

3 November 2016

Homelessness Strategy Team
Strategic Reform & Policy
Department of Family and Community Services
Locked Bag 10
Strawberry Hills NSW 2012

By email: homelessness.strategy@facs.nsw.gov.au

Dear Homelessness Strategy Team,

Foundations for change – Homelessness in NSW Discussion Paper

1. Women's Legal Service NSW (WLS NSW) thanks the NSW Government for the opportunity to comment on the *Foundations for change - Homelessness 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 support, care and protection, human rights and access to justice.
3. WLS NSW has an Aboriginal Women's Legal Program (IWLP). This program delivers a culturally sensitive legal service to Aboriginal women in NSW. We provide an Aboriginal legal advice line, participate in law reform and policy work, and provide community legal education programs and conferences that are topical and relevant for Aboriginal and Torres Strait Islander women.
4. An Aboriginal Women's Consultation Network guides the IWLP. It meets quarterly to ensure we deliver a culturally appropriate service. The members include regional community representatives and the IWLP staff. There is a representative from the Aboriginal Women's Consultation Network on the WLS NSW Board.
5. We agree that reform to government, private and community housing sectors is necessary to address homelessness. We are particularly concerned that the inadequacy of the private and social housing systems means that women and their children who are subjected to



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domestic and/or family violence are exposed to unacceptable risks to their safety and in some circumstances are unable to escape the violence.

6. The purpose of this submission is to raise some concerns about the current private and social housing options for women, especially those subjected to domestic and/or family violence, and make some recommendations for improvement. We submit that any review of the private and social housing should prioritise the needs of victims/survivors of domestic and/or family violence.

Use of language

7. Domestic and/or family violence, which often includes sexual assault, 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. In the large majority of cases, as acknowledged in section 9(3)(b) of the *Crimes (Domestic and Personal Violence) Act*, 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 Increasing funding for specialist, culturally responsive women's refuges and emergency accommodation;
 - 11.2 Reviewing Housing NSW policies to prevent victims of domestic violence being evicted from and deemed ineligible from social housing due to the actions of perpetrators or by virtue of keeping themselves and their children safe;
 - 11.3 Implementing an enforceable appeal mechanism for decisions made by all social housing providers;
 - 11.4 Reviewing Housing NSW policy to allow primary carers with children in temporary care to be eligible for appropriate housing to allow restoration of children where it is safe to do so;

- 11.5 Reviewing the income based rent model and considering alternative rent models;
- 11.6 Implementing Recommendation 33 of the Legislative Council Standing Committee on Social Issues Domestic violence trends in NSW report, 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;
- 11.7 Housing NSW requires that all Community Housing Providers have clear and accessible policies regarding the treatment of tenants subjected to domestic violence;
- 11.8 That decisions made by Community Housing Providers about victims of domestic violence be reviewable by the Housing Appeals Committee;
- 11.9 Adding to the Residential and Tenancies Act 2010 (NSW) an additional ground to terminate a tenancy or residential tenancy agreement without compensating the landlord due to domestic violence, by serving a notice of termination and evidence of domestic violence, which could take effect upon service;
- 11.10 Expanding the proposed definition of "evidence of domestic violence" within the Act for the purposes of terminating a tenancy without penalty due to domestic violence to include a standard form statutory declaration from a prescribed list of people who can make a professional assessment as to whether the victim has been subjected to domestic violence.
- 11.11 Improving the safety of victims of domestic violence using the NSW Civil and Administrative Tribunal by reviewing and implementing safety mechanisms and procedures;
- 11.12 Ongoing training for NSW Civil and Administrative Tribunal members and other staff about the nature and dynamics of domestic violence;
- 11.13 Amending the Anti-Discrimination Act 1977 (NSW) to include being a victim of domestic violence as a protected attribute;
- 11.14 Increasing both the portion of the interest on rental bonds being paid to tenants and used to fund the Tenants' Advice and Advocacy Services;
- 11.15 Ensuring that the Staying Home Leaving Violence program is available statewide.
- 11.16 Substantially increasing the social housing stock available for victims of domestic violence;
- 11.17 Amending Housing NSW policy to allow decision makers to approve the continuation of the Start Safely rental subsidy beyond 36 months, where appropriate;

- 11.18 Amending Housing NSW policy to provide that the Start Safely subsidy will be reviewed on an annual basis;
- 11.19 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;
- 11.20 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;
- 11.21 Reviewing Housing NSW policies with respect to inmates of correctional centres, in consultation with organisations such as Women In Prison Advocacy Network (WIPAN).

Domestic Violence and Homelessness

12. 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.¹ 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.² This figure is expected to rise to \$15.6 billion by 2021.³
13. The Australian Government has acknowledged the link between domestic violence and homelessness in *The Road Home: A National approach to Reducing Homelessness*.⁴ 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.⁵ The Council of Australian Governments (COAG) has endorsed the National Plan.
14. 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.
15. 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

¹ 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

² 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

³ Ibid.

⁴ 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.

⁵ 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

across public, social and private housing systems.

16. 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 result in a child(ren) being removed from the care of their parents.
17. It is important to strengthen protections within the *Residential Tenancies Act 2010* (NSW) to make it easier for a victim of violence to end their tenancy without penalty and there must also be safe and affordable alternative housing options for victims of domestic violence, who are primarily women and children.

How can government and non-government agencies build on previous NSW homelessness initiatives and plans to create a robust strategy to prevent and reduce homelessness?

In addition to increasing housing supply, what actions are needed to improve access to housing for people experiencing homelessness and how can the access system for social housing be more responsive to their needs?

Emergency Accommodation and Refuges

18. We believe that wherever possible victims of domestic violence should be assisted in finding safe, affordable, 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.
19. 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".⁶ It is also important that there are culturally responsive specialist women's services, including specialist Aboriginal women's refuges.
20. 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. In visits to Aboriginal communities we are hearing of the impact of the loss of specialist Aboriginal women's refuges. For example, women may be able to access emergency accommodation, but only for a few days, and so they have very few options other than to return to their violent partner. Additionally, some Aboriginal women have fed back to community organisations poor experiences with some services and so there is

⁶ Regina Graycar and Jenny Morgan, 'Disabling Citizenship: Civil Death for Women in the 1990's?' 17 *Adel LR*, 1995 at p. 76.

a reluctance for these organisations to refer to services which are not considered culturally responsive.

21. 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 specialist, culturally responsive women's refuges and emergency accommodation.

Former tenant categories

22. The Housing NSW *Domestic and Family Violence Policy Statement* sets out a broad definition of domestic violence, including economic abuse. In our experience, perpetrators often force victims to take out loans and credit cards in their name. We are concerned that when assessing whether a person is eligible for priority housing the *Social Housing Eligibility and Allocations Policy Supplement* does not allow Housing NSW to take into account personal debts of any kind, even though a victim may have been coerced into taking on debt.
23. The Housing NSW *Domestic and Family Violence Policy Statement* acknowledges that perpetrators of domestic violence often cause damage to property. In our experience, victims of domestic violence are often left liable for damage done to rental properties by perpetrators who were either co-tenants or occupants.
24. Section 90 of the *Residential Tenancies Act 2010 (the Act)* allows landlords, including social housing providers, to apply to the Tribunal for a termination order, without needing to issue a notice of termination to the tenant, if they are satisfied that the tenant, or any person who although not a tenant is occupying or jointly occupying the residential premise, has intentionally or recklessly caused or permitted serious damage to the residential premise or any neighbouring property (including any property available for use by the tenant in common with others).
25. Section 54 of *the Act* holds tenants vicariously responsible to the landlord for any act or omission by any other person who is lawfully on the residential premises that would have been a breach of the residential tenancy agreement if it had been an act or omission by the tenant.
26. According to the Housing NSW *Tenancy Policy Supplement* a tenant who is evicted from their tenancy due to a breach of their tenancy agreement is deemed to be an "unsatisfactory former social housing tenant" and is required under the *Social Housing Eligibility and Allocations Policy Supplement* to show evidence they have sustained a tenancy for six months before they can be approved and listed on the NSW Housing Register.
27. According to the Housing NSW *Tenancy Policy Supplement* a tenant who moves out owing more than \$500 to a social housing provider is deemed to be a "less than satisfactory

former social housing tenant". Their application on the Housing Register is suspended until they have made repayments over a six-month period under the *Social Housing Eligibility and Allocations Policy Supplement*.

28. Women often need to leave their homes urgently to keep themselves and their children safe. According to the Housing NSW *Tenancy Policy Supplement* a tenant who abandons a property is deemed to be a "less than satisfactory former social housing tenant".

29. We believe that Housing NSW policy treats victims of domestic violence living in social housing more harshly than the private rental system. Section 212 of *the Act* states a landlord or agent of a landlord must not list personal information about a person in a residential tenancy database unless:

(a) the person was named as a tenant in a residential tenancy agreement that has terminated or the person's co-tenancy was terminated, and

(b) the person breached the agreement, and

(c) because of the breach, the person owes the landlord an amount that is more than the rental bond for the agreement or the Tribunal has made a termination order, and

(d) the personal information identifies the nature of the breach and is accurate, complete and unambiguous.

30. Subsection 217(2) of *the Act* empowers the Tribunal to make an order removing a person's name from a residential tenancy database if:

(b) the inclusion of the applicant's name or other personal information about the applicant is unjust in the circumstances, having regard to the following:

(i) the reason for the listing,

(ii) the tenant's involvement in any acts or omissions giving rise to the listing,

(iii) any adverse consequences suffered, or likely to be suffered, by the tenant because of the listing,

(iv) any other relevant matter.

31. We submit that the threshold to exclude a person from the social housing system is lower than the threshold to name a person on a residential tenancy database (which could have the effect of excluding them from the private rental market) and former social housing tenants do not have access to an enforceable avenue to review the decision to categorise them in a particular way.

32. While the NSW Housing Appeals Committee has the power to independently review policy decisions pursuant to the NSW Housing External Appeals Policy, 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.

Recommendations:

Review Housing NSW policy to prevent victims of domestic violence being evicted from and deemed ineligible from social housing due to the actions of perpetrators or by virtue of keeping themselves and their children safe.

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

Social housing and children

33. The Housing NSW *Domestic and Family Violence Policy Statement* acknowledges the impact that domestic violence has on children and young people, stating that “Government and non-government agencies have a legal responsibility to protect children and young people from risk of significant harm.”
34. Women with children who are subjected to domestic violence are often in a difficult position. Women often stay in violent relationships in order to protect their children from the perpetrator. Yet children who are exposed to domestic violence are at risk of being removed by the Department of Family and Community Services. If women leave violent homes with their children, children are also at risk of removal due to being homeless. Once children are removed, inappropriate housing can be a barrier to restoration. Mothers are caught in a catch 22 where without their children they are ineligible for housing with multiple bedrooms to accommodate their children yet they will not have their children returned to their care without adequate housing.

Recommendation:

Review Housing NSW policy to allow primary caregivers with children in temporary care to be eligible for appropriate housing to allow restoration of children where it is safe to do so.

Income based rent model

35. 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.”⁷ 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.
36. 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

⁷ Ibid.

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.

37. 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, job seeking or study is reliant on access to affordable childcare and reliable and accessible public transport

Recommendation:

Review the income based rent model and consider alternative rent models.

Inconsistent application of policies

38. 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.*⁸

Recommendation:

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.

Community housing providers

39. We refer to the announcement on 6 October 2016 by the Honourable Minister Hazzard to transfer a further 18,000 property social housing properties to Community Housing Providers (CHPs).
40. We understand that CHPs must apply some Housing NSW policies, however can also develop and apply their own policies, which in our experience are not as accessible as

⁸ Legislative Council Standing Committee on Social Issues report 46, *Domestic violence trends and issues* in NSW August 2012 at 144.

Housing NSW policies. Not all CHP decisions are reviewable by the Housing Appeals Committee.

41. We are concerned that CHPs may not have clear and accessible policies regarding the treatment of tenants subjected to domestic violence and that decisions may not be reviewable.

Recommendation:

Housing NSW requires that all Community Housing Providers have clear and accessible policies regarding the treatment of tenants subjected to domestic violence.

That decisions made by Community Housing Providers about victims of domestic violence be reviewable by the Housing Appeals Committee.

Private rental market

42. Given the shortage of social housing stock and the availability of financial support to assist people renting in the private rental market, it is important to enable victims of domestic violence to continue to be able to access the private rental market.
43. Women can be excluded from the private rental market when they abandon a rental property, accrue a debt and are blacklisted on a residential tenancy database.
44. We welcomed the announcement by the Honourable Minister Dominello and Honourable Minister Goward on 5 July 2016 to reform *the Act* to allow victims of domestic violence to leave a tenancy immediately without penalty by attaching a provisional, interim or final apprehended violence order (AVO) or a court injunction under the *Family Law Act 1975 (Cth)* to a notice of termination; to limit victim's liability for damage caused to a rental property by a perpetrator; and prohibit landlords from listing victims of domestic violence on residential tenancy databases.
45. However, we believe the reforms could go further to protect the rights of victims of domestic violence. Many victims of domestic violence are reluctant to report violence to the Police because they are ashamed or afraid the violence will escalate. They are often worried about the effect an AVO or a criminal charge will have on the perpetrator's employment opportunities.

Case study one

Yasmin and Daniel* were married for several years. Daniel had been violent towards Yasmin throughout their relationship, however she had never reported the abuse to police because Daniel was a teacher and she did not want him to lose his job.*

Yasmin had reported the violence to a domestic violence support service.

Yasmin and Daniel entered into a 12 month fixed term lease. After a month, Yasmin left the

property to sleep on a couch at a friend's place to try and escape the violence. A month later Yasmin returned to the house she and Daniel were leasing. Shortly after this Daniel was violent towards Yasmin again. Immediately after this, Daniel abandoned the property and no longer paid rent.

Yasmin paid the rent on her own for a short time by maxing out her credit card. Women's Legal Service NSW assisted Yasmin in an urgent application to NCAT to end her tenancy due to the special circumstances of her case. While the tribunal is designed to function without lawyers, Yasmin was terrified by the prospect of having to face Daniel in the tribunal proceedings. We represented Yasmin at NCAT. We attached letters from support services detailing the history of domestic violence.

NCAT made orders ending her tenancy and leaving Daniel liable for the fees associated with ending the lease early.

** Not their real names*

If the amendments we propose are adopted, Yasmin could have terminated her tenancy immediately without penalty upon provision of the termination notice and evidence of domestic violence to the landlord or real estate. Her safety would have been prioritised, she could have avoided the accumulation of debt and she could have avoided the unnecessary stress of the tribunal proceedings.

46. We believe that a victim should also be able to end their tenancy without liability by relying on a statutory declaration from a professional with sufficient experience to form an opinion as to whether a person has been a victim of domestic violence. Our proposal is based on a list of professionals who can provide evidence of family violence in Immigration matters.⁹ This includes a: medical practitioner; registered nurse; social worker; registered psychologist; domestic violence service worker; child protection worker; school counsellor or school principal; family consultant appointed under the *Family Law Act 1975 (Cth)*; or family relationship counsellor who works at a Family Relationship Centre.
47. Given this list of professionals is in the context of immigration it is also important to consider additional professionals with whom Aboriginal and Torres Strait Islander people would engage. In addition to those who provide evidence of family violence in Immigration matters, we recommend the inclusion of community access workers, community liaison workers, community workers or any other title to describe the role of Aboriginal and Torres Strait Islander workers liaising with Aboriginal and Torres Strait Islander people.
48. We would also add a senior homelessness worker.
49. Being able to rely on a statutory declaration from a relevant professional would balance a victims right to end their tenancy quickly without needing a court order as well as assuring

⁹ Migration Regulations 1994 – Specification of Evidentiary Requirements – IMMI 12/116

landlords that the reason for ending their tenancy was justified in the circumstances.

50. We recommend the NSW Fair Trading Rental Bond Lodgement form be amended to include the apportionment of the bond paid by each tenant. This is so it is clear how the bond money will be refunded.

Recommendation:

Consistent with the Government's commitment adding to *the Act* an additional ground to terminate a tenancy or residential tenancy agreement without compensating the landlord due to domestic violence, by serving a notice of termination and evidence of domestic violence, which could take effect upon service.

Expanding the proposed definition of "evidence of domestic violence" within the Act for the purposes of terminating a tenancy without penalty due to domestic violence to include a standard form statutory declaration from a prescribed list of people who can make a professional assessment as to whether the victim has experienced domestic violence.

Safety protections at NCAT

51. Given that the NSW Civil and Administrative Tribunal (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.
52. 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.
53. 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.
54. Consideration should also be given to the need for staff training in relation to domestic 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

55. 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.¹⁰
56. 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.
57. 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.
58. Such protection is consistent with Australia's human rights obligations.¹¹
59. 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 gender equality including through developing workplace measures to support women experiencing and escaping from domestic violence.¹²
60. Protection from discrimination on the grounds of status of being a victim/survivor of domestic and/or family violence in the *Anti-Discrimination Act 1977 (NSW)* provides an opportunity to further educate and engage the community in addressing domestic and family violence.
61. Such protection builds on the important work undertaken across Australia, including by the NSW government, to provide work entitlements for victims/survivors of domestic and/or family violence in the form of flexible work arrangements and additional paid leave through enterprise agreements and awards.
62. However, such provisions do not address negative treatment, attitudes and stereotyping that lead to unfair treatment. Anti-discrimination laws have traditionally been used to

¹⁰ 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.

¹¹ 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). *General Comment No 19* makes clear that gender-based violence is a form of discrimination within Article 1 of CEDAW and Article 2 of CEDAW obliges state parties to legislate to prohibit all discrimination against women.

¹² *National Plan to Reduce Violence against Women and their Children 2010 – 2022*, Commonwealth of Australia, 2012, Strategy 1.3 at 21.

address stigma and challenge barriers posed to equal participation in public life.¹³

63. Additionally, protection through clauses in enterprise agreements and awards is limited to employment only and not to all areas of public life. There is growing evidence highlighting the need for protection from discrimination on the grounds of status of being a victim/survivor of domestic violence in all areas of public life, including accommodation.¹⁴
64. 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.¹⁵ A similar protection is also required in state and territory legislation.

Recommendation:

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

Tenant's advice and advocacy services

65. Tenants are better able to sustain tenancies if they understand their rights and responsibilities. Tenants advice and advocacy services play a key role in advising tenants about their rights and responsibilities.
66. We submit that the current proportion of interest on rental bonds paid to tenants (0.01%) and used to fund services for tenants such as the Tenants' Advice and Advocacy Services (at around 8%) is meagre.
67. We recommend increasing both the portion of the interest on rental bonds being paid to tenants and used to fund the Tenants' Advice and Advocacy Services.

Recommendation:

Increasing both the portion of the interest on rental bonds being paid to tenants and used to fund the Tenants' Advice and Advocacy Services.

¹³ Tashina Orchiston and Belinda Smith, 'Empowering Victims of Family Violence: Could Anti-Discrimination Laws Play a Role?' *Australian Review of Public Affairs*, March 2012.

¹⁴ 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.

¹⁵ 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.

How can we build on Staying Home Leaving Violence and Start Safely, to address the risk of homelessness for people experiencing domestic and family violence, including supporting women and children to stay in their home?

Staying Home Leaving Violence

68. We commend the NSW government on their commitment to invest \$25 million over the next four years in the Staying Home Leaving Violence program.¹⁶
69. 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.
70. 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 to her care 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.*

71. We are concerned, however, that currently the program is not available statewide. 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.

¹⁶ Media release: NSW Budget: Record Investment to Tackle Domestic Violence, 11 June 2016: http://www.health.nsw.gov.au/news/Documents/20160614_00.pdf

72. It would also be helpful to understand what success looks like in this program for Aboriginal women in remote communities in NSW.

Recommendation:

Ensure that the Staying Home Leaving Violence program is available statewide.

Start Safely

73. We commend the NSW Government on its commitment to investing \$43 million over four years for housing supports through Start Safely.¹⁷ 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.

74. 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 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.

75. 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 36 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 36 months.

76. 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 are 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.

77. 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.

¹⁷ Ibid.

78. 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.
79. 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 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.

Recommendation:

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 36 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.

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.

How can Safer Pathways rollout be used to ensure early intervention for people at risk of homelessness?

80. We understand that women are being able to successfully access safe housing through the NSW Safer Pathway Safety Action Meetings (SAMs). These currently operate in 6 sites

around NSW and are planned to roll out to a further 21 new sites over the next 7 months.¹⁸

81. This is positive but SAMs are not universally available to women across NSW who need safe housing; nor should a SAM be required as a way to access safe housing in all cases.

Aboriginal people and homelessness

How can existing services better identify and support Aboriginal people at risk of homelessness?

82. In our experience clients are sometimes offered properties by Aboriginal Housing Offices (AHO) that are inappropriate or unsafe. There should be an obligation on AHO to take proactive steps to ensure that alternative properties offered are safe. If tenants escaping violence or an unsafe situation are moved to another location that is also unsafe then this contributes further to homelessness rather than resolving the problem.

83. We are also concerned by the number of chronically homeless Aboriginal and Torres Strait Islander women. It would be helpful to hear more about how chronically homeless women are able to access support services and how they may be prioritised for a safe place to live.

How can service systems improve how they engage with Aboriginal people to deliver culturally competent, holistic responses when they are at risk or experiencing homelessness?

84. We have identified that one of the most essential features of an appropriate service response is that the service needs to act quickly. If there is a delay in the client being able to access the service then they are more likely to end up back on the street.

Older women

Where are the opportunities to identify and support older women earlier who may be vulnerable and at risk of homelessness?

85. We are concerned by the homelessness of older women as a result of the gender pay gap and corresponding access to less superannuation; unpaid carer responsibilities; and domestic violence. These issues need to be addressed in order to address the homelessness of older women.

86. We recommend consultation with the Older Women's Network, Older Persons' Tenant Service and Senior Rights Service.

¹⁸ Media release: Domestic Violence Victims on a Safer Pathway, 19 July 2016:
http://www.health.nsw.gov.au/news/Documents/20160719_01.pdf

Leaving prison and homelessness

What exit planning strategies and support partners need to be involved to stop people leaving prisons into homelessness?

87. We commend the amendment to Housing NSW policy such that a tenant can retain their housing and pay \$5 a week rent if they go to prison for a period of six months or less.
88. The *Social Housing Eligibility and Allocations Policy Supplement* states that an application for public housing is suspended while an applicant is in prison. This means that women cannot start, progress or secure housing prior to being released. This may result in women staying longer in prison because they cannot meet parole requirements or they may be released into homelessness, increasing their risk of recidivism. Without secure housing upon exit from prison, mothers cannot have children who are often living in out of home care or with violent perpetrators returned to their care.
89. We note FaCS announced a pilot in the Nepean / Blue Mountains areas to start the priority housing assessment while women are in custody rather than having to wait to make a post release application. We welcome this initiative and look forward to hearing further about this pilot.
90. We also support a greater focus on diversionary programs. We refer particularly to the MIRANDA Project: “an innovative, gender specific approach to crime prevention targeting women with complex needs who are at risk of offending and re-offending” which is based on the UK women’s centres.¹⁹
91. WLS NSW believes that there should be consultation with people with lived experience of incarceration and organisations such as Women In Prison Advocacy Network (WIPAN) to help stop people leaving prisons into homelessness.

Recommendations:

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

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

Yours faithfully,

Women's Legal Service NSW

**Janet Loughman
Principal Solicitor**

¹⁹ See: <http://www.crcnsw.org.au/miranda-project>