. This is consistent with ECLC’s holistic approach to client service provision, where the link between legal need and health is well evidenced and documented. In tenancy matters, linking a person with adequate supports in addition to providing legal intervention can minimise the risk of housing stress and homelessness in the future.

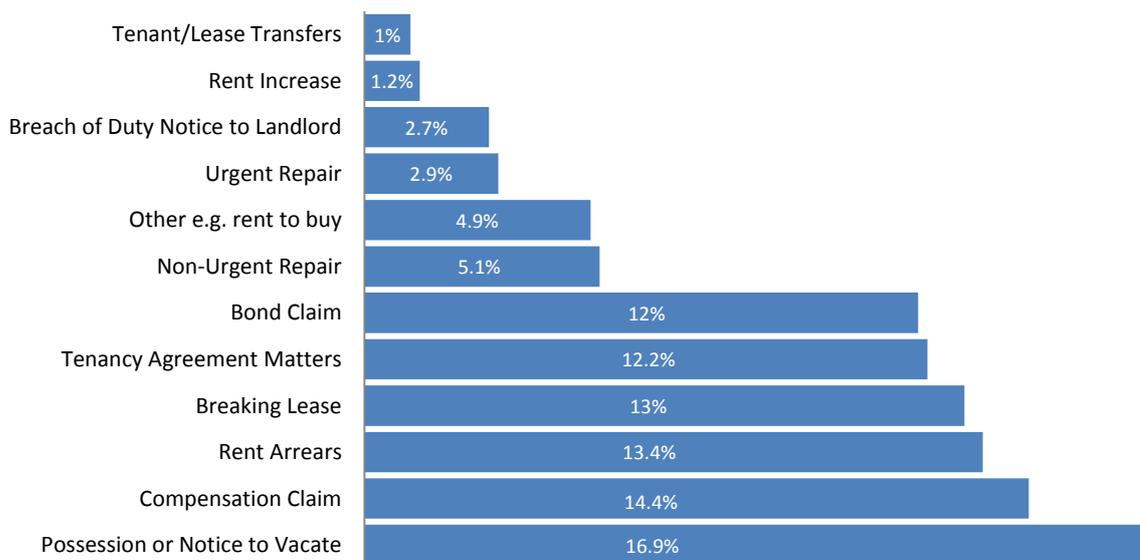


Figure 7. Tenancy Matters

4.2 VCAT Attendance

Although there is no up-to-date data on tenant non-attendance at VCAT, a discussion paper released by VCAT in 2010 estimated an 80% non-attendance rate by tenants at hearings.

Whilst this figure does not differentiate between the types of hearing tenants failed to attend, the location of these hearings or the eventual orders VCAT made, it indicates that a large number of important VCAT decisions are being made in the absence of the tenant.

Hence the work of the Tenancy Advocates in supporting tenant attendance at VCAT (either by preparing the tenant for self-representation or by attending the hearing with the tenant) is a significant and valuable aspect of the program.

Of the TAAP cases that went to VCAT, the outcomes were as follows:

- Full redress for the tenant 58%
- Partial redress for the tenant 18%
- No redress for the tenant 6%
- Outcome unknown (Unable to make contact with the tenant) 18%

Given the significant vulnerabilities experienced by the tenants assisted by the Centre and the impact of non-attendance as outlined above, the 'success rates' above with over 75% receiving at least partial redress are highly significant and demonstrate the key impact of the program.

4.3 Tenancy Agreement

A large proportion of the requests for assistance regard clarifying a client's rights or responsibilities in relation to their tenancy agreement. This is not as simple as it sounds.

With the rise of rental prices, the existence of shared households has become more common – whether they be through housemates or rooming houses. These new housing trends have created a number of new challenges for both tenants and landlords and the legal frameworks that exist to protect them, primarily the Residential Tenancies Act 1997.

Case study: Aisha and Basar's Story

Aisha and Basar, are a couple studying at university, and placed an advertisement for a new housemate to share the rent because they were having financial hardships. The successful candidate, Craig, was officially placed onto the tenancy agreement and bond, and the household ran smoothly for the first 2 months. However, then Craig started drinking more frequently and became aggressive towards Aisha and Basar; picking fights, and yelling racial slurs at them. On one occasion, they were forced to call the police because of his abusive behaviour, and they believed he may have caused damage by punching the walls of his room.

Aisha and Basar began to feel fearful about staying in the house, and only returned to the property to sleep, frequently staying with friends and eating at restaurants to avoid conflicts with Craig. They contacted the real estate agent about Craig's behaviour, and the real estate agent told them Craig was not the agency's problem, and that the couple would still be legally liable for the house for as long as their name was on the lease.

Aisha and Basar sought ECLC's advice about their dispute with Craig. They explained that they would prefer to stay in the property because it was close to their university, but were also willing to sign over the tenancy to Craig to resolve the dispute. But Craig refused to leave or sign any paperwork that would let them leave as he could not afford the rent himself.

Aisha and Basar felt trapped. Even if they applied to VCAT to have their names removed, they did not have the money to pay double rent to live in another property in the meantime. They are also afraid that Craig would cause more damage to the house if they moved out while still being named on the lease. They could not evict Craig themselves. Their only option was to negotiate with him directly despite the fact he was extremely volatile.

4.4 Sharehouses

Renters will often enter into sharehouse arrangements through online advertisements with little or no knowledge about their housemates beforehand, and often with little understanding of the legal differences between different sharehouse arrangements. In fact, each renter within a sharehouse may have different legal standing, depending on whether or not they have exclusive possession of part of the property.

Under current Victorian legislation, there is significant legal uncertainty with respect to shared housing arrangements, specifically around licensees, subtenants and rooming house residents. Licensees who are not named on the lease and do not have exclusive possession are not covered under the RTA. However, it is often difficult for Advocates to give advice about whether a renter has exclusive possession of a room in specific cases, and the renter's legal standing will be significantly different if the Act does not apply to them. Where trained advocates and lawyers find this area of law extremely difficult, it can be almost impossible for the layperson to understand.

Although licensees are not named on leases, the large majority are still nonetheless living in the rental property as their primary place of residence, and in our experience, are often some of the most vulnerable renters in the system. Licensees are often not named on leases because they do not have a rental history or do not have enough income to be accepted on a lease. Some licensees have recently arrived in Australia, do not understand much English or come from a country with significantly different approaches to renting. If they are evicted, many of these renters do not have access to a safety net of family or friends for housing.²⁹ For many licensees, their head tenant/landlord may change the locks on the doors without warning and they may have little to no redress to regain access to the property.

ECLC has recommended to the review of the RTA that where a renter pays rent and lives somewhere as their primary place of residence, they should be covered under the Act regardless of whether they have exclusive possession of all or part of the property.

Case study: Rouba and Lee's Story

Rouba lives in a self-contained granny flat at the back of the property. Lee lives in the main house with Mark, who is the only person on the lease and the "head tenant" that everyone pays rent to. Both Rouba and Lee approached the Advocate for advice about Mark's aggressive manner, repairs in the house and his attempt to personally evict them from the property without a VCAT order.

Rouba is in a clear sub-tenancy because of her exclusive possession of the granny flat. However, it is unclear if Lee would fall under the Act because he may be a licensee, even though they are experiencing exactly the same problems with the same landlord in the same property. Both Rouba and Lee consider the property their primary address, and are at risk of homelessness if they are evicted from the property.

Both matters are brought to the Tribunal. Lee's application makes reference to the Australian Consumer Law in the alternative. The matters are heard together, and the VCAT member makes the same order for both tenants because the landlord does not rebut the presumption under section 507 of the Act.

5. Challenge and Opportunity

A wide range of key issues have been researched, considered and analysed in the preparation of this report. Housing affordability and rental stress are major concerns that significantly affect tenants living in the EMR, leading to a range of housing and tenancy problems. The Centre's data and experience confirms that the program is addressing serious need and that a diverse range of highly vulnerable communities are being assisted. Finally, the research identifies some systemic tenancy and housing issues that are emerging as the housing and rental market changes and require further attention, particularly by government.

The research considered the focus and emphasis of ECLC's tenancy service. It is clearly well targeted and heavily focused on direct service delivery, using empowerment approaches where possible. However, the data identifies the Centre is struggling to meet this high

demand and too often relies on highly vulnerable and disadvantaged tenants to be skilled at finding and seeking assistance.

Throughout the research a broad range of opportunities for further development and work by ECLC and its many community and agency partners were identified. Some are targeted initiatives to reach highly vulnerable groups while others would actively reduce demand by preventing the need for tenancy assistance before it occurs.

These opportunities include proposals to:

- Raise the profile of tenancy program with a focus on particularly vulnerable and disadvantaged client groups;
- Raise the profile of the tenancy program at caravan parks, particularly in the Yarra Ranges;
- Undertake assertive outreach to known rooming houses and build stronger relationships with relevant Council to deal with unregistered rooming houses;
- Further develop opportunities for joint outreach with relevant services, eg. Centrelink;
- Include community legal education on housing and tenancy when undertaking education regarding family violence;
- Deliver community legal education on housing and tenancy to health, disability and community services including financial counsellors;
- Collaborate with Indigenous services and community leaders to build a partnership approach to increase access to tenancy legal information and advice for the ATSI community;
- Further develop partnerships with CaLD communities' services to encourage timely referrals and build capacity;
- Strengthen networks with service providers and community hubs in areas of higher rental stress; and
- Target education institutions to provide community legal education, particularly for international students and disengaged young people to inform them of their rights and responsibilities as they seek independent housing options.

ECLC is well placed to build upon its current success in tenancy and other programs and expand its service delivery approach and reach, particularly targeting communities experiencing the highest level of disadvantage and/ or high rental stress. However, both the limited resources and current service model prevent any of these opportunities being meaningfully pursued.

Yet as this report outlines, whether through financial circumstances, health or family violence concerns leading to rental difficulties, or through tenants not having the skills or education or knowledge to challenge unscrupulous landlords, the consequences are often the same – a ‘failed tenancy’ leading to further financial and health problems and often the reality of homelessness and all of the challenge and risk that entails.

Sadly, those former tenants will then be likely to seek the help of other agencies and service systems – so the costs are both shifted and increased. The vulnerable members of the Eastern community deserve better.

References

- Anglicare Australia (2015) 'Rental Affordability Snapshot', http://www.anglicare.asn.au/site/rental_affordability_snapshot.php
- Australian Bureau of Statistics (2011) Census of Population and Housing, catalogue number 2010.2, ABS, Canberra
- Australian Bureau of Statistics (2014) Household Use of Information Technology- 2012-13, catalogue number 8146.0, ABS, Canberra
- Australian Bureau of Statistics (2012) 'Life after homelessness', Australian Social Trends, March 2012, catalogue number 4102.0, ABS, Canberra
- Bleasdale, M. (2007) Supporting the housing of people with complex needs. AHURI Final Report No. 104. Melbourne: Australian Housing and Urban Research Institute, UNSW-UWS Research Centre, NSW
- Costello, L, Thomson, M and Jones, K. (2013) 'Mental Health and Homelessness: Final Report', Australian Housing and Urban Research Institute Research Synthesis Service, Melbourne, Victoria
- Carson, D & Kerr, L. (2014) 'Australian Social Policy and the Human Services', Cambridge University Press, Victoria
- Directorate for Employment, Labour and Social Affairs (2009) 'Sickness, disability and work: keeping on track in the economic downturn – background paper', Organisation for Economic Co-operation and Development.
- Homeless Law (2015) 'Homesafe: Submission to the Royal Commission into Family Violence', Justice Connect, Victoria
- National Shelter, 2014, 'Housing Australia Fact Sheet', www.shelter.org.au
- profile.id, 2015, Community Profile, <http://profile.id.com.au/>
- PWC (2011) Disability Expectations: Investing in a better life, a stronger Australia', www.pwc.com.au/industry/government/
-

Notes

¹ National Shelter, 2014, 'Housing Australia Fact Sheet', www.shelter.org.au, pg. 9

² Ibid

³ Anglicare Australia, 2015, 'Rental Affordability Snapshot', Pg. 18

⁴ profile.id, 2011, based on ABS Census of Population and Housing

⁵ D Carson & L Kerr, 2014, 'Australian Social Policy and the Human Services', Cambridge University Press, Australia, Pg. 96

⁶ National Shelter, 2014, 'Housing Australia Fact Sheet', www.shelter.org.au, pg. 9

⁷ Ibid

⁸ Anglicare Australia, 2015, 'Rental Affordability Snapshot', Pg. 18

⁹ profile.id, 2011, based on ABS Census of Population and Housing

¹⁰ D Carson & L Kerr, 2014, 'Australian Social Policy and the Human Services', Cambridge University Press, Australia, Pg. 96

¹¹ August 2012 – 31 October 2015

¹² *'Social housing' as defined by the TAAP does not include public housing. It does however include housing which may be owned by DHS but managed by another service for the purposes of crisis or transitional accommodation, or community housing and housing cooperatives. This is different to the definition of social housing employed by the Australian Bureau of Statistics, Census of Population and Housing 2011 "*dwelling being rented by a resident of the household, where the landlord type is a State or Territory housing authority*".

¹³ Consumer Affairs Victoria (CAV) introduced a separate category 'family violence' to be used for data collection from July 2014 onwards

¹⁴ profile.id, 2015, Community Profile, <http://profile.id.com.au/>

¹⁵ Homeless Law, (2015) 'Homesafe: Submission to the Royal Commission into Family Violence', Justice Connect, Victoria

¹⁶ Anglicare Australia, 2015, 'Rental Affordability Snapshot', Pg. 18

¹⁷ profile.id, 2015, Community Profile, <http://profile.id.com.au/>

¹⁸ Australian Bureau of Statistics, 2014, *Household Use of Information Technology- 2012-13*, catalogue number 8146.0, ABS, Canberra

¹⁹ Ibid

²⁰ Australian Bureau of Statistics, 2012, 'Life after homelessness', *Australian Social Trends, March 2012*, catalogue number 4102.0, ABS, Canberra.

²¹ PWC (2011) Disability Expectations: Investing in a better life, a stronger Australia', www.pwc.com.au/industry/government/ Page 9

²² Bleasdale, M. (2007) Supporting the housing of people with complex needs. AHURI Final Report No. 104. Melbourne: Australian Housing and Urban Research Institute, UNSW-UWS Research Centre.

²³ Costello, L, Thomson, M and Jones, K. (2013) 'Mental Health and Homelessness: Final Report', Australian Housing and Urban Research Institute Research Synthesis Service, Melbourne. Pg. 21

²⁴ Ibid

²⁵ Australian Bureau of Statistics, Census of Population and Housing 2011

²⁶ Ibid

²⁷ Ibid

²⁸ August 2012 – 31 October 2015

²⁹ It is noted that many of these licensee disputes are eligible to be heard at VCAT under the Australian Consumer Law and Fair Trading Act 2012 (Vic) ('ACLFTA') and by extension, the Australian Consumer Law ('ACL') under Schedule 2 of the Competition and Consumer Act 2010 (Cth). However, the ACLFTA and ACL are general Acts and do not provide specific protections for bonds, a fair process for eviction, right to quiet enjoyment, rights of entry, rights to good repair, etc.