



19 February 2015

Social Housing Policy Team
Department of Family and Community Services
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Australia Square NSW 1215

By email: socialhousingreform@facs.nsw.gov.au

Dear Social Housing Policy Team,

Discussion paper on social Housing in NSW

1. Women's Legal Services NSW (WLS NSW) thanks the NSW Department of Family and Community Services (FACS) for the opportunity to comment on the Social Housing in NSW Discussion Paper.
2. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims compensation, care and protection, human rights and access to justice.
3. We are deeply concerned that the inadequate social housing system means that women and their children who experience domestic and/or family violence are exposed to unacceptable risks to their safety and in some circumstances are unable to escape the violence.
4. The purpose of this submission is to raise some concerns around the current social housing options for women, especially those experiencing domestic violence, and make some recommendations for improvement. We submit that any review of social housing should prioritise the needs of victims of domestic violence.
5. We also wish to raise some concerns around the housing difficulties faced by women in prison.

6. While we understand that the Discussion Paper is principally concerned with amendments to the social housing system, we submit that the goals of a “social housing system that provides opportunity and pathways for client independence” can only be achieved with a whole of government response and taking the entire private and social housing and planning sectors into account. Accordingly, our recommendations encompass funding and service delivery and legislative reform in areas outside of the strict realm of ‘social housing’ but crucial to addressing the housing and safety needs of domestic violence victims.

Use of language

7. Domestic and/or family violence occurs when one person tries to coerce or control another person in a range of ‘domestic relationships’ as outlined in section 5 *Crimes (Domestic and Personal Violence) Act 2007* (NSW). Family violence is the preferred term to encompass the complex interaction of kinship structures and extended family relationships in Aboriginal and Torres Strait Islander communities. The definition of ‘family violence’ in the *Family Law Act 1975 (Cth)* also includes coercive and controlling behaviour.
8. When we use the term ‘domestic violence’ in this submission it is intended to also include family violence.
9. Domestic violence involves an abuse of power and can take the form of physical violence, sexual abuse, emotional or psychological abuse, verbal abuse, stalking and intimidation, social and geographical isolation, financial abuse, cruelty to pets, or damage to property or threats to be violence in these ways. In the large majority of cases, domestic violence is gendered, that is, it is perpetrated by men against women. However, women can be perpetrators of violence in both heterosexual and same sex relationships.
10. We note that some people who experience violence prefer the term ‘victim’ and others prefer the term ‘survivor’. In this submission we use the term ‘victim’ which is intended to be inclusive of both victims and survivors.

Recommendations

11. In summary, we recommend:

- 11.1 social housing policy and practice must be grounded in a human rights framework;
- 11.2 urgently improve housing options for women and children experiencing domestic violence;
- 11.3 substantially increasing the social housing stock available for victims of domestic violence;
- 11.4 amending Housing NSW policy to allow decision makers to approve the continuation of the Start Safely rental subsidy beyond 24 months, where appropriate.
- 11.5 amending Housing NSW policy to provide that the Start Safely subsidy will be reviewed on an annual basis;

- 11.6 where a permanent social housing property is the most suitable option for a victim of domestic violence, their private rent in an appropriate property should be subsidised for the period it takes for a social housing property to become available;
- 11.7 expanding the current social housing products to support victims of domestic violence accessing the private rental market, including the Private Rental Brokerage Scheme, Tenancy Guarantee and Rentstart products;
- 11.8 developing and implementing appropriate evidence guides to ensure the evidence of specialist domestic violence services and appropriate professionals are accepted to substantiate claims of domestic violence and risk;
- 11.9 ensuring existing social housing tenants are offered all appropriate options available under policy including transfers for additional occupants who are the victims of domestic violence;
- 11.10 ensuring a 'one FACS' collaborative approach that supports and does not prejudice clients who have experienced domestic violence;
- 11.11 implementing recommendation 33 of the Legislative Council Standing Committee on Social Issues report on *Domestic violence trends in NSW* which calls for accurate and consistent application of housing policies in relation to victims and children seeking housing as a result of domestic violence and training for staff in relation to domestic violence;
- 11.12 reviewing Housing NSW policies with respect to inmates of correctional centres, in consultation with organisations such as Women In Prison Advocacy Network (WIPAN) and other advocacy groups;
- 11.13 implementing an enforceable appeal mechanism for decisions made by all social housing providers;
- 11.14 increasing funding for women's refuges and emergency accommodation;
- 11.15 providing additional funding for the expansion of the Staying Home Leaving Violence program;
- 11.16 introducing additional mechanisms to end a residential tenancy agreement by way of notice and without penalty, in circumstances of domestic violence;
- 11.17 amending the *Residential Tenancies Act 2010* (NSW) to provide that perpetrators of domestic violence who cause property damage are liable for the damage;
- 11.18 introducing a specific defence to being listed on a tenant database where there is evidence of domestic violence;
- 11.19 amending the *Residential Tenancies Act 2010* (NSW) to provide an option to seek an order from the NSW Civil and Administrative Tribunal to prevent being listed on a tenant database where there is evidence of domestic violence;
- 11.20 improving the safety of victims of domestic violence using the NSW Civil and Administrative Tribunal by reviewing and implementing safety mechanisms and

procedures;

- 11.21 ongoing training for NSW Civil and Administrative Tribunal members and other staff about the nature and dynamics of domestic violence.

Domestic Violence and Homelessness

12. There were an estimated 28,190 homeless people in NSW on the night of the Census of Population and Housing in 2011, which was 26.8% of the total population of homeless people in Australia at that time.¹ Aboriginal and Torres Strait Islander Australians are over-represented in rates of homelessness in NSW (7.8%) (and all other Australian states and territories, especially the Northern Territory where they represent 15% of the population but over 90% of homeless people) compared to their representation in the overall Australian population.²

13. Violence against women is one of the most widespread human rights abuses in Australia. A study conducted in Victoria found that domestic violence puts more women aged 15-44 years at risk of ill health and premature death than any other risk factor.³ Violence against women also comes at an enormous economic cost. Research released by the Australian Government shows that each year violence against women costs the nation \$13.6 billion.⁴ This figure is expected to rise to \$15.6 billion by 2021.⁵ In 2012-13, 51,953 people used homelessness services.⁶ The most common main reasons for seeking assistance from homelessness services in 2011-12 were:

- domestic and family violence (23%);
- financial difficulties (16%); and
- housing crisis (15%).⁷

14. The Australian Government has acknowledged the link between domestic violence and homelessness in *The Road Home: A National approach to Reducing Homelessness*.⁸

¹ Australian Bureau of Statistics, 'Census of Population and Housing: estimating homelessness, 2011', November 2012, table 3.1, p.16; Australian Bureau of Statistics, 'Census of Population and Housing: estimating homelessness, 2006', September 2012, table 1.1, p.47. The ABS defines a person as being homeless where they do not have suitable accommodation alternatives and their current living arrangement: is in a dwelling that is inadequate; has no tenure, or if their initial tenure is short and not extendable; or does not allow them to have control of, and access to space for social relations (Australian Bureau of Statistics, 'Information paper: a statistical definition of homelessness', 4 September 2012, p.11).

² Curtin Economics Centre, 'Falling Through the Cracks: poverty and disadvantage in Australia' Focus on the States Report Series, No.1 (October 2014) p 52-53.

³ VicHealth and Department of Human Services, *The Health Costs of Violence. Measuring the Burden of Disease Caused by Intimate Partner Violence – A Summary of Findings*, 2004 at 10 http://www.health.vic.gov.au/vwhp/downloads/vichealth_violence%20_%20summary.pdf

⁴ KPMG, *The Cost of Violence against Women and their Children. Safety Taskforce*, Department of Families, Housing, Community Services and Indigenous Affairs, Australian Government, 2009 a https://www.dss.gov.au/sites/default/files/documents/05_2012/vawc_economic_report.pdf

⁵ Ibid.

⁶ Australian Institute of Health and Welfare, 'Specialist homelessness services, NSW supplementary tables, 2012-13', 17 December 2013, table NSW 2.1.

⁷ Ibid, table S2.14.

⁸ Homelessness Taskforce, Department of Families, Housing, Community Services and Indigenous Affairs, *The Road Home: A National approach to Reducing Homelessness*, 2008 https://www.dss.gov.au/sites/default/files/documents/05_2012/the_road_home.pdf.

The *National Plan to Reduce Violence against Women and their Children 2010 – 2022* (National Plan) recognises that escaping violence is the most common reason provided by people who seek help from specialist homeless services.⁹

15. It is also our experience that many women who are victims of domestic violence remain in a violent home and/or relationship, as they simply have nowhere else to go. We note other domestic violence services have reported similar concerns. In 2011 the NSW Legislative Council Standing Committee on Social Issues conducted a comprehensive inquiry into domestic violence trends and issues in NSW. We refer to the report by the Legislative Council Standing Committee on Social Issues, *Domestic Violence Trends in NSW* which stated that:

*A number of participants including Homelessness Australia, Mt Druitt Family Violence Response and Support Strategy Leadership Group, the Women's Refuge Movement, Ms Betty Green, Manager of Liverpool Women's Health Centre and Convenor of [NSW] Domestic Violence Coalition, and the Immigrant Women's Speakout Association all argued that without safe, affordable housing, victims risk becoming homeless, or may stay in or return to situations of violence.*¹⁰

16. We submit that the inadequacy of housing options for victims of domestic violence stems from systemic failures across emergency, temporary and long term housing options across public, social and private housing systems.
17. We submit that the failure to adequately address these issues can have devastating consequences. Not only is the safety of women and children at risk but lack of safe housing may also risk a child or children being removed from the care of their parents.

Australian human rights obligations

Right to adequate housing

18. The right to adequate housing is found in Articles 11 and 2 of the *International Covenant on Economic, Social and Cultural Rights*, ratified by Australia on 10 December 1975.
19. Pursuant to Article 11(1) of the *International Covenant on Economic, Social and Cultural Rights*, State parties 'recognize the right of everyone to an adequate standard of living for himself/herself and his/her family, including adequate food, clothing and housing and to the continuous improvement of living conditions.'¹¹
20. The core elements of this right are outlined in General Comment No.4 of the United Nations Committee on Economic, Social and Cultural Rights and include: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability;

⁹ Council of Australian Governments, *National Plan to Reduce Violence against Women and their Children 2010 – 2022*, 2012, https://www.dss.gov.au/sites/default/files/documents/08_2014/national_plan1.pdf

¹⁰ Legislative Council Standing Committee on Social Issues report 46, *Domestic violence trends and issues in NSW*, August 2012 at 136
<http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/2340ACAD17F1E8C4CA257A6700149EFD>

¹¹ Article 11(1) *International Covenant on Economic, Social and Cultural Rights* (ICESCR), ratified by Australia on 10 December 1975.

habitability; accessibility; location; and cultural adequacy.¹²

21. We submit that the right to adequate housing is more than a right to shelter and specifically includes a right to be secure, safe and free from violence in your home. General Comment No.4 states:

*In the Committee's view, the right to housing should not be interpreted in a narrow or restrictive sense, which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather, it should be seen as the right to live somewhere in security, peace and dignity.*¹³

22. We also note, as outlined in General Comment No.4:

*While the most appropriate means of achieving the full realization of the right to adequate housing will inevitably vary significantly from one State party to another, the Covenant clearly requires that a State party take whatever steps are necessary for that purpose.*¹⁴

23. And further, the obligation is 'to demonstrate that, in aggregate, the measures being taken are sufficient to realize the right for every individual in the shortest possible time in accordance with the maximum available resources.'¹⁵

Obligation to eliminate violence against women

24. Australia's human rights obligations to eliminate violence against women are outlined in the *Convention on the Elimination of All Forms of Discrimination Against Women 1979* (CEDAW) ratified by Australia on 28 July 1983 and CEDAW Committee General Recommendation No 12 (General Comment No 12) and CEDAW Committee General Recommendation No 19 (General Comment No 19).

25. General Comment No 19 makes clear that gender-based violence is a form of discrimination within Article 1 of CEDAW¹⁶ and Article 2 of CEDAW obliges state parties to legislate to prohibit all discrimination against women. Such violence is a violation of the rights to life, to equality, to liberty and security of the person, to the highest standard attainable of physical and mental health, to just and favourable conditions of work and not to be subjected to torture and other cruel, inhuman, or degrading treatment or punishment.¹⁷

26. Under international human rights, States are required to act with due diligence to protect, promote and fulfil their human rights obligations.¹⁸

¹² CESCR Committee General Comment No.4: *The right to adequate housing*, UN Doc E/1992/23 (1991) at para 8

¹³ CESCR Committee General Comment No.4 at para 7

¹⁴ CESCR Committee General Comment No.4 at para 12

¹⁵ CESCR Committee General Comment No.4 at para 14

¹⁶ CEDAW Committee, *General Recommendation No.19: Violence against Women*, UN Doc a/47/38 (1992), para 7.

¹⁷ CEDAW Committee General Comment No 19, para 7. See also: *International Covenant on Civil and Political Rights* (ICCPR) ratified by Australia on 13 August 1980, Articles 2, 3,7 and 26; ICESCR Articles 3 and 10.

¹⁸ Human Rights Committee, *General Comment No.31*, CCPR/C/74/CRP.4/Rev.6, para 8; Committee on the

27. Additionally, CEDAW Concluding Observations on Australia in 2010 recommended that Australia develop strategies to prevent homelessness resulting from domestic/family violence.¹⁹

Recommendation:

Social housing policy and practice must be grounded in a human rights framework.

Public housing waiting lists

28. One of the most significant problems encountered by our clients trying to access social housing in NSW is the lack of available properties which result in unacceptable waiting times to access long-term stable accommodation. At 30 June 2014 there were 59,534 applicants waiting for social housing in NSW.²⁰ Despite meeting the criteria for either urgent housing or urgent transfers and despite indicating that they are at risk of harm if they remain living where they are, our clients often are simply not able to access social housing due to lack of available housing stock. We submit that this is unacceptable and places victims of domestic violence and their children at risk of further harm.
29. We note the obligation on State Parties under Article 11(1) of the *International Covenant on Economic, Social and Cultural Rights* to take the necessary steps to realise the right to adequate housing for every individual in the shortest possible time in accordance with the maximum available resources. We submit that unacceptable waiting times for public housing and for emergency transfers for at risk clients demonstrates that our clients' rights to housing are not adequately protected.

Recommendation:

Urgently improve housing options for women and children experiencing domestic violence.

Start Safely and other social housing products

30. Start Safely has allowed some of our clients to access the private rental market while they are re-establishing themselves in circumstances where they would otherwise have been unable to enter the private rental market. For these clients this product provides a quick and efficient solution to their housing needs enabling them to quickly escape domestic violence.
31. Beyond addressing the immediate physical safety risks posed by cohabiting with an abusive person Start Safely allows some victims to re-establish some financial independence and develop a rental history. Enabling victims to re-establish their

Rights of the Child, *General Comment No.5*, CRC/GC/2003/5, 27 November 2003, para 1; *Committee on Economic, Social and Cultural Rights, General Comment No.14*, E/c.12/2000/4 9200), para 33.

¹⁹ Committee on the Elimination of Discrimination Against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women –Australia*, 30 July 2010, CEDAW/C/AUL/CO/7 at paragraph 29 accessed on 16 February 2015 at: <http://www2.ohchr.org/english/bodies/cedaw/cedaws46.htm>

²⁰ Housing Pathways, accessed on 16 February 2015 at: <http://www.housingpathways.nsw.gov.au/NR/rdonlyres/9C300EE3-F53A-46C9-A43B-48A8CBA05003/0/EWTOOverviewJune14.pdf>

independence following separation or leaving abusive family members makes it less likely for them to return to their abusive partner and reduces the risk they will re-partner out of economic necessity.

32. However, we also submit that the Start Safely rental subsidy is not an appropriate solution for many of our clients escaping domestic violence. Under the program, clients are only supported for a period of up to 24 months, after which they are required to support themselves in the private rental market. While we support programs that assist clients to become financially independent, this is not always appropriate. In some cases women need the support of this rental subsidy beyond 24 months.
33. For our clients in receipt of Newstart in metropolitan areas, particularly in Sydney, Start Safely is largely ineffective. A subsidised Newstart payment would be barely sufficient to cover the costs of shared or boarding house accommodation. For most of our clients leaving domestic violence, these shared-type or insecure housing types are inappropriate and may expose them to further risk of violence or abuse and likely to compromise their efforts to re-establish their independence. Insecure or unsuitable housing options also have implications for women trying to look for work as well as in legal proceedings in the care and protection and family law jurisdictions.
34. The review of the product allocation eligibility at quarterly intervals is inappropriate beyond rental subsidy review purposes. This generates uncertainty, stress for victims and does not allow the certainty and security required to establish new lives following domestic violence, particularly with respect to organising children's schooling and child care and work. Annual review of the Start Safely subsidy is appropriate and recognises the long-term nature of domestic violence impacts.
35. It is common for our clients to experience long-term psychological, social and economic difficulties as a result of experiencing domestic violence. This can significantly limit their capacity to work. In such cases permanent public housing accommodation is a much more appropriate housing solution. In such cases we recommend that where permanent social housing property is the most suitable option for a victim of domestic violence, their rent should be subsidised for the period it takes for a social housing property to become available.
36. We are supportive of a new specialist domestic violence housing company called Address Housing, which plans to offer tenancies of up to five years with rents increasing incrementally towards market rent, while tenants received employment and training support.²¹
37. In addition to the cost of the private rental market there are multiple additional barriers that our clients encounter when trying to access the private rental market even if they are eligible for a subsidy. We submit that these would need to be taken into account when developing any program which channels clients who would otherwise be housed in social housing into the private rental market. For a number of reasons victims can find it hard to obtain rental references and private rental properties, such as:
 - our clients who have been living with a violent partner or other family member

²¹ NSW Family and Community Services, *Establishment of Specialist DV Housing Company* 2014, http://www.housing.nsw.gov.au/NR/rdonlyres/B16C0197-E56B-48D3-9D0D-8BB3F4F9F138/0/Specialist_DV_HousingCompany.pdf

often have substantial rental debts due to property damage caused by violent family members as well as rental arrears.

- they also often report that neighbours have made complaints about noise and nuisance; and
- some clients have reported that partners have harassed real estate agents.

Case Study One

Louisa was renting a private property with her partner. They usually shared the cost of the rental payments. Louisa's partner was violent and financially controlling. When he was angry with Louisa he stopped paying his share of the rent. Louisa was only working part time as she needed to care for their children and could not afford to keep paying the rent on her own. As a result she got increasingly behind in her rent. Her partner also caused significant damage to the property by punching a number of holes in the wall.*

The violence escalated and Louisa needed to leave the property urgently. She made an application to Housing NSW for assistance and was approved for the Start Safely program. Louisa was excited that she had received assistance from Housing NSW but found it very difficult to find a real estate agent who would accept her application because her rent ledger showed that she was really behind in her rent and her current real estate agent told the other agents that she had caused damage to the property.

**Not their real name*

38. Further detail in relation to the difficulties faced in the private rental market can be found later in this submission.

39. In addition to rental subsidies, other social housing products such as Private Rental Brokerage Scheme, Tenancy Guarantee and Rentstart Assistance can be helpful tools to address these problems. However it is our experience that the eligibility criteria for these products are narrow and they need to be expanded.

Recommendations:

Substantially increase the social housing stock available for victims of domestic violence.

Amend Housing NSW policy to allow decision makers to approve the continuation of the Start Safely rental subsidy beyond 24 months, where appropriate.

Amend Housing NSW policy to provide that the Start Safely subsidy will be reviewed on an annual basis.

Where permanent social housing property is the most suitable option for a victim of domestic violence, their rent should be subsidised for the period it takes for a social housing property to become available.

Expand the current social housing products to support victims of domestic violence accessing the private rental market, including the Private Rental Brokerage Scheme,

Tenancy Guarantee and Rentstart products.

Develop and implement appropriate evidence guides to ensure the evidence of specialist domestic violence services and appropriate professionals are accepted to substantiate claims of domestic violence and risk.

Ensure existing social housing tenants are offered all appropriate options available under policy including transfers for additional occupants who are the victims of domestic violence.

Ensure a 'one FACS' collaborative approach that supports and does not prejudice clients who have experienced domestic violence.

Housing NSW Policies

40. While Housing NSW and other social housing providers in NSW have policies and procedures in place to provide for the specific needs of victims of domestic violence it is our experience that these policies are inconsistently applied. We endorse Recommendation 33 made by the Legislative Council Standing Committee on Social Issues report 46, *Domestic violence trends in NSW*:

*That Housing NSW ensure that staff in Housing offices are applying social housing policies accurately and consistently in relation to victims and children seeking housing as a result of domestic and family violence. Consideration should be given to the need for staff training in relation to domestic violence.*²²

41. Another area of specific concern regarding Housing NSW policies is in relation to those that apply when a person is incarcerated. Properties are held for only a three month period and inmates cannot apply to be on the housing register until they are near release. This means that these women lose stable housing and face even further challenges on release. WLS NSW believes that there should be consultation with organisations such as Women In Prison Advocacy Network (WIPAN) and other advocacy groups to assess the impact that this has on clients who are the victims of domestic violence and in particular the impact that this has with respect to child protection issues.
42. Furthermore, there is no enforceable appeal mechanism to contest decisions made by social housing providers. The NSW Housing Appeals Committee has the power to independently review policy decisions pursuant to the NSW Housing External Appeals Policy, however these powers are recommendatory only and Housing NSW is not bound by these decisions. Therefore there is no external second tier review mechanism to ensure compliance and no further avenues of appeal or judicial remedy.

²² Legislative Council Standing Committee on Social Issues report 46, *Domestic violence trends and issues in NSW* August 2012 at 144.

Recommendations:

Implement recommendation 33 of the Legislative Council Standing Committee on Social Issues report on *Domestic violence trends in NSW* which calls for accurate and consistent application of housing policies in relation to victims and children seeking housing as a result of domestic violence and training for staff in relation to domestic violence.

Review Housing NSW policies with respect to inmates of correctional centres, in consultation with organisations such as Women In Prison Advocacy Network (WIPAN) and other advocacy groups.

Implement an enforceable appeal mechanism for decisions made by all social housing providers.

Emergency Accommodation and Refuges

43. We believe that wherever possible victims of domestic violence should be assisted in finding long-term permanent housing options as quickly as possible. Given that victims of domestic violence may need to leave their home at very short notice there will, however, always be a need for emergency accommodation and women's refuges.
44. Specialist women's services are important as they have a thorough understanding of the nature and dynamics of domestic violence and why such violence is primarily perpetrated against women and children. They provide a safe space where women can access support and advice from people who are trained to understand their unique needs. Specialist women's services also recognise and respond to the intersecting and compounding forms of disadvantage that women face for example, due to their sex; gender identity, sexual orientation or intersex status; race; disability; age; and/or social and/or economic disadvantage which can significantly limit women's "full enjoyment of citizenship".²³
45. WLS NSW sees that there is an increasing demand for women's refuges and emergency accommodation. We note that our clients report that it is often difficult to access emergency accommodation or refuges especially where they are living in rural and remote communities. Our clients also report on the significant challenges they face when they are forced to flee to a refuge a significant distance away from their current employment, children's schools and support networks.

Recommendation:

Increase funding for women's refuges and emergency accommodation.

²³ Regina Graycar and Jenny Morgan, 'Disabling Citizenship: Civil Death for Women in the 1990's?' 17 *Adel LR*, 1995 at p. 76.

Staying Home Leaving Violence

46. We are supportive of programs such as Staying Home Leaving Violence, which provide assistance to upgrade the security of premises where there are concerns about domestic violence.
47. Our clients often report that while apprehended violence orders (AVOs) can exclude a perpetrator of violence from the home and orders can be made that make it an offence to enter the property, improvements to security make them feel much safer in their home.
48. While we strongly advocate for significant increases in housing options that allow victims of domestic violence to leave their home if they wish, we recognise that for many women there are substantial benefits in remaining in their home, including allowing them to retain jobs, keep their children in schools and remain near family and support services. Increased security can be one way to ensure adequate housing.

Case Study Two

Mina was renting a private property with her husband Peter* before they separated in 2011. Peter was violent during their relationship and when they separated Mina applied for an AVO. After separation Peter moved out of the property and out of Sydney so Mina did not ask the Police to apply for an exclusion order. Mina remained living where she was as she has a good job with supportive workmates and friends. When Mina applied to the Family Court for parenting orders in relation to their children, Peter became angry. He used the key that he had to the property and while Mina was sleeping, took their children with him. This caused Mina a great amount of distress and she was extremely concerned for the children's safety.*

With assistance from our service and the Staying Home Leaving Violence program, Mina was able to apply for a recovery order to have her children returned and was able to have all the locks changed in her house so that it could not happen again. Mina would not have been able to afford to pay for the locks to be changed herself. Mina later reported feeling much safer in her home and relieved that she did not have to move and change jobs and the children's school.

** Not their real names.*

49. We are concerned, however, that currently the program is not available state-wide. Given the significant benefits of the program we would support the expansion of the program so that all victims of domestic violence who meet the eligibility requirements are able to access the program.
50. While we welcome the NSW Government's announcement in 2014 that the 'number of Staying Home Leaving Violence sites will expand from 23 to 27 over five years',²⁴ it is important that such a service is offered across the state and that current funding

²⁴ NSW Government, *It Stops Here: Standing together to end domestic and family violence in NSW. The NSW Government's Domestic and Family Violence Framework for Reform*, February 2014 at 25.

available to each site is also expanded. Again the fact that there is no enforceable right to adequate housing or any mechanism to ensure compliance with State obligations under international treaties means that our clients who fall outside these geographical areas cannot access the program or protect their right to adequate housing.

Recommendation:

Provide additional funding for the expansion of the Staying Home Leaving Violence program.

Income based rent model

51. As highlighted in the Discussion Paper²⁵ social housing currently has an income-based rent model, which 'means that tenants on similar income support generally pay similar rents in social housing even though some tenants live in a highly sought after area or new home.'²⁶ This means that the cost of living in a particular area is not taken into account and means that it can be very difficult for a tenant to find rental accommodation in areas with higher rents such as in the Sydney region.
52. Stable employment and access to support systems can be extremely important factors for our clients when recovering from domestic violence and taking care of their family. It is often important that they live near other family members for support or live near support services such as counsellors, psychologists, medical practitioners or other domestic violence services. Often our clients are in the position of having to support themselves and their children on their own so maintaining their current employment or moving to areas with increased employment opportunities is essential. The way rent payments are assessed however means that many of our clients cannot afford to remain living in an appropriate area or are forced to move to an area with fewer prospects.
53. Supporting women to access or maintain access to quality childcare is a significant consideration for encouraging pathways out of violence and poverty. For parents and carers of young children, employment or job seeking or study is reliant on access to childcare, practical considerations such as getting to and from childcare and work when the client does not have a car or works far from home are very important.
54. The Discussion Paper proposes that the new social housing system be built around three pillars, the first of which is '*a social housing system that provides opportunity and pathways for client independence.*'²⁷ We submit that the current method of calculating rent is counterproductive to this purpose.

Residential Tenancies Act 2010 (NSW)

55. In NSW the public and private rental markets are regulated by the *Residential Tenancies Act 2010 (NSW)* (the Act). The Act deals very poorly with the issue of tenants experiencing domestic violence. Inadequate protections may expose victims to significant risk of further harm and means that they are at risk of incurring significant

²⁵ *Social Housing in NSW: A discussion paper for input and comment*, Family and Community Services, November 2014 p 27

²⁶ Ibid.

²⁷ Ibid.

debts which can greatly diminish their capacity to remain either in public or private rental accommodation. In effect, the Act is in many instances an obstacle to ensuring the protection of international human rights outlined above, such as the right to safe and secure housing and to live free from violence.

56. This section will primarily focus on the difficulties faced by victims of domestic violence who are co-tenants on their residential tenancy agreement (RTA) with a violent partner as it is these clients who report the most difficulties under the Act. The problems faced by victims of such violence when navigating the Act are complex and numerous. We have chosen to discuss three of the main problem areas to highlight some of the challenges faced by victims of domestic violence who are renting. There are multiple additional problem areas, for example in relation to changing locks and recovering bond money, that are outside the scope of this submission.

Ending a Residential Tenancy Agreement early

57. Where a victim is on a fixed term RTA it is often very difficult for them to end their agreement early. This is particularly an issue of concern where there is a co-tenant who is the perpetrator of domestic violence. This is problematic when a victim of domestic violence needs to leave their home urgently due to safety concerns.

58. If a victim who is a co-tenant simply abandons the property this will not end their liability under their RTA. They can still be held liable for all of the rent while their violent partner remains living in the property.

Case Study Three

Corrine and her partner Martin* were co-tenants on a fixed term RTA for six months. One month into the RTA Corrine fled to another state with her children due to concerns for her safety after a violent incident at home. Martin remained living in the property and Corrine believed that he would continue to pay the rent.*

Two months later Corrine received a phone call from the real estate agent informing her that the rent had not been paid and she owed them \$2,000.

Corrine didn't have the money to pay the debt as she needed all of her money to support herself and her children.

**Not their real names.*

59. While there are some options to terminate sole or co-tenancies early under the Act, these options are only useful in very limited and narrow circumstances.

60. For example, if a co-tenant has a final AVO, that includes an exclusion order, prohibiting the other co-tenant from residing or accessing the residential premises, then the person with this protection order can end their tenancy by providing 14 days notice to the landlord and any other co-tenant without the risk of a financial penalty. However, in our experience this option is not often available to victims of domestic violence for the following reasons.

61. Firstly, in some circumstances victims of domestic violence report they would feel safer if they could leave the property. In such circumstances it is very difficult to obtain an AVO that includes an exclusion order, as the court is unlikely to make the order if the victim is no longer wanting to or living in the property.
62. Secondly, if a victim of domestic violence wants to remain in the property an exclusion order will not be made without considering the accommodation options for the alleged perpetrator.
63. Thirdly, it often takes a long time for an AVO to be finalised, especially where there are charges against the perpetrator of violence. By the time the AVO has been finalised it is likely that the victim will have already incurred significant liabilities under the RTA.
64. Significant debts make it financially very difficult for victims to re-establish themselves in a new home and can lead to a blacklisting on a tenant database. It also makes it difficult to obtain positive renting references. These can be substantial obstacles to finding alternative housing and a cause of homelessness amongst domestic violence victims.
65. While exclusion orders have an important role to play, in practice they are only useful when the victim chooses to remain in the property. For example, in the case study outlined above, “Corrine” would have been unlikely to be successful in an application for an order excluding “Martin” from the premises because she no longer needed to live in the property and was living in another state.
66. While a victim of violence can make an application to the NSW Civil and Administrative Tribunal (NCAT) for an order terminating their RTA due to special circumstances they face a risk of being ordered to compensate the landlord for early termination being made against them.²⁸ We are concerned that this punishes the victim by enforcing what is, in effect, a monetary penalty and is a considerable disincentive to leave.
67. We submit that additional mechanisms to end a lease by way of notice and without penalty other than just a final AVO with an exclusion order are required where there is domestic violence. It should be easier for victims to end their liability without the need for an application to the NCAT.

Recommendation:

Introduce additional mechanisms to end a residential tenancy agreement by way of notice and without penalty, in circumstances of domestic violence.

Liability for damage to property

68. It is very common for our clients to report that violent family members have caused damage to their homes. Damage might include holes in walls and broken doors and windows. If a victim of domestic violence is a co-tenant on a RTA with a violent partner, they can be held liable for all of the damage done to the property despite the fact that they had no control over that person's actions.

²⁸ *Residential Tenancies Act 2010* (NSW), section 102.

69. Again, significant debts can make it very difficult for victims to re-establish themselves in a new home and can lead to a blacklisting on a tenant database. It also makes it difficult to obtain positive renting references. These can be substantial obstacles to finding alternative housing and a cause of homelessness amongst domestic violence victims.
70. We submit that perpetrators of domestic violence who cause damage to property should be held liable for the damage.

Case Study Four

Donna and Max* had been in a relationship for 5 years and were renting together. Max had been violent towards Donna on many occasions. He would throw things at Donna and had punched multiple holes in the walls. On one occasion he threw a chair through their front window. Donna reported the violence to the police and Max was charged with a number of offences including property damage. The courts also granted an AVO for Donna's protection. Max moved out of the property and Donna was hopeful that she could remain safely living in the property.*

At the next property inspection the real estate agent informed Donna that they would be terminating her tenancy due to the significant damage caused to the property. The real estate agent also said that they would be asking her to pay for all the damage to the property, which was extensive and far exceeded the amount Donna and Max had paid for the bond.

Despite the fact that the damage was not her fault, Donna was liable to compensate the landlord and could not prevent the termination of her tenancy.

** Not their real names.*

Recommendation:

Amend the *Residential Tenancies Act 2010* (NSW) to provide that perpetrators of domestic violence who cause damage to property are liable for the damage.

Blacklisting on tenant databases

71. As outlined above, there are a number of circumstances wherein victims of violence might be blacklisted on a tenant database as a consequence of domestic violence, whether it be due to early termination of their RTA, rental arrears or damage to property.
72. WLS NSW welcomed the changes that were introduced in 2010 to the Act that now provide for an application to be made to NCAT for a person's name to be removed from a database where it is 'unjust in the circumstances.'²⁹ We believe, however, that these provisions need to be strengthened to provide greater protection for victims of domestic violence. For example, it would be beneficial for the Act to provide a specific defence against a blacklisting where there is evidence of domestic violence and to enable victims to seek an order to prevent them being listed on a tenant database where there is evidence of domestic violence.

²⁹ *Residential Tenancies Act 2010* (NSW), section 217(2)(b).

Recommendations:

Introduce a specific defence to being listed on a tenant database where there is evidence of domestic violence.

Amend the *Residential Tenancies Act 2010* (NSW) to provide an option to seek an order from NSW Civil and Administrative Tribunal to prevent being listed on a tenant database where there is evidence of domestic violence.

Safety protections at NCAT

73. Given that NCAT has to deal with matters where domestic violence is an issue, we submit that it is essential that there are steps taken to ensure the safety of victims of domestic violence when participating in the process and to ensure that the domestic violence issues are dealt with appropriately.
74. It is important to recognise that victims of domestic violence may have particular vulnerabilities when navigating NCAT proceedings. Apart from concerns regarding their physical safety when participating in the process and the need for safe rooms, victims may face challenges when participating in conciliations, giving evidence and being cross-examined by violent partners.
75. It is essential that safety mechanisms be put in place at NCAT to ensure that victims of domestic violence can adequately participate in NCAT proceedings and make use of the provisions in the Act designed for their protection.
76. Consideration should also be given to the need for staff training in relation to domestic and family violence. This should include NCAT members and other NCAT staff.

Recommendations:

Improve the safety of victims of domestic violence using the NSW Civil and Administrative Tribunal by reviewing and implementing safety mechanisms and procedures.

Ongoing training for NSW Civil and Administrative Tribunal members and other staff about the nature and dynamics of domestic violence.

Protections for victims of domestic violence in NSW anti-discrimination laws

77. There is growing evidence highlighting the need for protection from discrimination on the grounds of status of being a victim of domestic violence in all areas of public life, including accommodation.³⁰

³⁰ National Association of Community Legal Centres, *Submission in Inquiry into the Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012* (2012) (NACLC HRAD Bill submission) p25-29; ADFVC, *Submission to the Inquiry into the Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012* (2012) p 8; Ms Adams, Ms Davis & Ms McCormack, *Senate Legal and Constitutional Affairs Legislation Committee, Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012*, Hansard (23 January 2013) p 29-30, 32-33.

78. In our experience, victims of domestic violence are often evicted from rental properties and find it difficult to secure rental properties because they have been victims of domestic violence.
79. We submit that protection from discrimination on the grounds of being victim of domestic violence in NSW anti-discrimination legislation would better protect victims of domestic violence from discrimination in the rental housing market.
80. Such protection is consistent with Australia's human rights obligations as outlined above.
81. It is also consistent with the National Plan to Reduce Violence Against Women and their Children, which aims to engage all in the community to address violence against women and advance their gender equality including through developing workplace measures to support women experiencing and escaping from domestic violence.³¹
82. The Legal and Constitutional Affairs Legislation Committee recommended the inclusion of domestic violence as a protected attribute in the Commonwealth Human Rights and Anti-Discrimination Bill.³²

Recommendation:

Amend the *Anti-Discrimination Act 1977* (NSW) to include being a victim of domestic violence as a protected attribute.

If you would like to discuss any aspect of this submission, please contact Gabrielle Craig or Kellie MacDonald, Senior Solicitors or Liz Snell, Law Reform and Policy Coordinator on 02 8745 6900.

Yours faithfully,
Women's Legal Services NSW

Janet Loughman
 Principal Solicitor

³¹ *National Plan to Reduce Violence against Women and their Children 2010 – 2022*, Commonwealth of Australia, 2012, Strategy 1.3 at 21.

³² *The Senate Legal and Constitutional Affairs Legislation Committee, Report on the Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012* (2013), Recommendation 3.