

A PROPOSAL TO GIVE THE MAGISTRATES' COURT OF VICTORIA JURISDICTION TO RESOLVE RESIDENTIAL TENANCY MATTERS INVOLVING FAMILY VIOLENCE

SAMUEL TYRER*

Family violence victims face a problem under Victoria's Residential Tenancies Act 1997 ('RTA'). Victims must apply to access its protections in the Victorian Civil and Administrative Tribunal ('VCAT') which is a separate jurisdiction to where they apply for intervention orders under the Family Violence Protection Act 2008 (Vic), ie, the Magistrates' Court of Victoria. This may result in victims having to navigate a completely different jurisdiction, ie, VCAT, if they access the RTA's protections there. This makes the process unnecessarily complex, and it may even deter some victims from accessing the RTA's protections for a safe home. Victoria's 2016 Royal Commission into Family Violence identified this problem, and this article advances and unpacks a recommendation it made to consider legislative reform to simplify processes for victims. The research presented herein, while focused on Victorian law, may also inform potential approaches to law reform in other Australian jurisdictions.

I INTRODUCTION

The COVID-19 pandemic has brought many challenges for the state to address, among them increasing levels of domestic violence within homes.¹ Circumstances made it difficult for victims to escape violence as they were locked-down and

* BA (Melb), LLB (Hons) (Melb); LLM (TCD) (Distinction); GCHE (Griffith); GDLP (College of Law); Solicitor, Supreme Court of Victoria; Doctoral Candidate, Adelaide Law School, The University of Adelaide. This research is supported by the FA and MF Joyner Scholarship in Law, and by the Zelling-Gray Supplementary Scholarship. I am grateful to Louise Olsen and Gavin Ly for helpful conversations and comments that have informed aspects of this project. Thanks also to Paul Babie and Peter Burdon for their supervision (this article emerges from doctoral research supported by the above scholarships) and to the anonymous peer reviewers who provided perceptive and helpful comments and suggestions on an earlier draft. All errors remain my own.

1 See Kerry Carrington et al, 'The Impact of COVID-19 Pandemic on Domestic and Family Violence Services and Clients' (Research Report, Queensland University of Technology Centre for Justice, November 2020); Norman Hermant, 'Domestic Violence Surging amid COVID-19 Lockdowns, Research Shows', *ABC News* (online, 25 June 2021) <https://www.abc.net.au/news/2021-06-25/coronavirus-covid-lockdowns-and-domestic-violence-data/100237406?utm_campaign=abc_news_web&utm_content=link&utm_medium=content_shared&utm_source=abc_news_web>.

isolated in the same home as the violent perpetrator, literally 24-hours a day at the height of the pandemic in some Australian states.² For victims, being isolated in the home with a violent perpetrator is a terrifying proposition. Their physical and psychological safety is put at risk as is, relatedly, their experience of home. Victims may be forced to leave the home. The COVID-19 pandemic has thus highlighted the pre-existing problem of family violence and homelessness, the focus of this article. Victims' experience of home is a particular focus.

Victims suffer violent abuse. This is contrary to a positive experience of home. Fox explains: 'when the home becomes a place of danger, the positive associations of home – as a place of safety, of security, of control over oneself and one's environment – become subverted, and the effect can be psychologically very damaging'.³ This is 'the darker side of home as a common site of domestic violence and fear within families'.⁴ This is not how it should be. Homes should be places of shelter, inside which ideally takes place an experience of 'home' as a sense of security and of loving relationships.⁵ Home, in this sense, is essential to individuals' flourishing.⁶ However, it is destroyed or at least undermined for family violence victims, as noted. Victims may even have to flee their homes, to protect their lives and those of their children,⁷ in which case they lose both the shelter and experience of home; homelessness in both of these senses is the price they pay to obtain safety.⁸ While many victims leave their home, it should be acknowledged

2 Carrington (n 1) 15, 17, 19–20; Hermant (n 1).

3 Lorna Fox, *Conceptualising Home: Theories, Laws and Policies* (Hart Publishing, 2007) 162 <<https://doi.org/10.5040/9781474200554>> ('*Conceptualising Home*'). See also Council to Homeless Persons, Submission No 920 to Royal Commission into Family Violence (May 2015) 6, 8 ('CHP Submission to RCFV'); Royal Commission into Family Violence: *Summary and Recommendations* (Report, March 2016) 22 ('*RCFV Summary Report*').

4 Fox, *Conceptualising Home* (n 3) 162.

5 On this particular theorisation of the experience of home: see Samuel Tyrer, 'Home in Australia: Meaning, Values and Law?' (2020) 43(1) *University of New South Wales Law Journal* 340, 349–58 <<https://doi.org/10.53637/GGOS1001>> ('Home in Australia'). See also Lorna Fox, 'The Meaning of Home: A Chimerical Concept or a Legal Challenge?' (2002) 29(4) *Journal of Law and Society* 580, 590 <<https://doi.org/10.1111/1467-6478.00234>> ('The Meaning of Home'); the physical home is 'the locus for the experience of home'; Fox, *Conceptualising Home* (n 3) 145–6.

6 As theorised in earlier work on the experience of home and the human flourishing theory of property espoused by Gregory Alexander: see Samuel Tyrer, 'A New Theorisation of "Home" as a Thing in Property' (2022) 49(2) *University of Western Australia Law Review* 191 ('A New Theorisation'). See also Fox, *Conceptualising Home* (n 3) 109–22 and empirical studies cited therein on the importance of home to psychological wellbeing.

7 *Royal Commission into Family Violence: Report and Recommendations* (Report, March 2016) vol 2, 38 ('*RCFV Report: A Safe Home*'); Kellie McDonald, 'Tenancy and Domestic Violence: New Tenancy Reforms Strengthen the Rights of Domestic Violence Victims' (2019) 53 (March) *Law Society Journal* 78, 78.

8 Relevantly, the loss of home as an experience (homelessness) and loss of home as shelter (rooflessness) has been distinguished: see Peter Somerville, 'Homelessness and the Meaning of Home: Rooflessness or Rootlessness?' (1992) 16(4) *International Journal of Urban and Regional Research* 529 <<https://doi.org/10.1111/j.1468-2427.1992.tb00194.x>>. 'People distinguish between the absence of "real home" (ironically meaning a failure to experience home in an *ideal* sense) and the lack of something which can be *called* home for them (meaning lack of abode).': at 530–1 (emphasis in original). Somerville argues 'that there is much more to homelessness than the minimal definition in terms of rooflessness': at 536.

that for those who do not, a problem of homelessness may still exist in that the violence they experience destroys their experience of home.⁹

Family violence and homelessness is a complex and significant problem; family violence ‘is the single biggest cause of homelessness in Victoria’.¹⁰ Law is by no means capable of offering a comprehensive response to this problem. However, it may assist victims to re-establish both the place and experience of home, which is this article’s concern. Protections for victims contained in Victoria’s *Residential Tenancies Act 1997* (Vic) (*RTA*) may assist in this regard by affording victims in leased homes control and stability in respect of home in various ways. Laws must embody control and stability for individuals to experience home, as theorised in earlier work.¹¹ The *RTA*’s protections do so by allowing victims to apply for orders to end their lease, so they can leave an unsafe home (and ideally make a new home elsewhere).¹² Alternatively, victims may apply for orders for a new lease of their existing home with the perpetrator excluded, so they can remain living in their existing home safely (and thus retain home and related connections to their community).¹³ Other protections in the *RTA*, discussed later in this article, similarly support victims in leased homes to re-establish both the place and experience of home. However, victims may find it difficult to access these protections in practice.¹⁴

To access these protections victims must currently apply in the Victorian Civil and Administrative Tribunal (‘VCAT’),¹⁵ however, doing so remains problematic.¹⁶ Victims’ applications for intervention orders under the *Family Violence Protection Act 2008* (Vic) (*FVPA*) are made separately in the Magistrates’ Court of Victoria (‘MCV’).¹⁷ As such, application to VCAT pursuant to the *RTA* protections forces victims to navigate a different jurisdiction, thereby adding complexity to the

9 Of course, this does not preclude victims from still having some ‘positive attachment’ to their home; indeed, such an attachment ‘may be part of the reason why battered wives do not easily give up their homes in order to escape the violence, although further research is required in order to test such a hypothesis’: see *ibid* 535.

10 CHP Submission to RCFV (n 3) 3.

11 Tyrer, ‘Home in Australia’ (n 5) 361–70.

12 *Residential Tenancies Act 1997* (Vic) ss 91V(1)(a), (2) (*RTA*); Angela Spinney, Witness Statement No 58 to Royal Commission into Family Violence (20 July 2015) [36] (‘Spinney Witness Statement to RCFV’). See also *RCFV Report: A Safe Home* (n 7) 38.

13 *RTA* (n 12) ss 91V(1)(b), (2), 91W(1A), (6); *RCFV: A Safe Home* (n 7) 77.

14 *Royal Commission into Family Violence: Report and Recommendations* (Report, March 2016) vol 4, 112, 124–5 (‘*RCFV Report: Financial Security*’).

15 The Victorian Civil and Administrative Tribunal (‘VCAT’) has practically exclusive jurisdiction to hear victims’ (and other persons’) *RTA* applications. While the Magistrates’ Court of Victoria (‘MCV’) and County Court of Victoria have (a limited) jurisdiction to hear *RTA* applications where the dispute exceeds VCAT’s jurisdictional cap for the hearing of these matters (currently up to \$40,000), this rarely (if ever) occurs: *RTA* (n 12) ss 447, 509–10. Parties do not make *RTA* applications in the Supreme Court in its inherent jurisdiction as it is a costly jurisdiction in which to litigate.

16 *RCFV Report: Financial Security* (n 14) 112, 124–5.

17 *Family Violence Protection Act 2008* (Vic) s 42 (*FVPA*). Or applications are made in the Children’s Court of Victoria (‘CCV’) in circumstances involving a child: at s 42; *Children, Youth and Families Act 2005* (Vic) ss 515(2), 3(1) (*CYFA*). See also *RCFV Report: Financial Security* (n 14) 112, 124–5.

process.¹⁸ This may deter some victims from accessing the *RTA*'s protections.¹⁹ To redress this deficiency in the available protections, this article argues that the Parliament of Victoria ought to confer a new jurisdiction upon the MCV, along with existing victims' intervention order applications pursuant to the *FVPA*, to adjudicate victims' applications for protection under the *RTA* ('the new jurisdiction').²⁰ This would simplify processes for victims, who could apply jointly, following one process, to MCV so as to access protections under the *FVPA* and the *RTA*.²¹ This would expand accessibility to *RTA* protections for home for the victims of family violence, thereby supporting their experience of home. Further, to the extent expanded accessibility results in more victims accessing the *RTA*'s protections for home, it will ensure the law better protects home. This means that the experience of home can be enhanced by laws.²² This overall point is demonstrated through this article's discussion of the *RTA*'s protections directed to assisting victims with re-establishing the place and experience of home.

This article draws on the 2016 final report of Victoria's Royal Commission into Family Violence ('Commission'), which highlighted the difficulties faced by victims in navigating two jurisdictions in order to access the protections of the *RTA* and the *FVPA*.²³ Consistent with the recommendation of the report, this article argues for MCV to receive the proposed *RTA* jurisdiction.²⁴ However, and to be clear, the Commission's recommendation was for the Victorian Government to consider this reform. The Commission did not, as this article does, recommend it be implemented.²⁵ The Commission also did not, it follows, comprehensively set out the key features of the reform to be implemented in amending legislation; this article seeks to fill this gap.²⁶ This article also acknowledges the reform would not comprehensively address the problem of victims having to navigate multiple

18 *RCFV Report: Financial Security* (n 14) 112, 124–5.

19 The fact VCAT receives relatively low numbers of applications from victims under the *RTA*, as compared to the number of applications victims make in the MCV under the *FVPA*, may be indicative of this, although the Commission did not conclude as such and other reasons may explain this discrepancy: *RCFV Report: Financial Security* (n 14) 112. See also Judicial College of Victoria, Submission No 536 to Royal Commission into Family Violence (2015) 10 n 19 ('JCV Submission to RCFV'); Justice Connect Homeless Law, Submission to Royal Commission into Family Violence (May 2015) 27–9 ('Justice Connect Homeless Law Submission to RCFV'); Victorian Civil and Administrative Tribunal, Submission No 164 to Royal Commission into Family Violence (2015) 1, 3 ('VCAT Submission to RCFV').

20 The Commission first recommended consideration of this reform by the Victorian Government: see *RCFV Report: Financial Security* (n 14) 126. Recommendation 119 was in the following terms: 'The Victorian Government consider any legislative reform that would limit as far as possible the necessity for individuals affected by family violence with proceedings in the Magistrates' Court of Victoria to bring separate proceedings in the Victorian Civil and Administrative Tribunal in connection with any tenancy related to the family violence [within two years].' See also related discussion at 112, 124–5.

21 *RCFV Report: Financial Security* (n 14) 112, 124–5.

22 See generally Fox, *Conceptualising Home* (n 3); Tyrer, 'Home in Australia' (n 5); Tyrer, 'A New Theorisation' (n 6).

23 *RCFV Report: Financial Security* (n 14) 112, 124–5.

24 *Ibid* 126. See above n 20.

25 *Ibid* 126. See above n 20 for recommendation 119 extracted in full.

26 In recommending that the Victorian Government consider the proposed jurisdiction for MCV, the Commission left open the door for this further work which it understood would have funding implications: see below Part III.

court systems. For example, victims would still need to separately navigate the family law court system if they wish to obtain parenting orders (on who any children will live with) or property orders (on the division of assets acquired by parties to a relationship subject to the Act) pursuant to the *Family Law Act 1975* (Cth).²⁷ Similarly, victims would still need to navigate the County Court of Victoria or Supreme Court of Victoria if they need to bring a civil claim for testator family maintenance or there has been serious criminal offending necessitating a prosecution in those courts.²⁸ The proposed reform would not, as such, completely resolve the broader problem of victims having to navigate different and complex jurisdictions, but it would go some way to simplifying those processes for victims by combining the tenancy and intervention order system in MCV, which this article argues is relevant to victims' experience of home in housing.

In addition to this Introduction, the article contains four parts. Part II outlines the benefits of reform, which includes access to justice for victims and potential efficiency gains in case handling. Extending accessibility of the *RTA*'s protections to victims in MCV would improve access to justice. Victims could apply to MCV to access protections under the *RTA* and *FVPA* at the same time, and following the same process, which is not possible currently as *RTA* applications must be made separately to VCAT.²⁹ Part III sets out details, including outlining key features of the proposed reform, and thus building and expanding on the Commission's work. In setting out these details, the article provides guidance to policymakers in developing enabling legislation for the reform by providing a blueprint for that legislation. The proposed enabling legislation would confer jurisdiction on MCV to hear relevant applications made by victims under the *RTA* according to the specific processes set out, while also retaining VCAT's existing jurisdiction to hear these applications.³⁰ While approached from a Victorian law perspective, this part – on key features of the proposal – has relevance to other Australian jurisdictions in which victims face a similar problem of having to navigate two separate jurisdictions to access protections in tenancy and intervention order legislation.³¹ The research presented may thus inform potential approaches to reform in those jurisdictions which would need to also take into account their own unique tenancy and intervention order legislation.³² Part IV concludes and acknowledges that – in addition to the law reform advanced in this article – other policy responses are

27 *Family Law Act 1975* (Cth) ss 64B, 79. For useful discussion of the family law system from the perspective of home as experienced by children, see Kristin Natalier and Belinda Fehlberg, 'Children's Experiences of "Home" and "Homemaking" after Parents Separate: A New Conceptual Frame for Listening and Supporting Adjustment' (2015) 29(2) *Australian Journal of Family Law* 111.

28 JCV Submission to RCFV (n 19) 9–10.

29 *RCFV Report: Financial Security* (n 14) 112, 124–5.

30 To be clear, the proposal is for both MCV and VCAT to have concurrent *RTA* jurisdiction as regards victims matters: see below Part III(A)(2)(d).

31 That is, all Australian jurisdictions except Western Australia. Note that this problem exists to a lesser extent in some jurisdictions: see below Part II(C).

32 See below Part II(C).

necessary to address family violence, including to ensure affordable housing is made available to victims for shelter upon leaving violent homes.³³

Regarding terminology, this article refers to individuals who have experienced family violence as 'victims'. Use of the term 'victims' emphasises that these individuals are persons against whom a wrong has been committed in respect of 'which the justice system has an obligation to respond'.³⁴ However, other terms may be used including 'victim/survivors' or 'survivors' to emphasise that these individuals are not defined by the violence they have survived.³⁵ This article also uses the term 'family violence'. This term is taken to include physical, economic and emotional or psychological abuse by a person toward a family member.³⁶ A 'family member' may be a person's spouse, someone the person has an intimate relationship with, or a relative.³⁷ It may also be someone like a family member based on the social and emotional connection between the persons.³⁸ 'Family member' is thus given a broad meaning, encompassing persons who enjoy a close connection, regardless of blood-ties or whether they are traditionally thought of as 'family'.³⁹ It is not a requirement that violence occur in the home for it to be 'family violence', although that may be where 'family violence' typically occurs. This understanding of 'family violence' and 'family member' is taken from the *FVPA*, which is Victoria's centrepiece legislation on this social problem. It recognises that family violence comes in different forms. The Victorian Law Reform Commission has explained:

Recognising the broad nature of family violence is particularly important because it identifies unacceptable behaviour and validates the experiences of victims, who may have experienced many different types of violence. A broad definition of family violence is also important to ensure that people are able to obtain legal protection through an intervention order.⁴⁰

This article uses the term 'family violence' as explained above for consistency with the *FVPA*. However, other terms may be used, including 'domestic violence'. Having defined relevant terms and the problem of victims having to navigate two jurisdictions in Victoria to access protections under the *RTA* and *FVPA*, this article turns to explore a possible reform option.

33 *RCFV Report: A Safe Home* (n 7) 82, 84, 90–2 (recommendations 14–20).

34 Centre for Innovative Justice, *Opportunities for Early Intervention: Bringing Perpetrators of Family Violence into View* (Report, March 2015) 13.

35 *Ibid.*

36 *FVPA* (n 17) ss 5–7. 'Family member' is also defined broadly: at s 8.

37 *Ibid* s 8.

38 *Ibid.*

39 *Ibid.*

40 As explained in its report recommending that this legislation be introduced in Victoria: see Victorian Law Reform Commission, *Review of Family Violence Laws* (Report No 185, March 2006) 20 ('*VLRC Report*').

II A NEW JURISDICTION FOR MCV: KEY BENEFITS

This Part outlines the case for the proposed reform for MCV to receive *RTA* jurisdiction. This reform would improve access to justice for victims, and potentially result in efficiency gains via victims' *RTA* and *FVPA* matters being handled in a single jurisdiction.⁴¹

A Benefits

1 Access to Justice for Victims

Access to justice would be improved for victims by extending the accessibility of the *RTA*'s protections to them in MCV.⁴² This would be the reform's principal benefit. Victims could apply in MCV to access protections under the *RTA* and *FVPA* at the same time, and following the same process,⁴³ which is not possible currently as *RTA* applications must be made separately in *VCAT*.⁴⁴ The process of accessing protections would thus be made easier for victims, as MCV would become a 'one stop shop' for the hearing of *RTA* and *FVPA* matters.⁴⁵ This follows the Commission's general recommendation to, if possible, provide for victims 'to have all their legal issues determined in the same court'.⁴⁶ More victims may access the *RTA*'s protections for home in MCV under this proposed streamlined process than has been occurring in *VCAT*.⁴⁷

Because MCV would hear victims' *RTA* and *FVPA* matters together, victims would only need to attend one hearing, before the same judicial officer.⁴⁸ Victims

41 The Commission considered both aspects: access to justice for victims and whether efficiencies would result from the proposed expansion of MCV's jurisdiction. However, the Commission did not go so far as to endorse this proposed reform. In particular, it was unsure whether efficiencies or delays would result in practice: see *RCFV Report: Financial Security* (n 14) 112, 124–5. This reform would to some extent simplify processes for victims, but victims would still need to navigate other systems in other courts such as the family law court system in the federal courts: see above Part I.

42 The proposal is for both MCV and *VCAT* to have concurrent *RTA* jurisdiction regarding victims matters: see below Part III(A)(2)(d).

43 See also *RCFV Report: Financial Security* (n 14) 112, 124–5.

44 See above n 15.

45 A single jurisdiction for the hearing of victims matters, ie, a 'one stop shop' model, has been the ideal recommended in various law reform reports: Australian Law Reform Commission, *Family Violence: A National Legal Response* (Final Report No 114, October 2010) 149 ('*ALRC Report*'); *VLRC Report* (n 40) 182 [6.38]. The MCV's Family Violence Court Division, discussed later in this section, has been described as 'the closest example of a "one stop shop" model for victims of family violence in Australia': *ALRC Report* (n 45) 1499.

46 *Royal Commission into Family Violence: Report and Recommendations* (Report, March 2016) vol 3, 158 ('*RCFV Report: Court-Based Responses*'). See also *ALRC Report* (n 45) 149; *VLRC Report* (n 40) 182 [6.38].

47 See above n 19.

48 *RCFV Report: Financial Security* (n 14) 124–5. A single judicial officer to hear all victims' matters represents best practice: see Magistrates' Court of Victoria and Children's Court of Victoria, Submission No 978 to Royal Commission into Family Violence (June 2015) iv ('*MCV and CCV Submission to RCFV*'). Best practice includes '[i]ntegrated cross jurisdictional approaches to family violence cases to enable a single judicial officer (where appropriate) to determine the range of proceedings that a family experiencing family violence may encounter'; and a specialist approach where '[l]egal issues relating to family violence can be dealt with in the one court and possibly in the one hearing': *VLRC Report* (n 40) 182 [6.38].

would thus only need to tell their story once.⁴⁹ This too would be a significant improvement on the current approach whereby, because these matters are heard across VCAT and MCV, victims may have to attend multiple hearings, ie, a hearing in each jurisdiction before different judicial officers,⁵⁰ which may exacerbate the trauma of victims as 'they have to navigate another system' and may need to 're-tell their story' in each jurisdiction.⁵¹ In any case, the current approach involving two jurisdictions is arduous for victims to navigate.⁵² The proposal to ensure a single judicial officer in MCV could hear victims' *RTA* and *FVPA* applications would improve their experience of the justice system in this way.⁵³ Again, more victims may access the *RTA*'s protections in MCV, as a result, than occurs in VCAT currently.⁵⁴ In addition to improving access to justice as discussed, this reform would benefit victims in other ways as discussed in the next section.

2 Specialist Expertise and Support

Pursuant to this reform, victims' applications for protection pursuant to the *RTA* could be heard in MCV's Family Violence Court Division ('FVCD') which is staffed by specialists and support workers in family violence. Magistrates sitting in that division are assigned to it based on their family violence expertise, and the division's staff also have this expertise.⁵⁵ Victims would thus have their matters heard by specialists with an 'understanding of the dynamics of family violence and the issues faced by applicants and respondents'.⁵⁶

Second, victims would also gain access to the FVCD's specialised support services and specially designed premises. Support services and referrals are available to help victims navigate court processes and address their experience

49 *RCFV Report: Financial Security* (n 14) 112, 124–5.

50 *Ibid.*

51 *Ibid.* 112. '[T]he need to re-tell one's story multiple times or to correct misunderstandings caused by limited information sharing can greatly exacerbate the stress associated with court hearings for victims of family violence': *RCFV Report: Court-Based Responses* (n 46) 133. 'As things stand, it is necessary for some affected family members to re-tell their story in multiple forums or proceedings. For example, the victim may have to seek an FVIO to exclude the perpetrator from the home, and give evidence against the perpetrator in criminal proceedings for breach of an earlier order.': *RCFV Report: Court-Based Responses* (n 46) 158. 'The Commissions consider that fostering the seamlessness of the court process in this way has significant benefits for victims of family violence. This approach also minimises victims' exposure to multiple proceedings in different jurisdictions, thereby avoiding the personal and financial impacts of repeated proceedings and consequent reiteration of the same facts before different courts.': Australian Law Reform Commission, *Family Violence: A National Legal Response* (Summary Report No 114, October 2010) 21 ('*ALRC Summary Report*'). 'The benefits of the enhanced jurisdiction are significant. It creates a more seamless system for victims of family violence – including children – to allow them to access as many orders and services as possible in the court in which the family is first involved; removes the need for the child and the family to have to navigate multiple courts; reduces the need for victims of family violence to have to repeat their stories; and consequently reduces the likelihood that people will drop out of the system without the protections they need.': at 23.

52 *RCFV Report: Financial Security* (n 14) 112, 124–5.

53 *Ibid.* 124–5.

54 See above n 19.

55 *Magistrates' Court Act 1989* (Vic) s 41A(6) ('*MC Act*'); MCV and CCV Submission to RCFV (n 48) iii, 10, 30.

56 MCV and CCV Submission to RCFV (n 48) 30.

of family violence.⁵⁷ Specially designed premises have ‘separate waiting areas’ for victims, to ensure victims are separate from the perpetrator,⁵⁸ and facilities are available for victims to give their evidence via ‘alternative arrangements’ such as audio-visual link or from behind a screen in court, again to ensure that victims are separate from the perpetrator.⁵⁹ This recognises that ‘[v]ictims of family violence seeking the protection of the courts must be and feel safe within the court environment’.⁶⁰ Further, ‘the trauma and anxiety that accompanies the court process is heightened where victims know they will be in close proximity to the perpetrator and his supporters’.⁶¹

Third, victims would benefit from the FVCD’s focus on perpetrators’ behavioral change. Perpetrators would be ordered to attend counselling (as part of the Family Violence Court Intervention Program) if required by the *FVPA*, thereby engaging them in a process to rehabilitate and change their behaviour.⁶² Ideally, perpetrators cease their violent behaviour after counselling, thus enhancing victims’ safety vis-a-vis the perpetrator.⁶³ Counselling thus benefits victims, as well as perpetrators. As part of this reform, the FVCD could be empowered to order perpetrators to attend counselling, as it may do currently when hearing victims’ *FVPA* applications.⁶⁴ Finally, as the FVCD’s recent expansion demonstrates, it could administer matters under the jurisdiction proposed here if it is appropriately funded and resourced.⁶⁵

57 Ibid iii, 10.

58 Ibid 33.

59 Ibid 10.

60 Ibid 49. On the experience of victims in court: see *VLRC Report* (n 40) 221 [6.141]; Court Services Victoria, Submission No 646 to Royal Commission into Family Violence (29 May 2015) 14–15 (‘CSV Submission to RCFV’).

61 MCV and CCV Submission to RCFV (n 48) 50. Supports for victims in court represents best practice, including ‘[s]afety and support for victims to ensure that victims have a positive court experience, have access to appropriate services and feel physically safe while attending court’: at iv.

62 Ibid 10–11; *FVPA* (n 17) ss 129–30. The program aims to increase men’s ‘accountability and promote the safety of women and children’: MCV and CCV Submission to RCFV (n 48) 10; and to ‘increase accountability of those men who have used violence toward family members’: at 11.

63 MCV and CCV Submission to RCFV (n 48) 11. A goal of the program is to ‘enhance the safety of those women and children who have experienced family violence’. Programs focusing on perpetrators are vital in effectively responding to family violence: see Centre for Innovative Justice (n 34) 34–5. Engagement with perpetrators before intervention orders are made is also important for victims’ safety: MCV and CCV Submission to RCFV (n 48) 32. ‘Failing to engage with respondents before the making of intervention orders increases the safety risks of women and children. MBCPs are the only intervention currently available in Victoria for men who use family violence. In this context, the Court accepts that MBCPs that meet the NTV minimum standards, together with appropriate sanctions and therapeutic responses, are a valuable component of Victoria’s integrated response to family violence.’: at 32. The term MBCP refers to ‘men’s behaviour change program’: at 10; and NTV refers to an organisation called ‘No To Violence’ which works with men who use family violence: at 30.

64 *FVPA* (n 17) ss 129–30.

65 In this regard, it is relevant to note that Victorian Government funding has made it possible in recent years to expand the FVCD, from when it first began operating in 2005. MCV received \$130 million over four years in the 2017 State budget to expand the FVCD following the Commission’s recommendations for its expansion: Family Violence Reform Implementation Monitor, *Report of the Family Violence Reform Implementation Monitor* (Report, 1 November 2019) 13. New specialist FVCD courts have subsequently been opened in Shepparton in September 2019, in Ballarat in November 2019, in Moorabbin in March 2020, and in Heidelberg and Frankston in May and June 2021, respectively. In the 2021/22 State budget,

The next section considers how this reform might also result in case handling efficiencies, in addition to benefiting victims in the ways already noted.

3 Efficiencies

Because of MCV's expertise, its hearing of victims' *RTA* applications could result in these applications being processed more efficiently than occurs currently in VCAT. Magistrates sitting in the FVCD are assigned based on their family violence expertise, as noted.⁶⁶ This expertise may help them to process family violence applications faster than judicial officers in other Victorian administrative and court jurisdictions, for example VCAT whose judicial officers process *RTA* applications currently but otherwise do not (unlike magistrates) routinely hear family violence matters.⁶⁷ This has been explained: 'Specialisation facilitates a depth of understanding of family violence among practitioners and personnel involved in those matters, which results in more consistent and effective processing of cases.'⁶⁸ The scholarship reveals that elsewhere specialisation has yielded efficiencies.⁶⁹ In the Australian Capital Territory ('ACT'), for instance, the Magistrates' Court's specialisation in family violence has been shown to have improved the efficiencies with which cases are handled.⁷⁰ Improvements in efficiency may correlate with the extent to which judicial officers with expertise identify issues (that non-experts may not) in hearing matters and thus may order or refer parties to relevant agencies, thereby ensuring such issues do not develop into entrenched social problems with significant costs for government. As has been explained:

Efficient case handling delivers savings elsewhere in the court and broader service system – for example, more effective legal intervention early in a case can reduce the likelihood of a family becoming involved in the child protection system, and

further funding was received for other Magistrates' Court venues to become FVCD courts: Victorian Government, 'Extend the Functions of Family Violence Court Division Courts to Other Courts', *Family Violence Recommendations* (Web Page, 11 October 2021) <www.vic.gov.au/family-violence-recommendations/extend-functions-family-violence-court-division-courts-other-courts>. See also MCV and CCV Submission to RCFV (n 48) iv.

66 *MC Act* (n 55) s 41A(6); MCV and CCV Submission to RCFV (n 48) iii, 10, 30.

67 This is not saying that VCAT members processing *RTA* applications do not have expertise in hearing family violence cases, which they do. Rather, the point being made is that judicial officers in MCV, because they may hear many more applications made by victims (under the *FVPA* for intervention orders) than judicial officers in VCAT (under the *RTA* for tenancy orders), may have greater expertise in the hearing of protection applications made by victims. This may result in MCV's judicial officers being able to process victims' applications more efficiently than VCAT's can currently. See further *RCFV Report: Financial Security* (n 14) 124. 'Unlike the Magistrates' Court, VCAT has not traditionally been a forum in which these [family violence] matters are adjudicated and VCAT members may not have particular expertise in this area.'

68 MCV and CCV Submission to RCFV (n 48) 34. 'Specialisation can improve consistency and efficiency in the interpretation and application of laws, as a result of shared understandings and the awareness and experience of a smaller number of decision makers. Specialists can identify and solve problems more quickly and effectively and can develop and promote best practice that can then be mainstreamed to drive change in the system more generally.'; see *ALRC Summary Report* (n 51) 34. 'Cases can be resolved more quickly and efficiently as a result of specialist staff.'; *VLRC Report* (n 40) 182 [6.38] n 644.

69 *VLRC Report* (n 40) 182 [6.38], citing Keys Young, *Evaluation of ACT Interagency Family Violence Intervention Program* (Final Report, February 2000) 78.

70 *Ibid.*

cases where effective offender /perpetrator programs form part of the outcomes can reduce the likelihood courts [sic] having to deal with subsequent breaches and related criminal offences. A compassionate, supportive court system provides families affected by family violence to [sic] have their stories heard, to be provided with appropriate advice and support, and to be afforded considered decision making by the courts when imposing orders.⁷¹

In addition, the proposal could result in more efficient case handling by reducing the number of judicial officers involved in hearing victims' cases. Protection applications under the *RTA* and *FVPA* could be heard by a single judicial officer in MCV, unlike currently where two judicial officers hear those applications, sitting separately, across VCAT (for the *RTA*) and MCV (for the *FVPA*).⁷² Arguably, this is not an efficient use of judicial resources or time. It means each judicial officer must take time to, separately, familiarise themselves with all the same facts and evidence related to the same family violence. By avoiding this double-up, and instead utilising a single judicial officer in MCV, the proposed jurisdiction could make case handling more efficient and, relatedly, reduce victims' wait times in application processing.

Notwithstanding potential efficiencies outlined above, MCV will likely require additional funding and resourcing to operate the jurisdiction proposed. This is because any cost savings derived from the possible efficiencies noted, while beneficial, are unlikely to fully offset MCV's costs of hearing additional matters. If MCV is not provided with appropriate levels of funding, the hearing of victims' matters may be delayed; possibly to a greater extent than any delays which may currently be experienced by victims in VCAT. The Commission noted this concern, saying the hearing of matters in MCV 'may not result in a significantly more streamlined process and, in some cases, may create additional delays'.⁷³ MCV should thus be given additional resources as part of the proposal to ensure this does not occur and that it can process victims' protection applications in a timely way. This is critical as victims' physical safety may depend on orders being made promptly, for example, orders made pursuant to their *RTA* applications to exclude a violent perpetrator from the home under a lease or to terminate their lease so they can freely leave the home.

In outlining the proposal's benefits, this section has considered how it would enhance access to justice for victims and potentially result in case handling efficiencies. This is important as the scholarship demonstrates the importance of victims having a positive experience of the justice system – understood broadly

71 MCV and CCV Submission to RCFV (n 48) 34. 'The CCV is uniquely placed to make appropriate interventions in the lives of these children and their families to reduce the risk of them progressing to more violent behaviours and in doing so, to break the cycle of intergenerational family violence.': at 3. 'In the long run, the efficiency gains through specialisation may produce better outcomes that result in substantial savings elsewhere in the system – for example, earlier and more effective legal intervention may result in fewer cases requiring child protection agencies to intervene, and fewer demands on medical and psychological services. For these reasons, specialists are more likely to be effective in addressing family violence, and in their ability to make the system more efficient as a whole.': *ALRC Summary Report* (n 51) 34.

72 *RCFV Report: Financial Security* (n 14) 112, 124–5.

73 *Ibid* 124.

to include court staff, police, judicial officers, and lawyers – although in reality their experiences have been mixed.⁷⁴ In the family violence context victims who have negative justice system experiences are ‘less likely’ to access its protection in the future,⁷⁵ and may suffer further violence in this way.⁷⁶ For victims, negative experiences may include, for example, their experiences being trivialised by others, not being heard through the process,⁷⁷ or a lack of safety due to ill-equipped facilities that lack waiting rooms for victims separate to those for the perpetrators.⁷⁸ Victim protective responses by the justice system are critical in such areas for these reasons. While the proposed reform is not the whole solution when it comes to improving the justice system for victims, it represents an improvement. However, improvements can also be made in other ways, for example, by promoting education and awareness of family violence by justice system staff and officers to ensure responses to victims are appropriate.⁷⁹ In addition, the responses of agencies and services outside of the justice system and courts are also critical. Former Chief Federal Magistrate John Pascoe has written: ‘The need for support of parties and children before, during, and after the litigation process, and in particular greater support in accessing crisis accommodation and refuges, demands an integrated approach by state and territory governments.’⁸⁰ Further, ‘we know from practice and research that affected parties are best assisted through proper communication and cooperation between agencies that are both within the court system and in the government and non-government sectors’.⁸¹ This article makes these points to demonstrate an awareness of victims’ justice system experiences more broadly, and the importance of improvements being made to ensure those experiences are positive, and the role played by agencies and services outside of the justice system in assisting victims.

The next section acknowledges the home experience, as a further benefit of the proposal.

B Relevance to Home

The proposal would benefit victims regarding their sense of home by expanding the accessibility of the *RTA*’s home protections in MCV. The *RTA*’s protections

74 JCV Submission to RCFV (n 19) 7, citing Lucinda Jordan and Lydia Phillips, *Women’s Experiences of Surviving Family Violence and Accessing the Magistrates’ Court in Geelong, Victoria* (Report, November 2013) 22–3, 25.

75 JCV Submission to RCFV (n 19) 7, citing Gerald T Hotaling and Eve S Buzawa, *Forgoing Criminal Justice Assistance: The Non-Reporting of New Incidents of Abuse in a Court Sample of Domestic Violence Victims* (Report, January 2003) <<https://doi.org/10.1037/e300602003-001>>.

76 JCV Submission to RCFV (n 19) 7, citing Heather Douglas, ‘The Criminal Law’s Response to Domestic Violence: What’s Going On?’ (2008) 30(3) *Sydney Law Review* 439, 440.

77 JCV Submission to RCFV (n 19) 7.

78 CSV Submission to RCFV (n 60) 10.

79 Advances have been made in this regard. The Judicial College of Victoria runs family violence training for court officers and staff to promote understanding of family violence. Topics have included, for example, ‘Understanding Financial Abuse in Domestic Relationships’: JCV Submission to RCFV (n 19) 10.

80 John Pascoe, ‘Family Violence, Homelessness and the *Family Law Act 1975* (Cth)’ (2010) 33(3) *University of New South Wales Law Journal* 895, 896.

81 *Ibid* 904–5.

arguably enhance victims' experience of home in the specific ways described in the next Part, thereby resulting in victims experiencing safety, security and identity through the place of home, either in a new home or in their existing home without the perpetrator. Fox makes the relevant point here that the house is 'the locus for the experience of home'.⁸² By making it easier for victims to access the *RTA*'s home protections in MCV, the proposal arguably helps them obtain the home experience. This is how the proposal benefits home. For victims, this is vitally important. Home affords security, which helps victims 'to regain a sense of safety and recover from the trauma they have experienced'.⁸³ Home can be used as a narrative to advocate for the proposal,⁸⁴ in addition to the other arguments set out above. The relevance of the proposal to other Australian jurisdictions is the focus of the next section.

C Relevance to Other Australian Jurisdictions

The proposed reform has relevance to other Australian jurisdictions in which victims' access to tenancy protections may be similarly complicated. Victims may – as in Victoria – need to navigate two separate jurisdictions to access certain tenancy protections, and intervention order protections, in New South Wales ('NSW'), South Australia ('SA'), Queensland ('Qld'), Tasmania ('Tas'), the Northern Territory ('NT') and the ACT.⁸⁵ In Western Australia ('WA'), this problem does not exist as the Magistrates' Court hears tenancy and intervention order matters.⁸⁶ The reform proposal is a possible way to overcome this complexity for victims – to the extent it exists in those jurisdictions – by creating a single jurisdiction for hearing victims' relevant tenancy and intervention order matters. However, those jurisdictions would need to consider their own unique tenancy and intervention order legislation as noted above in Part I.

To establish that the problem exists in these other Australian jurisdictions, an analysis was undertaken of their relevant legislation. However, this revealed that it will not always be the case that victims in NSW, SA, Qld, Tas and NT will have to navigate two jurisdictions. In some cases, the relevant court hearing their intervention order applications will be able to also hear their tenancy applications depending on their type or an application may be unnecessary to access the protection. In NSW, victims do not have to apply in any jurisdiction to terminate leases in cases of

82 Fox, 'The Meaning of Home' (n 5) 590.

83 *RCFV Report: A Safe Home* (n 7) 74. See also *RCFV Report: Financial Security* (n 14) 111.

84 Lorna Fox O'Mahony, 'The Meaning of Home: From Theory to Practice' (2013) 5(2) *International Journal of Law in the Built Environment* 156, 167 <<https://doi.org/10.1108/IJLBE-11-2012-0024>>: 'The concept of home provides the vocabulary, and the theoretical framework, for articulating the human claims of vulnerable people, with fragile claims to adequate housing, more coherently. It enables us to identify those problems in need to policy attention; to develop a narrative to express them; and to generate support for solving them.'

85 See *Residential Tenancies Act 1997* (ACT) s 76; *Family Violence Act 2016* (ACT) s 16; *Residential Tenancies Act 2010* (NSW); *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 50; *Residential Tenancies Act 1999* (NT); *Domestic and Family Violence Act 2007* (NT) s 30; *Residential Tenancies and Rooming Accommodation Act 2008* (Qld); *Domestic and Family Violence Protection Act 2012* (Qld) s 32; *Residential Tenancies Act 1995* (SA) ss 24, 89A; *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s 20; *Residential Tenancy Act 1997* (Tas); *Family Violence Act 2004* (Tas) ss 16–17.

86 See *Residential Tenancies Act 1987* (WA) s 12A; *Restraining Orders Act 1997* (WA) s 24A(3).

family violence, as they may declare that this has been their experience and proceed to terminate by notice to the landlord and each co-tenant.⁸⁷ Similarly, victims do not have to apply to any jurisdiction to exclude perpetrators from leases of their home as this happens automatically on the court making a final family violence intervention order.⁸⁸ However, to access other tenancy protections victims need to apply to the relevant state tribunal, in addition to the court for intervention order protections.⁸⁹ Accordingly, victims must navigate two jurisdictions in such cases which is the problem the proposed reform seeks to address. In SA, Qld, Tas and the NT, the position is slightly different. Relevant courts hearing victims' intervention order applications have been empowered to hear particular types of tenancy applications of victims, although not all.⁹⁰ Victims thus may not have to apply in a separate jurisdiction to access these tenancy protections from where they apply for intervention orders. However, the relevant courts have not been empowered to hear all tenancy applications made by victims and so if the protections victims seek to access fall within this category, they will need to apply separately to the relevant state tribunal (or in Tasmania the Residential Tenancy Commissioner) with the relevant jurisdiction.⁹¹ Again, the proposed reform could address this problem of victims having to navigate two jurisdictions. In the ACT, the position of victims is that they must navigate two separate jurisdictions to access tenancy and intervention order protections as, similarly to the position in Victoria, no provision has been made for exceptions or the relevant court to hear victims' tenancy matters.⁹²

Whether approaches in other jurisdictions could be implemented in Victoria, as an alternative to the reform proposed herein, is relevant to consider. The NSW approach, whereby victims may terminate leases by declaring in a notice to the landlord and each tenant that they have experienced family violence, is particularly notable as this saves victims from having to navigate any court or tribunal jurisdiction whatsoever

87 The form of the declaration, and the grounds entitling them to do so, are set out in sections 105, 105B–105D of the *Residential Tenancies Act 2010* (NSW). A similar provision applies in WA: *Residential Tenancies Act 1987* (WA) ss 60, 71AB. A landlord may seek a review of the validity of the notice of termination: at s 71AC.

88 *Residential Tenancies Act 2010* (NSW) s 79.

89 See, eg, *ibid* s 217 (disputes about database listings); *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 50.

90 *Domestic and Family Violence Act 2007* (NT) s 23; *Domestic and Family Violence Protection Act 2012* (Qld) s 139; *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) ss 245, 321, 323; *Intervention Orders (Prevention of Abuse) Act 2009* (SA) ss 3, 25 (victims may apply to exclude a perpetrator from the lease in the court that makes their intervention orders); *Family Violence Act 2004* (Tas) ss 16–17. These laws operate to simplify processes for victims by conferring tenancy jurisdiction on courts hearing victims' intervention order applications, as is proposed herein for Victoria. These laws thus demonstrate the viability of this reform approach. As these laws only confer jurisdiction on relevant courts to hear particular types of tenancy applications made by victims, the proposed reform remains relevant.

91 See, eg, regarding protections relating to residential tenancy database listings: *Residential Tenancies Act 1999* (NT) s 134; *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) s 460; *Residential Tenancies Act 1995* (SA) s 99L; *Residential Tenancies Act 1997* (Tas) s 48ZF.

92 *Residential Tenancies Act 1997* (ACT) ss 76, 85A–85B; *Family Violence Act 2016* (ACT) s 16.

to obtain this protection.⁹³ A similar provision applies for victims' benefit in WA.⁹⁴ However, while it is beneficial from the perspective of victims, this approach is not one that could be implemented to facilitate victims' access to all tenancy protections, for example, protections against their being liable to landlords for rent accrued by perpetrators. In this, and in most other cases, judicial oversight is necessary to ensure fairness to all parties. Allowing victims to declare their entitlement to such protections would not allow for this. This is why the proposed reform is to confer jurisdiction on courts to hear victims' tenancy protections, and not generally to allow victims to declare their entitlement to protections as an alternative approach in all cases. However, that approach could be adopted in the particular circumstances in which it applies, to ensure victims' immediate access to the protections entitling them to terminate leases in cases of family violence, ie, without the need for a court or tribunal application and hearing first. This ensures victims may break their leases without consequences to obtain safety.

The above discussion has identified that the problem exists in other jurisdictions, to a lesser extent in NSW, SA, Qld, Tas, and NT than in the ACT and Victoria. The problem does not exist in WA at all. For victims in these jurisdictions, the reform proposal could assist to simplify processes. The relevant laws in other jurisdictions are not discussed further in this article, given its focus on Victoria and, specifically, on the reform proposed for consideration in Victoria by the Commission. An evaluation of other jurisdictions' laws to determine whether they are effective from victims' perspectives could be the subject of future research.

The reform proposals' key features to be implemented in new legislation in Victoria are the focus of the next Part.

III NEW LEGISLATION TO GIVE MCV JURISDICTION: KEY FEATURES

The previous Part outlined the case for MCV to receive the proposed new *RTA* jurisdiction and the justice benefits for victims brought about by the ensuing efficiencies. This Part sets out key features of the proposed jurisdiction that, it is argued, would be appropriate to implement in enabling legislation. It formulates a blueprint for that legislation, thereby building and expanding on the Commission's work to provide policymakers developing such legislation with guidance and a recommended framework approach. It is acknowledged that the proposed framework represents a particular approach to implementation of the jurisdiction, and that there may be other approaches. This Part, while approached from the perspective of Victorian law, is relevant to other Australian jurisdictions which have not already streamlined the hearing of victims' tenancy and intervention order applications in a single jurisdiction and may consider doing so.⁹⁵ As to structure, three sections follow. The first proposes the jurisdiction that is to be conferred on

93 *Residential Tenancies Act 2010* (NSW) ss 105, 105B–105D.

94 *Residential Tenancies Act 1987* (WA) ss 60, 71AB.

95 SA, ACT and NSW: see above Part II.

MCV. The second and third sections explore, respectively, the orders that could be made by MCV and various procedures for it hearing matters.

A Jurisdiction

The proposed enabling legislation would confer jurisdiction on MCV so that it could hear victims' *RTA* applications.⁹⁶ That would be its main purpose. The Children's Court of Victoria ('CCV') might also be conferred with this jurisdiction to ensure that victims who wish to have their *RTA* applications processed in the CCV rather than MCV, in circumstances where the CCV (rather than MCV) is already hearing their intervention order application under the *FVPA* because it concerns a child, may elect to do so. The CCV and MCV have concurrent jurisdiction to hear *FVPA* applications currently, and so it would be logical for them to also have concurrent jurisdiction to hear *RTA* matters, so these could be heard in both jurisdictions along with *FVPA* matters.⁹⁷ If the CCV were conferred with the *RTA* jurisdiction in addition to MCV as recommended, the proposed legislation would need to address the issues outlined in this Part in respect of the CCV. While this Part refers to the MCV or the court for ease of reference, it should be taken to also include reference to the CCV as the points relate to both regardless of which may be given jurisdiction.

1 Types of Applications

The proposed enabling legislation would need to set out which types of applications, made by victims under the *RTA*, the court would have jurisdiction to hear.⁹⁸ This section presents five possible application types the court may hear: first, termination of lease applications; second, new lease applications; third, objection to termination applications; fourth, apportionment of liability applications; and fifth, tenancy database applications. This section also recommends that these applications be capable of being heard by the court where made by victims of personal violence as defined in the *Personal Safety Intervention Orders Act 2010* (Vic) ('*PSIO Act*') in addition to victims of family violence, for the reasons set out below in section (f).

96 Victims' *RTA* applications which MCV could hear are particularised in this section. Jurisdiction would only need to be conferred in respect of these, and not victims' applications under the *FVPA* which MCV already has jurisdiction to hear: *FVPA* (n 17) s 42.

97 Ibid. The CCV may hear *FVPA* applications where the family violence intervention order ('FVIO') is sought by a parent on a child's behalf, where it is alleged that the child is the victim of family violence, or where the child is the respondent, ie, alleged to have perpetrated the family violence: at ss 45(d), 146; *CYFA* (n 17) ss 3(1) (definition of 'proper venue'), 515(2). See also MCV and CCV Submission to RCFV (n 48) 3, 5.

98 The *RTA* also contains protections for victims relevant to home, but for which an application for orders is not needed, and thus which are not relevant to discuss in detail for present purposes. For example, a right for victims to make certain modifications to the premises: see *RCFV Report: Financial Security* (n 14) 125.

(a) *Termination of Lease Applications*

Currently, victims may apply in VCAT for orders terminating a lease without incurring a financial penalty. Victims who have been, or are currently being, ‘subjected to family violence’ by another party to the lease may make these applications.⁹⁹ MCV would receive jurisdiction to hear these applications under the proposed legislation.¹⁰⁰ Victims would benefit from MCV being able to hear these applications, in addition to VCAT as currently.¹⁰¹ Pursuant to these applications, victims may leave violent homes by lease termination orders.¹⁰² These orders also ensure their financial liability ceases and so does not operate as a barrier to them leaving. The Commission explained: ‘Recent research confirms that a lack of money was the most significant barrier to women leaving an abusive relationship.’¹⁰³ Victims are also supported to obtain the experience of home described at the outset, including a feeling of security and loving relationships as, by ending their lease early to leave a violent home environment,¹⁰⁴ they can remove themselves from an environment undermining of that experience. However, expert evidence given to the Commission explained: ‘The existence of choice is important. For some women, it may be that they no longer feel that it is safe for them to remain at home, or their home makes them so unhappy that they wish to leave and start afresh. ... Many women will [however] want to stay.’¹⁰⁵

Victims are supported regarding their experience of home in yet another way. They are put in a better financial position to obtain a new home (ie, lease) elsewhere as compared to if these orders terminating their lease and releasing them from future liability under it had not been made and they continued to be financially liable under the lease or liable for penalties for its early termination.¹⁰⁶ In other words, these orders recognise – as the Commission did – that it is important not to burden victims with financial liabilities as these ‘limit their ability to obtain

99 *RTA* (n 12) ss 91V(1)(a), (2).

100 The Commission recognised MCV should hear these applications under this reform: *RCFV Report: Financial Security* (n 14) 125. See also, Justice Connect Homeless Law Submission to RCFV (n 19) 42.

101 Refer to discussion of ‘VCAT’s Existing *RTA* Jurisdiction’: see below Part III(A)(2)(d).

102 Victims may want to leave a home because they ‘[do] not feel safe remaining in the home and would prefer to move to temporary accommodation out of the perpetrator’s reach’: *VLRC Report* (n 40) 319–20 [9.27].

103 *RCFV Report: Financial Security* (n 14) 95, citing Prue Cameron, ‘Relationship Problems and Money: Women Talk about Financial Abuse’ (Research Report, WIRE Women’s Information, August 2014) 22. See also *RCFV Report: Financial Security* (n 14) 93, 95, 97, 117, 127; Lucinda Adams and Antoinette Russo, Witness Statement No 59 to Royal Commission into Family Violence (15 July 2015) [57] (‘Adams and Russo Witness Statement to RCFV’).

104 *RTA* (n 12) ss 91V(1)(a), (2).

105 Spinney Witness Statement to RCFV (n 12) [36]; *RCFV Report: A Safe Home* (n 7) 38.

106 Other barriers exist which make it difficult for victims to obtain a new safe home and these must be addressed in responding to family violence. The lack of affordable housing is highly problematic and, although beyond the laws’ capacity to comprehensively address, is something governments must address through sustained investment in this area. ‘Women who leave their homes have trouble finding safe, suitable and affordable alternative accommodation and, in some instances this can lead to homelessness.’: *RCFV Report: A Safe Home* (n 7) 37.

safe alternative housing'.¹⁰⁷ The Commission's report draws out this link between financial wellbeing and the ability to obtain a home.¹⁰⁸

In hearing applications, MCV would be required by the proposed legislation to apply the *RTA*'s existing provisions applied by VCAT currently. This would ensure consistency in the law applied within each jurisdiction. Judicial officers would thus need to be satisfied that family violence has occurred,¹⁰⁹ and of certain other matters, including that the victim would suffer greater hardship if the lease were not terminated than the landlord would if the lease were terminated.¹¹⁰ Judicial officers would also consider other matters, including whether an intervention order or notice had already been made excluding the perpetrator from the premises under the *FVPA*.¹¹¹ Judicial officers would not be permitted to order victims to pay compensation for the termination to the landlord,¹¹² and would need to specify when the lease terminates, ie, the date.¹¹³

Jurisdiction to hear matters relating to goods left behind at the premises (by the victim or other tenants) could also be conferred on the MCV, as these matters may arise in the context of lease terminations.¹¹⁴ For example, victims may apply for orders that goods be stored, noting these applications are made to VCAT currently.¹¹⁵

(b) New Lease Applications

Currently, victims may apply in VCAT for orders for a new lease of their home in their name and which excludes the perpetrator; the new lease replaces the existing lease of premises.¹¹⁶ Victims who have been, or are currently being, subjected to family violence by a party to an existing lease may make these applications.¹¹⁷ The premises in respect of which these applications are made must be the victims' home,¹¹⁸ but the victim does not need to be officially listed as a tenant on the lease.¹¹⁹ MCV would receive jurisdiction to hear these applications under the proposed legislation.¹²⁰ Victims would benefit from being able to make

107 *RCFV Report: Financial Security* (n 14) 124. See also at 113, citing Justice Connect Homeless Law Submission to RCFV (n 19) 22; Adams and Russo Witness Statement to RCFV (n 103) [56].

108 See above n 107.

109 Family violence could be demonstrated by victims showing they are protected by a relevant intervention order or a safety notice, or by adducing relevant evidence of such violence having occurred. The *RTA* also recognises notices and orders from other jurisdictions: *RTA* (n 12) ss 3(1) (definition of 'non-local DVO'), 91V(3); *National Domestic Violence Order Scheme Act 2016* (Vic) ss 4 (definition of 'non-local DVO'), 5-6; *National Domestic Violence Order Scheme Regulations 2017* (Vic) reg 5.

110 *RTA* (n 12) ss 91W(1), (1B).

111 *Ibid* s 91W(3).

112 *Ibid* s 91X(2).

113 *Ibid* s 91W(5).

114 Justice Connect Homeless Law Submission to RCFV (n 19) 42.

115 *RTA* (n 12) s 395. For relevant application types concerning goods left behind, see at pt 9.

116 *Ibid* ss 91V(1)(b), 91W(1A), (6).

117 *Ibid* ss 91V(1)(b), (2), 91W(1A), (6), (8).

118 *Ibid* ss 91V(1)(b), (2).

119 *Ibid* s 91V(2)(b).

120 The Commission recognised MCV could hear these applications under such a reform: *RCFV Report: Financial Security* (n 14) 124. See also Justice Connect Homeless Law Submission to RCFV (n 19) 42.

these applications in MCV, in addition to VCAT as currently.¹²¹ Pursuant to these applications, victims may ‘remain in or return safely to their homes’,¹²² and thereby ‘avoid homelessness’, as a result of orders for a new lease in their name excluding the perpetrator.¹²³ The perpetrator loses their proprietary right to reside in the home, as they are removed from the lease, while the victim remains on the (new) lease.¹²⁴ Thus, ‘the responsibility for leaving the family home [is attributed] to the perpetrator of family violence’.¹²⁵ These applications are a part of ‘a move towards helping women and children [and other victims] to stay in their homes when it is safe to do so’ and this is referred to as the ‘staying safely at home’ or ‘safe at home’ approach.¹²⁶ The Commission explained how this ‘allows victims to stay in their home and community’,¹²⁷ and thus to mostly avoid ‘losing connections with family and friends and other supports, school networks, employment, and participation in the community’.¹²⁸ The law, by helping victims to retain these connections, is actually empowering victims to experience home. That is, the ideal experience of loving relationships in a place and a related sense of security, as noted earlier. This experience is essential to victims’ recovery from violence. The Commission explained: ‘Secure and affordable housing is an essential foundation if victims of violence are to regain a sense of safety and recover from the trauma they have experienced.’¹²⁹ Particularly for women who have been abused, home is vitally important, for it provides ‘the source of their locations in the community, the focus of their children’s relationships with the social worlds of the schools and

121 Refer to discussion of ‘VCAT’s Existing *RTA* Jurisdiction’: see below Part III(A)(2)(d).

122 *RCFV Report: A Safe Home* (n 7) 77. The Victorian Law Reform Commission originally recommended these provisions empowering victims to make new lease applications to ensure victims could remain at home in their existing premises under a lease in their name: see also *VLRC Report* (n 40) 329–30 [9.56].

123 Adams and Russo Witness Statement to RCFV (n 103) [34]. ‘[L]egal representation in relation to housing and tenancy might be beneficial. This is particularly in relation to the creation application provisions in the *Residential Tenancies Act 1997* (Vic) ... aimed to support victims of family violence to avoid homelessness...’. See also CHP Submission to RCFV (n 3) 4–5, 18.

124 ‘The Tribunal is empowered to give tenancy rights (and associated duties and obligations) to the applicant and others specified in the application and remove tenancy rights (and the associated duties and obligations) from the respondent tenant and other parties to the existing tenancy agreement. If the Tribunal only orders that the tenancy terminate, it terminates on the date the Tribunal specifies. If the Tribunal terminates a tenancy and orders the landlord to enter into a new tenancy agreement, the existing tenancy agreement terminates on the signing of the new tenancy agreement (s 233B(5) & (6)).’: John Billings, Jacquelyn Kefford and Alan Vassie, *Victorian Civil and Administrative Tribunal: Residential Tenancies* (at September 2020) P6-31 [233B.01]. ‘This has the effect of stopping the perpetrator from being a tenant or having any rights over the tenancy.’: Spinney Witness Statement to RCFV (n 12) [39.2].

125 *RCFV Report: A Safe Home* (n 7) 77.

126 *Ibid* 39. However, the ‘safe at home’ approach has also received criticism as has been noted: see Kristin Diemer, Cathy Humphreys and Karen Crinall, ‘Safe at Home? Housing Decisions for Women Leaving Family Violence’ (2017) 52(1) *Australian Journal of Social Issues* 32, 34 <<https://doi.org/10.1002/ajs4.5>> and scholarship cited therein.

127 *RCFV Report: A Safe Home* (n 7) 77. For discussion on this point: see also at 75. See also CHP Submission to RCFV (n 3) 18; Spinney Witness Statement to RCFV (n 12) [31].

128 See above n 127.

129 *RCFV Report: A Safe Home* (n 7) 74. ‘Safe and affordable housing is essential for family violence victims’ recovery. However, there are a range of issues related to tenancy and residency agreements that can disproportionately affect victims. The financial implications are often severe.’: *RCFV Report: Financial Security* (n 14) 111.

school friends and the sites of their family stability'.¹³⁰ In addition, by protecting victims, the vast majority of whom are women who have suffered violence at the hands of men, Victoria's residential tenancy laws comply with the requirements of international human rights law. '[T]he UN Special Rapporteur on violence against women has recommended that all States should "provide for the removal of the abuser from the shared home and allow the victim-survivor to retain her present housing, at least until formal and final separation is achieved"'.¹³¹ Expanding accessibility of these legal protections to MCV would benefit victims and their experience of home.

At this point, it is important to acknowledge that the 'safe at home' approach requires more than just tenancy law protections in the form of orders for a new lease. Victims require additional things to feel safe to remain at home. The scholarship reveals that a strong justice system response is required, whereby intervention orders stopping perpetrators from approaching victims are actually enforced against perpetrators in practice.¹³² Diemer, Humphreys and Crinall have explained that, based on their research, '[s]tronger safety measures and a tighter enforcement system are needed if staying "safe at home" is to be a genuine option for more women and their children who want to separate from a violent and abusive partner'.¹³³ In other words, a new lease for victims excluding the perpetrator is not enough to make them feel safe to stay if the perpetrator is able to flout intervention orders and return to the home easily. The justice system response should thus be a priority focus for governments given 'the majority of women who have experienced family violence would prefer to remain in their own homes',¹³⁴ in addition to purely legal responses under the *RTA*, such as the reform advanced herein.

Returning to the proposal, judicial officers hearing victims' applications for a new lease would need to be satisfied that family violence has occurred,¹³⁵ and that the premises is actually the victims' home.¹³⁶ So long as the premises is their home, the victim need not demonstrate any proprietary right to reside there, ie, they need not be a tenant on an existing lease.¹³⁷ Judicial officers would also need to be satisfied of certain other matters before ordering a new lease, including that the victim's hardship if a new lease were not ordered would be greater than the

130 Elizabeth Branigan, 'His Money or Our Money?' *Financial Abuse of Women in Intimate Partner Relationships* (Report, 2004) 31, cited in *VLRC Report* (n 40) 319 [9.25].

131 *VLRC Report* (n 40) 324 [9.41]. 'The UN Model Strategies also provide that protection orders should include "removal of the perpetrator from the domicile".' See also Diemer, Humphreys and Crinall (n 126) 34; *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981); *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

132 Diemer, Humphreys and Crinall (n 126) 44; 'Second, it relies upon ensuring that a perpetrator is removed and kept away. This relies in turn upon an appropriate justice response to family violence.': Spinney Witness Statement to RCFV (n 12) [39.2].

133 Diemer, Humphreys and Crinall (n 126) 44.

134 *VLRC Report* (n 40) 320 [9.27].

135 See above n 109.

136 *RTA* (n 12) s 91V(2).

137 *Ibid* s 91V(2)(b).

landlord's if the new lease were ordered to replace the existing lease.¹³⁸ Judicial officers would also consider other matters, including whether an intervention order or notice excluding the perpetrator from the premises had already been issued under the *FVPA* as this may suggest it is similarly appropriate to order a new lease in the victim's name to the exclusion of the perpetrator.¹³⁹ Any new lease ordered would be for a term equivalent to the term remaining under the existing lease,¹⁴⁰ and be on the same terms as the existing lease; rent, for example, would remain the same.¹⁴¹ The existing lease would terminate on the new lease being signed.¹⁴²

(c) *Objection to Termination Applications*

Currently, victims may apply in VCAT for orders to stop a landlord terminating their lease. Specifically, victims may apply for orders to invalidate a landlord's notice to vacate. These notices are served on tenants by landlords who wish to terminate their lease with a tenant. However, the result of orders invalidating these notices is that landlords are stopped from terminating the lease.¹⁴³ MCV would receive jurisdiction to hear victims' applications for these orders under the proposed legislation.¹⁴⁴ Victims would benefit from being able to make these applications in MCV, in addition to VCAT as currently.¹⁴⁵ Pursuant to these applications, victims may retain their home, ie, the physical shelter, and the home experience which occurs through that medium,¹⁴⁶ through the above orders stopping the landlord terminating their lease. Hence these applications are important to protect home. Accessibility of these applications is particularly important to victims, noting that they are vulnerable to landlords terminating their lease. Landlords may seek to terminate their leases because, for example, the violent perpetrator has caused damage to the premises.¹⁴⁷ Victims should not lose their home in that way, through no fault of their own, and the law recognises this. VCAT hears victims' applications for orders to stop terminations currently, as noted, and if MCV were to receive this jurisdiction as proposed here it would apply the same provisions of the *RTA* for consistency.¹⁴⁸ Judicial officers in MCV would thus need to be satisfied of family violence and that the landlord's proposed termination has resulted from the perpetrator's wrongdoing (not the victim's), such that the victim should not

138 Ibid ss 91W(1A), (2).

139 Ibid s 91W(3).

140 Ibid s 91W(4).

141 Ibid s 91W(4).

142 Ibid s 91W(6).

143 Ibid s 91ZZU.

144 Justice Connect Homeless Law Submission to RCFV (n 19) 27, 29; VCAT Submission to RCFV (n 19) 42.

145 Refer to discussion of 'VCAT's Existing *RTA* Jurisdiction': see below Part III(A)(2)(d).

146 Fox makes the point that house is 'the locus for the experience of home': Fox, 'The Meaning of Home' (n 5) 590.

147 'For example, if a perpetrator of family violence deliberately causes damage to the rental property, this may lead to a Notice to Vacate being given to all tenants.': Tenants Union of Victoria, Submission No 767 to Royal Commission into Family Violence (28 May 2015) 6 ('Tenants Union of Victoria Submission to RCFV').

148 *RTA* (n 12) ss 91ZZU, 91ZZV.

lose their home by the lease terminating.¹⁴⁹ The landlord's notice to vacate would be invalidated in these circumstances, as noted above.¹⁵⁰

(d) *Apportionment of Liability Applications*

Currently, victims may apply for VCAT orders to excuse them from liability to the landlord that would ordinarily be shared between themselves and a perpetrator who is their co-tenant.¹⁵¹ Victims make these applications where the perpetrator has damaged the premises or accrued rent after the victim has left such that the perpetrator should be made wholly or partly liable for liabilities to the landlord by an order to this effect, thus excusing the victim from such liability.¹⁵² These orders displace the principle of joint and several liability of co-tenants by apportioning these liabilities to the perpetrator.¹⁵³ MCV would receive jurisdiction to hear applications for these orders under the proposed legislation.¹⁵⁴

Victims would benefit from MCV being able to hear these applications, in addition to VCAT as currently.¹⁵⁵ Pursuant to these applications, victims may leave an unsafe home environment through orders excusing them from liability for the perpetrator's wrongdoing.¹⁵⁶ These orders mean victims may leave without fear of continuing to carry this liability upon leaving, which may operate as a barrier to them leaving. The Commission received evidence that these orders 'would reduce one barrier victims of family violence face when leaving violent relationships [and homes]: the fear that they will be held legally responsible for damage they didn't cause or rental arrears accrued after they have fled'.¹⁵⁷ In addition, victims may obtain a new home elsewhere, as they are placed in a better financial position compared to if these orders excusing them from liability to the landlord for the perpetrator's wrongs had not been made. 'The Commission heard evidence that victims of family violence living in private and public rental accommodation are often burdened with compensation claims and debts that limit their ability to obtain safe alternative housing.'¹⁵⁸

149 Ibid s 91ZZU.

150 Ibid s 91ZZV.

151 Ibid s 91X.

152 Ibid; *RCFV Report: Financial Security* (n 14) 113, 124; Adams and Russo Witness Statement to RCFV (n 103) [57]; Justice Connect Homeless Law Submission to RCFV (n 19) 9, 22–5; 'However, if victims simply abandon their rental property, they can accrue a debt as a result of outstanding rent and damage to the property, and be blacklisted on a residential tenancy database, making it very difficult for them to rent in the future.': McDonald (n 7) 78.

153 See above n 152.

154 The Commission recognised MCV could hear these applications under such a reform: *RCFV Report: Financial Security* (n 14) 125. See also Justice Connect Homeless Law Submission to RCFV (n 19) 42.

155 Refer to discussion of 'VCAT's Existing RTA Jurisdiction': see below Part III(A)(2)(d).

156 '[V]ictims of family violence are not held legally liable for debts that are properly attributable to perpetrators of family violence': *RCFV Report: Financial Security* (n 14) 113. See also at 124; Justice Connect Homeless Law Submission to RCFV (n 19) 24.

157 Adams and Russo Witness Statement to RCFV (n 103) [57]. See generally, *RCFV Report: Financial Security* (n 14) 93, 95, 97, 117, 127; Tenants Union of Victoria Submission to RCFV (n 147) 4; Justice Connect Homeless Law Submission to RCFV (n 19) 5, 22–5.

158 *RCFV Report: Financial Security* (n 14) 124. See also at 113, citing Justice Connect Homeless Law Submission to RCFV (n 19) 22; Adams and Russo Witness Statement to RCFV (n 103) [56]; McDonald

As discussed above, once judicial officers are satisfied that family violence has occurred, they could then make these orders.¹⁵⁹ Applications for these orders could be made by victims at the same time as they make other types of *RTA* applications or separately, which is important as issues of their liability to the landlord may only manifest subsequent to other types of applications having been made.¹⁶⁰

(e) *Tenancy Database Applications*

Currently, victims may apply in VCAT for orders prohibiting a landlord or their agent from listing them on a tenancy database.¹⁶¹ Victims may also apply to VCAT for orders requiring their name be removed from a database on which they have already been listed.¹⁶² These databases list persons who have previously breached the *RTA* or a lease, for example for non-payment of rent or damage to premises,¹⁶³ and are viewed by landlords to decide to whom not to rent their premises.¹⁶⁴ They can thus have a significant impact on whether listed victims can obtain housing, which is why it is important that victims can apply to stop or remove listings against them.¹⁶⁵ Indeed, this is particularly important for victims who are vulnerable to being listed due to the violent perpetrator breaching the lease.¹⁶⁶ MCV would receive jurisdiction to hear these applications under the proposed legislation, in addition to VCAT as currently.¹⁶⁷ This would benefit victims in at least two ways. First, victims would not be adversely impacted by listings in their search for housing, to the extent relevant orders are made. Second, victims' home experience would also be protected by these orders, noting the home experience under consideration here takes place through the place of home and thus requires shelter,¹⁶⁸ which these orders would help victims obtain. These orders would do so by ensuring victims are not precluded from obtaining a new (leased) home due to listings of breaches for which they were not responsible.¹⁶⁹

(n 7) 78, quoted in above n 152.

159 *RTA* (n 12) s 91X(1)(a).

160 'There is often insufficient evidence concerning how liabilities between the parties will crystallise once the tenancy ends, or what claims may follow after the landlord has inspected the vacant premises. It may be more appropriate that once the tenancy ends, any dispute as to liability be the subject of a later application to the Tribunal.': Billings, Kefford and Vassie (n 124) P6-35 [233C.01].

161 *RTA* (n 12) s 439L(2A).

162 *Ibid.*

163 *RCFV Report: Financial Security* (n 14) 113.

164 Justice Connect Homeless Law Submission to RCFV (n 19) 25.

165 *RCFV Report: Financial Security* (n 14) 113; *ibid.*

166 *RCFV Report: Financial Security* (n 14) 113; Justice Connect Homeless Law Submission to RCFV (n 19) 25. See also at 5, 22; Tenants Union of Victoria Submission to RCFV (n 147) 6–7; CHP Submission to RCFV (n 3) 14; McDonald (n 7) 78, quoted in above n 152.

167 Refer to discussion of 'VCAT's Existing *RTA* Jurisdiction': see below at Part III(A)(2)(d). See Justice Connect Homeless Law Submission to RCFV (n 19) 42.

168 The physical home is 'the locus for the experience of home': Fox, 'The Meaning of Home' (n 5) 590.

169 See above n 166.

(f) *Victims of Personal Violence*

Personal violence is violence which occurs in relationships outside of the family context, thereby distinguishing it from family violence.¹⁷⁰ Victims of this form of violence receive protection under the *PSIO Act*, under which they may apply for intervention orders in the MCV similarly to how such orders are applied for by family violence victims under the *FVPA*.¹⁷¹ Such victims can also apply to access *RTA* protections separately in VCAT, again, similarly to family violence victims as discussed above.¹⁷² Personal violence victims thus, again like family violence victims, have to apply in two jurisdictions to access relevant protections, ie, MCV for intervention orders and VCAT for *RTA* protections. So that they need only navigate a single jurisdiction in future, the recommendation is for MCV to be empowered under the proposed legislation to hear the above *RTA* protection applications which personal violence victims may make, in addition to the *FVPA* applications which it may already hear. Personal violence victims make *RTA* applications in VCAT infrequently at present and so it is not expected this would impose a significant resource burden on MCV.¹⁷³

2 *Ancillary Issues*

As part of conferring jurisdiction, the proposed legislation would need to address several ancillary issues. This section discusses four such issues and provides recommendations for how they could be resolved in that legislation. The issues are as follows: first, financial limits on jurisdiction; second, pre-conditions to jurisdiction; third, the 'proper venue' in MCV; and fourth, VCAT's existing *RTA* jurisdiction. Each issue is discussed in turn.

(a) *Financial Limits on Jurisdiction*

Whether financial limits should be applied to MCV's jurisdiction is the first issue. If applied, these limits would mean MCV could only hear *RTA* applications up to a certain financial amount. As this would mean it could not hear all victims' *RTA* applications, ie, those above the set amount, it is not recommended that a financial limit be applied. Instead, it is recommended MCV be able to hear all applications regardless of their value. This is different to what is currently provided under the *RTA*, which gives MCV a limited jurisdiction to hear *RTA* applications valued above a certain financial value, ie, \$40,000.¹⁷⁴ This financial limit would need to be disapplied under the *RTA* jurisdiction proposed for MCV here.

(b) *Pre-Conditions to Jurisdiction*

Whether applicants would need to satisfy any pre-conditions to enliven the MCV's proposed jurisdiction is a further issue. In Qld, a jurisdiction in which

170 Billings, Kefford and Vassie (n 124) P6-27 [233A.03].

171 *Personal Safety Intervention Orders Act 2010* (Vic) s 15.

172 *RTA* (n 12) ss 91V(2)(a)(ii), 91V(2)(b)(iii)(B), 91X, 91ZZU, 439L(2A).

173 Billings, Kefford and Vassie (n 124) P6-33 [233B.04].

174 See above n 15.

victims can already apply in the Magistrates' Court to have their tenancy applications resolved alongside their intervention order applications for a streamlined process, a pre-condition applies.¹⁷⁵ The Court's tenancy jurisdiction is enlivened only if victims have made both intervention order and tenancy applications in the Court.¹⁷⁶ In other words, this is a pre-condition to the Court exercising tenancy jurisdiction, and this incentivises victims to make both applications simultaneously.¹⁷⁷ However, it restricts the Court's ability to hear victims' tenancy applications as some victims may not wish to apply for intervention orders, or may have already done so, at the time of making their tenancy application. These victims may not be able to satisfy the pre-condition, and thus the Court may not have jurisdiction to assist them with tenancy matters. For these reasons, this approach is not recommended for Victoria. It would frustrate the aims of the proposed jurisdiction for MCV to assist all victims through MCV's expertise and support services being applied in *RTA* matters. Further, it may cause confusion for victims who may not understand that, to enliven the jurisdiction, they would need to – if the Qld approach were followed contrary to what is recommended here – apply for intervention and tenancy orders simultaneously.¹⁷⁸ These victims may thus inadvertently forfeit their ability to apply to the Court in tenancy matters through a lack of understanding caused by complexity.

(c) *Proper Venue*

Defining the 'proper venue' in MCV in which victims may make *RTA* applications and have them heard is yet another issue to be addressed in the proposed legislation. It is recommended that the 'proper venue' be defined as MCV's FVCD or the Neighbourhood Justice Division, as this would ensure consistency with the 'proper venue' for applications under the *FVPA*,¹⁷⁹ such that victims could then make *RTA* and *FVPA* applications together in the same 'proper venue'. This would be the default 'proper venue' under the legislation. MCV could also be given a power to determine a different 'proper venue' as it may for the *FVPA* jurisdiction currently.¹⁸⁰ MCV could thus determine that this is the civil registry or its generalist court division if the MCV's FVCD or Neighbourhood Justice Division are not available to hear a case; for example, due to resourcing constraints or these default venues not being located in the relevant area where a matter needs to be heard.

175 *Domestic and Family Violence Protection Act 2012* (Qld) s 139.

176 See *ibid* s 139(1).

177 However, such an incentive is unnecessary to the extent that victims may naturally prefer to have their related matters heard together for convenience.

178 If the proposed jurisdiction is also conferred on the CCV as recommended in the opening to this Part, there may be merit in the enabling legislation taking a different approach for the CCV and requiring victims to have made an intervention order application in the CCV simultaneously with any *RTA* application. This would ensure that the CCV's *RTA* jurisdiction only engages in relevant circumstances involving a child as is already the case for its *FVPA* jurisdiction, and the relevant requirements would thus be picked up. This is consistent with the Court's purpose as a children's court, as currently, the Court can only receive intervention order applications in circumstances involving a child: see above n 17.

179 *MC Act* (n 55) s 41B.

180 *FVPA* (n 17) s 42; *ibid* s 3 (definition of 'proper venue').

(d) *VCAT's Existing RTA Jurisdiction*

VCAT has existing *RTA* jurisdiction and whether this jurisdiction is to be retained for victims if MCV is given jurisdiction to hear their *RTA* matters, as recommended, is an issue that would need to be clarified. Retaining VCAT's existing *RTA* jurisdiction (including for victims' matters) such that it would operate concurrently with any equivalent jurisdiction given to MCV is recommended.¹⁸¹ This will ensure VCAT can continue to resolve victims' *RTA* applications and take into account their family violence arguments in applications initiated by others, for example, a landlord. This is important, noting that victims may need to raise family violence arguments in landlord initiated VCAT matters, for example, for the termination of a lease (ie, application for a possession order).¹⁸² In those cases, VCAT would only be able to hear these arguments if its *RTA* jurisdiction with respect to family violence matters were retained, as recommended. If it were not, the victim would need to make a separate application in MCV on family violence grounds, while the VCAT matter is adjourned pending MCV's decision. As this would unnecessarily complicate the process and delay victims' matters being processed due to two jurisdictions being involved, this is not recommended. In other words, VCAT's existing jurisdiction ought to be retained so as to operate concurrently with the proposed jurisdiction for MCV. Alternatively, the proposed jurisdiction for MCV could operate exclusively, so as to replace VCAT's jurisdiction, but for the reasons given this is not recommended.¹⁸³

Following the recommendation here for VCAT's existing jurisdiction to operate concurrently with the *RTA* jurisdiction proposed for MCV, there would be a risk of conflicting orders being made.¹⁸⁴ In separate proceedings concerning the same premises, MCV and VCAT may both make orders if neither is aware of the other's proceeding raising this risk of conflict. To ensure this does not happen, it is recommended that the following mechanism be included in the enabling legislation. The MCV would be required (and appropriately authorised) to notify VCAT of its *RTA* proceedings.¹⁸⁵ If VCAT is hearing *RTA* proceedings concerning the same

181 Rather than the proposed *RTA* jurisdiction being conferred exclusively on MCV, with VCAT's *RTA* jurisdiction removed in respect of victims.

182 See especially *RTA* (n 12) s 91ZZV.

183 This discussion has benefitted from and drawn on the discussion of exclusive and concurrent jurisdiction in Victorian Law Reform Commission, *Disputes between Co-owners* (Report No 136, 31 December 2001) 65 [4.21]; Samuel Tyrer, 'A Proposal to Give State and Territory Tribunals Jurisdiction to Resolve "Assets for Care" Disputes' (2020) 46(3) *Monash University Law Review* 204, 235–8 ('Jurisdiction Proposal to Resolve Assets for Care Disputes').

184 The general risk of conflicting orders in the context of overlapping jurisdictions has been noted. See JCV Submission to RCFV (n 19) 12–13: 'There are overlapping and interrelated jurisdictions between the courts, especially first instance proceedings in VCAT, Magistrates' Court, Children's Court, Federal Circuit Court and the Family Court. This can have the effect of increasing confusion around court orders or leading to conflicting or inconsistent court orders, particularly if lines of communication and information sharing between the courts are not effective. The courts cannot rely on individuals bringing relevant information from one proceeding to another.'

185 'While several judicial officers commented that the courts would benefit from the systematic sharing of more important information there are some legislative and resource constraints on jurisdictions sharing information. Thorough examination of the legislative framework is required so that enabling legislation can ensure the effective sharing of information and interconnectivity between the courts.': *ibid* 13.

premises, it would then be required to adjourn these until MCV's proceedings resolve.¹⁸⁶ The risk of conflicting orders being made is thus overcome. It makes sense to require MCV to notify VCAT of its *RTA* proceedings (and not the other way around) as MCV will have fewer *RTA* proceedings overall as the proposal is for it to hear only victims' *RTA* applications, whereas VCAT's existing jurisdiction is to hear all *RTA* applications regardless of whom they are made by.¹⁸⁷ Thus, the requirement to notify of these proceedings would be easier for MCV to comply with than for VCAT.

B Orders

The types of orders MCV could make and an approach for their enforcement are both key issues that would need to be addressed in the proposed legislation. This section considers both issues – types of orders and their enforcement – in turn and makes useful recommendations to guide policymakers.

1 Types of Orders

The proposed legislation would need to include a power for MCV to make orders. MCV could be conferred with a power to make any orders VCAT may make in the above *RTA* applications.¹⁸⁸ This would ensure consistency in the types of orders made by each jurisdiction and it would avoid having to list those out in the legislation. MCV could also receive power to make any other orders 'it considers appropriate' if this additional flexibility is considered necessary, for example, to enable MCV to make less usual orders, such as that an application originally commenced in MCV be transferred to VCAT for hearing if appropriate.¹⁸⁹ MCV's existing functions or powers under common law or statute could be preserved by stating in the proposed legislation that they are not limited in any way.¹⁹⁰

2 Enforcement

The proposed legislation would need to clarify how MCV's orders are to be enforced. MCV's existing enforcement processes could be applied, such that orders it makes in *RTA* matters would be enforced through those. This would mean that monetary orders, for example, orders that a tenant pay money to a landlord, would be enforced by a warrant to seize property.¹⁹¹ Further, non-monetary orders, for example, orders for a new lease to be entered into by parties, would be enforced according to their terms, with persons who breach their terms liable to a fine or

186 This mechanism has been proposed in a different context: see Tyrer, 'Jurisdiction Proposal to Resolve Assets for Care Disputes' (n 183) 239–42.

187 See above n 15.

188 For example, orders terminating a lease or for a new lease in place of an existing lease. MCV should receive all of VCAT's existing functions and powers in the hearing of relevant matters. See, eg, *Victorian Civil and Administrative Tribunal Act 1998* (Vic) s 57C(2) ('*VCAT Act*').

189 See, eg, *ibid* s 57C(1)(b).

190 See, eg, *ibid* s 57C(2).

191 *MC Act* (n 55) s 111.

imprisonment,¹⁹² or contempt of court action for non-compliance with a court order.¹⁹³ Enforcing MCV's orders following its existing approach would ensure the Court's enforcement approach remains consistent regardless of the type of civil matters its hears. Different enforcement processes apply in respect of VCAT, however, orders are enforced in the Supreme Court, County Court or MCV depending on the type of orders made; that is, VCAT does not, unlike MCV, enforce its own orders.¹⁹⁴ This different enforcement approach in VCAT means that parties to *RTA* matters will be treated differently for enforcement purposes, depending on whether their matter is heard in MCV or VCAT following the approach recommended here. However, this is a necessary trade-off for pursuing consistency in the enforcement processes within the Court by its existing enforcement processes continuing to apply there, rather than mirroring VCAT's for *RTA* matters of victims.

C Procedures

The proposed legislation would need to set out procedures for the hearing of *RTA* matters in MCV. This section considers various procedures that could apply and makes recommendations for their particular application in the proposed legislation, as follows: first, the rules of procedure; second, the *Civil Procedure Act 2010* (Vic) ('*CPA*'); third, the rules of evidence; fourth, involvement of interested parties; fifth, appeals; sixth, re-hearings; seventh, the timing for hearings; eight, costs; ninth, related applications; and tenth, alternative dispute resolution.

1 Rules of Procedure

Rules of procedure govern the conduct of proceedings by parties before courts. Different rules apply to proceedings being heard in a court's civil or criminal jurisdiction. As *RTA* applications are civil jurisdiction matters, if they were heard in MCV as proposed, the civil procedure rules would apply. This could be stated in the proposed legislation for clarification, and to ensure it is clear that the same civil procedure rules apply regardless of the type of civil matters MCV is hearing.¹⁹⁵ That said, the proposed legislation or new court rules could modify these rules if necessary to achieve a particular policy objective relevant to hearing victims' *RTA* applications.¹⁹⁶ Ensuring victims' psychological and physical safety in proceedings is a relevant policy objective in this context and, as such, the following procedures could be set out in the legislation to achieve this:

- Victims may give their evidence via alternative arrangements, such as by audio-visual link.¹⁹⁷

192 Ibid s 135.

193 Breach of a court order constitutes a form of contempt known as 'disobedience contempt': Victorian Law Reform Commission, *Contempt of Court* (Report, February 2020) 108, 120 n 72, citing *Moira Shire Council v Sidebottom Group Pty Ltd [No 3]* [2018] VSC 556.

194 Non-monetary orders are enforced in the Supreme Court: *VCAT Act* (n 188) s 122. Monetary orders are enforced in the MCV, County Court or Supreme Court: at s 121.

195 See, eg, *ibid* s 57C(3)(b).

196 See, eg, *ibid* s 57C(3).

197 See, eg, *ibid* sch 1 pt 17 cl 73B; *FVPA* (n 17) s 69.

- Victims may have access to a support person throughout the hearing.¹⁹⁸
- Victims may not be cross-examined by a perpetrator, or only with leave of the court.¹⁹⁹
- Victims may benefit from closed court orders to prevent their ‘undue distress or embarrassment’.²⁰⁰
- Victims may not be required to affect service on the perpetrator or other parties (MCV should affect service on behalf of victims instead).²⁰¹

In other court and tribunal matters, special procedures are applied to protect victims,²⁰² and to help them feel safer to participate in proceedings compared to if such procedures were not specified.

2 *Civil Procedure Act 2010 (Vic)*

The *CPA* contains further rules for the conduct of proceedings applicable to all Victorian court jurisdictions, including MCV.²⁰³ The rules require parties to, for example, use ‘reasonable endeavours’ to attempt to resolve their dispute before a hearing unless this is not in the interests of justice.²⁰⁴ Requiring victims to use ‘reasonable endeavours’ to resolve their dispute with a perpetrator is likely to traumatise victims and produce unfair outcomes due to the imbalance of power in the parties’ relationship;²⁰⁵ court oversight is necessary to fairly resolve these matters.²⁰⁶ Thus, it is recommended that the *CPA* not apply, and that this be stated in legislation.²⁰⁷ MCV would thus hear *RTA* applications without the *CPA* applying, consistently with the approaches taken in other contexts.²⁰⁸

3 *Rules of Evidence*

Rules of evidence determine which evidence is admissible in courts and are, generally speaking, quite technical. The rules are not, therefore, necessarily appropriate to apply in proceedings where an urgent outcome is required, such as in family violence cases, as this technicality may result in the court taking additional time to resolve matters and make orders. In turn, this risks victims’ safety and wellbeing as victims depend on orders being made promptly to escape

198 See, eg, *VCAT Act* (n 188) sch 1 pt 17 cl 67A; *FVPA* (n 17) s 69(1)(c).

199 See, eg, *VCAT Act* (n 188) sch 1 pt 17 cl 73A; *FVPA* (n 17) s 70.

200 See, eg, *FVPA* (n 17) s 68; *Open Courts Act 2013 (Vic)* s 30(2)(d).

201 See, eg, *FVPA* (n 17) s 48.

202 In VCAT and MCV: see *VCAT Act* (n 188) sch 1 pt 17; *FVPA* (n 17) ss 48, 68–70.

203 *Civil Procedure Act 2010 (Vic)* s 4(1) (‘*CPA*’).

204 *Ibid* s 22.

205 Sarah Dobinson and Rebecca Gray, ‘A Review of the Literature on Family Dispute Resolution and Family Violence: Identifying Best Practice and Research Objectives for the Next 10 Years’ (2016) 30(3) *Australian Journal of Family Law* 180, 181: ‘[M]ediation requires negotiation between parties on equal footing and the presence of family violence – characterised by coercion and control – is typically indicative of a significant power imbalance’.

206 Refer to discussion of ‘Alternative Dispute Resolution’: see below Part III(C)(10).

207 See, eg, *CPA* (n 203) s 4(2).

208 The *CPA* also does not apply in VCAT: *ibid* s 4(3); in certain contexts in MCV in respect of *FVPA* proceedings: at s 4(2)(a); and in respect of certain proceedings MCV hears in circumstances where VCAT lacks jurisdiction: at s 4(2)(ja).

violent perpetrators. For this reason, it is recommended that the rules of evidence not apply and for this to be stated in the proposed legislation, consistently with the approaches taken in other contexts.²⁰⁹

4 *Involvement of Interested Parties*

As other parties may be impacted by *RTA* proceedings in MCV, these parties should have an opportunity to be heard by joining the proceedings and making submissions. The Commission explained: ‘the landlord and any other tenants would need to become parties to the proceeding’.²¹⁰ This includes the perpetrator and potentially others. It is thus recommended that the Court be required by the proposed legislation to notify interested parties of the proceedings and provide them with information on how to join the proceedings. Victims could be requested to provide the Court with the details of interested parties at the time of making an application. However, if victims do not know these details, for example because they do not have a copy of the lease containing these parties’ details, MCV could still proceed to hear matters and, at the first hearing, request that other parties, such as the landlord, provide these details to the Court. Alternatively, the Court’s registry could make relevant inquiries to obtain interested parties’ details and notify them prior to a hearing.

5 *Appeals*

A process for appeals of MCV orders would need to be clarified in the proposed legislation. MCV’s existing appeals processes could be applied for consistency, meaning that MCV’s final orders would be appealable to the Supreme Court on a question of law within 30 days after the order is made,²¹¹ or with leave to appeal outside of this time.²¹² All MCV’s orders would thus be appealable in the same way. Additionally, this would ensure an appeals process which is broadly consistent with VCAT’s appeals process, whereby its orders are similarly appealable to the Supreme Court – the Trial Division of the Supreme Court, or the Court of Appeal if VCAT’s President or Vice President made the order.²¹³

209 The rules of evidence do not apply in VCAT, and do not apply in specific contexts in MCV in respect of family violence matters. In MCV, it is provided that ‘in a proceeding for a family violence intervention order the court may inform itself in any way it thinks fit, despite any rules of evidence to the contrary’: *FVPA* (n 17) s 65(1). However, certain provisions of the *Evidence Act 2008* (Vic) expressly apply, for example the ability for witnesses to use an interpreter in giving evidence under section 30: *FVPA* (n 17) s 65(2). In VCAT, the Tribunal ‘is not bound by the rules of evidence’ except if it chooses to apply them: *VCAT Act* (n 188) s 98(1)(b). The rule against self-incrimination also does not apply, however a direct use immunity is included: at s 105.

210 *RCFV Report: Financial Security* (n 14) 125. See also at 124.

211 *MC Act* (n 55) s 109. See, eg, *VCAT Act* (n 188) ss 57C(3)(j), (4).

212 *MC Act* (n 55) s 109(4).

213 *VCAT Act* (n 188) s 148. In VCAT, leave to appeal is required in all cases, which is not the case in MCV where leave to appeal is not required if an appeal is made within the stated time: at s 148; *MC Act* (n 55) s 109.

6 Re-hearings

Re-hearings are generally conducted as if the original hearing had not taken place and are usually only available in limited circumstances. In MCV, for example, currently a person may seek a re-hearing if they ‘did not appear in the proceeding’.²¹⁴ In VCAT, a person can seek a re-hearing in similar circumstances, including in *RTA* matters.²¹⁵ It is recommended that the proposed legislation provide similarly for consistency.

7 Timing for Hearing

Setting a time within which MCV must hear victims’ applications would assist to ensure they are heard promptly so victims can obtain the necessary orders to ensure their safety, wellbeing and experience of home, as discussed above. In VCAT, the Tribunal must hear victims’ urgent *RTA* applications within 3 days of receipt, or the next day if that timeframe cannot be met.²¹⁶ It is recommended that a similar timeframe be applied in respect of MCV’s proposed hearing of these matters for consistency.

8 Costs

Costs may be awarded in civil litigation by the court making orders for the losing party to pay the successful party’s costs.²¹⁷ Alternatively, each party may bear its own costs of the proceeding if such cost orders are not made. The approach of each party bearing responsibility for their own costs is recommended here as it would ensure parties (especially victims) are not deterred from accessing protections by the risk of adverse costs orders.²¹⁸ This approach is also consistent with the approach to costs in *FVPA* proceedings in MCV,²¹⁹ and in VCAT proceedings generally.²²⁰ A way to achieve the recommended approach to costs is for the legislation to include a presumption that ‘[e]ach party ... must bear the party’s own costs of the proceeding’,²²¹ followed by relevant exceptions providing for costs to possibly be ordered in ‘exceptional circumstances’,²²² or if a person’s application ‘was vexatious, frivolous or in bad faith’.²²³

214 *MC Act* (n 55) s 110.

215 *VCAT Act* (n 188) s 120.

216 *RTA* (n 12) s 91V(7).

217 This is known as the principle ‘costs follow the event’.

218 Parties may be deterred from accessing legal protections by costs.

219 In *FVPA* proceedings in MCV, ‘[e]ach party to a proceeding for a family violence intervention order under this *Act* or a proceeding for the variation, extension or revocation of a recognised DVO must bear the party’s own costs of the proceeding’: *FVPA* (n 17) s 154(1).

220 Costs are not generally awarded in VCAT unless justified in particular circumstances: *VCAT Act* (n 188) s 109.

221 *FVPA* (n 17) s 154(1).

222 *Ibid* s 154(3)(a).

223 *Ibid* s 154(3)(b).

9 Related Applications

A key benefit of the proposal is that the Court would be able to hear related applications together, including *RTA* and *FVPA* matters as noted. It is thus recommended that this be clarified as possible in the proposed legislation which could thus state that parties' related applications 'may be heard together if the court thinks fit', either on the Court's own motion or following a party applying.²²⁴ A provision in this form exists in the *FVPA*,²²⁵ to clarify that related applications may be heard together.

10 Alternative Dispute Resolution

Parties may be ordered by the court to attend alternative dispute resolution ('ADR') processes under its existing powers, as a way to avoid the need for, and thus costs of, a full hearing. It is recommended that, while the proposed legislation retain MCV's power to order parties to ADR (ie, mediation or pre-hearing conference),²²⁶ it be clarified that these processes will not be used in family violence cases unless exceptional circumstances exist, such as that the victim wishes to engage in ADR or the relevant mediator is trained in the use of ADR in family violence cases; the use of ADR may be considered to determine if it is appropriate in such cases.²²⁷ However, in most family violence cases these circumstances will not exist and ADR will generally not be appropriate due to the imbalance of power in the parties' relationship and a lack of court oversight of these processes which means victims may be exploited by the perpetrator.²²⁸ This is why it is recommended that it be clarified that ADR will not generally be used in these cases. This clarification could be provided in a practice note issued by the court.

IV CONCLUSION

This article proposes the conferral of jurisdiction upon the MCV to allow it to hear victim applications made under the *RTA*, thereby expanding the accessibility of the protections found there. As victim applications for intervention orders can already be made in MCV under the *FVPA*, implementation of this reform would enable these to be heard jointly with *RTA* applications, following the one process. The *RTA*'s protections for a safe and secure experience of home would be readily accessible to victims in MCV in this way. Other benefits would also flow. Victims

224 See, eg, *ibid* ss 63(1)–(2).

225 *Ibid*. See also relevant discussion in MCV and CCV Submission to RCFV (n 48) iii, 10.

226 MCV's existing powers to order parties to pre-hearing conferences and mediations could be cross-referenced under the new legislation: *MC Act* (n 55) ss 107, 108.

227 'It is also in response to the voices of victims, who in some instances choose to undergo FDR [family dispute resolution] for a number of reasons': Dobinson and Gray (n 205) 182. 'The continuation of these efforts is also supported by research showing the benefits of FDR for victims of violence that can occur when service providers are specially trained and the process is tailored to their needs.': at 182.

228 *Ibid* 181: '[M]ediation requires negotiation between parties on equal footing and the presence of family violence – characterised by coercion and control – is typically indicative of a significant power imbalance'.

would gain access to MCV's comprehensive support services in relation to their *RTA* applications. Further, the joint processing of *FVPA* and *RTA* applications in MCV and their hearing by expert magistrates might result in case handling efficiencies. The case for this reform is strong for these reasons, which draw and build on the Commission's work and recommendation for the Victorian Government to consider such a reform. This article has contributed beyond the Commission's work by detailing further arguments in favour of the proposed jurisdiction and proposing its key features to be implemented in legislation, thereby providing guidance to policymakers in this regard.

Of course, this reform provides no legal panacea for the treatment of family violence. It is, though, a significant means of improving Victoria's civil law for victims.²²⁹ It is also recognised that other policy responses are required to address family violence. Preventative responses are required to ensure violence does not occur in the first place,²³⁰ including education 'to dismantle harmful attitudes towards women, promote gender equality and encourage respectful relationships'.²³¹ Remedial responses are also required while family violence persists, including responses which equip agencies and courts to take action to ensure victims' personal safety,²³² and improve the availability of affordable housing.²³³ These responses demonstrate the magnitude of the task to comprehensively address family violence, which is beyond the scope of this law-reform article.²³⁴ It is a task which must extend beyond a purely legal response and which requires the whole of society to work together to address. The Commission explained:

Preventing family violence is essential for the health and wellbeing of our community and requires widespread cultural change. There are no 'quick fixes': a long-term perspective and sustained effort and investment are needed. This is one of the most complex and intractable problems confronting the Victorian Government and the Victorian community. If we do not tackle the problem of family violence at its source and become better at preventing it from occurring in the first place, communities and the systems that support them – police, courts and other services – will continue to be overwhelmed. We need to give as much attention to prevention as we do to the other parts of the family violence system. Leadership from the Victorian Government is essential, but action by the government alone will not

229 Civil law responses to family violence have benefits and limitations. See further *VLRC Report* (n 40) 60–2 [3.38]–[3.44].

230 *RCFV Summary Report* (n 3) 6, 11, 38. See also CHP Submission to RCFV (n 3) 4.

231 *RCFV Summary Report* (n 3) 11. See also at 38.

232 *Ibid* 10. See also at 19–20. See also CHP Submission to RCFV (n 3) 4; '[s]tronger safety measures and a tighter enforcement system are needed if staying "safe at home" is to be a genuine option for more women and their children who want to separate from a violent and abusive partner': Diemer, Humphreys and Crinall (n 126) 44.

233 Adams and Russo Witness Statement to RCFV (n 103) [79]: 'The availability of affordable housing for people is an essential part of an effective family violence response. The shortage of affordable housing presently is a structural deficiency in the housing and homelessness system. It is a major structural issue that requires significant investment, not only in the form of public housing, but in a range of difficulty things, including rapid re-housing, making private rental more accessible and better programs to keep people in the housing that they are already in.'

234 See *RCFV Summary Report* (n 3) 14: 'The Commission's strategy is not reliant on one central initiative: it depends on many initiatives. It is vital that these are coordinated and integrated rather than implemented in a piecemeal manner.'

be sufficient. To create a culture of non-violence and gender equality, ordinary Victorians must come together to change attitudes and behaviours. Everyone in the community has a role to play – individuals and all types of organisations.²³⁵

Victims' lives and wellbeing depend on this multi-disciplinary and multi-dimensional approach. Following the proposal set out herein for the *RTA's* home protections to be made accessible to victims in MCV would be a useful contribution.

235 *RCFV Summary Report* (n 3) 38. 'At the core of the Commission's recommendations, therefore, is a call for a long-term approach – one that is bipartisan, requires all parts of government to work together, and involves the entire community. It must include people with experience of family violence and expertise in the responses needed; it must be reflective about policy and program successes and failures; and it must be able to adapt to new knowledge and circumstances.': at 16.

