



31 October 2014

Ms Leilani Farha  
UN Special Rapporteur on Adequate Housing  
Office of the United Nations High Commissioner for Human Rights  
Special Procedures Branch  
Palais Wilson, Room 3-077  
CH – 1211, Geneva 10  
Switzerland

By email: [srhousing@ohchr.org](mailto:srhousing@ohchr.org)

Dear Ms Farha,

**Report on the responsibilities of governments at sub-national level in the  
implementation of the right to adequate housing**

1. Women's Legal Services New South Wales (WLS NSW) thanks the UN Special Rapporteur on adequate housing for the opportunity to comment on the responsibilities of governments at sub-national level in the implementation of the right to adequate housing.
2. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in New South Wales, Australia. 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 inadequate housing options and the lack of any enforceable right to adequate housing on the national and sub-national levels in Australia means that women who experience domestic and/or family violence are exposed to unacceptable risks to their safety and in some circumstances unable to escape the violence.

**Use of language**

4. 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)*.<sup>1</sup> 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. We note the term 'domestic violence' is used in the United Nations setting. When we use the term 'domestic violence' in this submission it is intended to also include family violence.

5. 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 perpetrated by men against women. However, women can be perpetrators of violence in both heterosexual and same sex relationships.
6. 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.

### **Housing affordability and availability**

7. Lower income earners (households in the bottom 40% of income distribution) who pay more than 30% of their gross income on housing are deemed to be experiencing housing stress.<sup>2</sup> In New South Wales in 2009-10, 62% of lower-income earners were in housing stress and 60% of the lower-income earners in Australia overall were in housing stress.<sup>3</sup> In 2013, 42% of New South Wales households receiving Centrelink Rent Assistance (an additional social security payment to help people renting in the private rental market) were experiencing housing stress.<sup>4</sup>
8. There is an insufficient supply of affordable housing stock available for purchase in New South Wales — in September 2013:
  - 2% of home purchase stock was affordable for very low income households;
  - 7% was affordable for low-income households; and
  - 28% was affordable for moderate-income households.<sup>5</sup>
9. There is a shortage of dwellings for rental in the private market for households with

<sup>1</sup> This includes flatmates, carers and those living in residential facilities.

<sup>2</sup> National Housing Supply Council, *Housing supply and affordability issues*, March 2013, p.143. The '30/40 rule' uses a 30% housing cost ratio to determine potential affordability problems, defines lower-income households as those in the lowest two quintiles of the equivalent disposable income distribution and assesses housing costs in relation to gross household income (Judith Yates and Michelle Gabrielle, 'Housing affordability in Australia', Australian Housing and Urban Research Institute, 2006, p.14). Ryanti Miranti and Binod Nepal, 'Housing stress in Australia 2007', National Centre for Social and Economic Modelling (University of Canberra, 2008) define housing stress as the situation where a family's housing costs are more than 30% of its disposable income and the family is in the bottom two quintiles of the equivalised income distribution.

<sup>3</sup> National Housing Supply Council, *Housing supply and affordability — key indicators, 2012*, 2012, table 5.4, p 45.

<sup>4</sup> Ibid, table 5.2, p.42.

<sup>5</sup> Centre for Affordable Housing, 'Local Government Housing Kit Database', September 2012-13, table M3b.

very low to moderate incomes in New South Wales – in September 2013:

- 9% of rental stock was affordable for very low income households;
- 26% was affordable for low-income households; and
- 64% was affordable for moderate-income households.<sup>6</sup>

## Domestic Violence and Homelessness

10. There were an estimated 28,190 homeless people in New South Wales 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.<sup>7</sup> Indigenous Australians are over-represented in rates of homelessness in New South Wales (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.<sup>8</sup>
11. Violence against women is one of the most widespread human rights abuses in Australia. A study conducted in Victoria, Australia found that domestic violence puts more women aged 15-44 years at risk of ill health and premature death than any other risk factor.<sup>9</sup> 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.<sup>10</sup> This figure is expected to rise to \$15.6 billion by 2021.<sup>11</sup> In 2012-13, 51,953 people used homelessness services.<sup>12</sup> 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%).<sup>13</sup>

<sup>6</sup> Centre for Affordable Housing, 'Local Government Housing Kit Database', table M3a.

<sup>7</sup> 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).

<sup>8</sup> 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.

<sup>9</sup> 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](http://www.health.vic.gov.au/vwhp/downloads/vichealth_violence%20%20summary.pdf)

<sup>10</sup> 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](https://www.dss.gov.au/sites/default/files/documents/05_2012/vawc_economic_report.pdf)

<sup>11</sup> Ibid.

<sup>12</sup> Australian Institute of Health and Welfare, 'Specialist homelessness services, NSW supplementary tables, 2012-13', 17 December 2013, table NSW 2.1.

<sup>13</sup> Ibid, table S2.14.

12. The Commonwealth Government of Australia has acknowledged the link between domestic violence and homelessness in *The Road Home: A National approach to Reducing Homelessness*.<sup>14</sup> 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.<sup>15</sup>

13. 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 no where else to go. We note other domestic violence services have reported similar concerns. In 2011 the New South Wales Legislative Council Standing Committee on Social Issues conducted a comprehensive inquiry into domestic violence trends and issues in New South Wales. We refer to the report by the Legislative Council Standing Committee on Social Issues, *Domestic Violence Trends in New South Wales* 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 [New South Wales] 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.*<sup>16</sup>

**Distribution of responsibilities related to the right to adequate housing:**

	National/ Federal	Provincial/ state	Municipal	Explanatory Notes
Housing programme	x	x		
Income support (eg: transfer payments to individuals, welfare, social security and/or rent subsidies/supplements)	x			
Tenancy and security of tenure legislation		x		
Infrastructure (eg: water/sanitation, electricity)		x		
Prohibition of discrimination in housing	x <sup>17</sup>	x <sup>18</sup>		

<sup>14</sup> 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](https://www.dss.gov.au/sites/default/files/documents/05_2012/the_road_home.pdf).

<sup>15</sup> 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](https://www.dss.gov.au/sites/default/files/documents/08_2014/national_plan1.pdf)

<sup>16</sup> 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/parliament/committee.nsf/0/2340ACAD17F1E8C4CA257A6700149EFD>

<sup>17</sup> Australian Commonwealth anti-discrimination legislation makes it unlawful for a person to discriminate against person on the basis of their sex, sexual orientation, gender identity, marital status, pregnancy or breast feeding status, disability, race or age in accommodation, to varying degrees (*Sex Discrimination Act 1984*, section 23; *Disability Discrimination Act 1992*, section 25; *Age Discrimination Act 2004*, section 29; *Racial Discrimination Act 1975*, section 12).

<sup>18</sup> New South Wales *Anti-Discrimination Act 1977* makes it unlawful to discriminate against a person in the provision of accommodation on the basis of their age (section 49ZY0), disability (section 49N),

## **Primary basis for the allocation of responsibilities among different levels of government**

### **National Partnership Agreement on Homelessness**

14. The Commonwealth Government funds and works with state and territory governments to develop strategies and policies to address homelessness and housing.
15. The National Partnership Agreement on Homelessness<sup>19</sup> (NPAH) was developed by Australian Commonwealth and state and territory governments to help 'people who are homeless or at risk of homelessness achieve sustainable housing and social inclusion.' WLS NSW is supportive of the initiatives under the agreement and notes that the 'NPAH funds have provided for the development or expansion of programs and responses providing accommodation and support for women and children experiencing domestic and family violence so that they can live a life free from violence and abuse.'
16. We further note the commitment in the National Plan to 'implement homelessness services under the National Homelessness Partnership Agreement to improve housing options for women victims of violence.'
17. The Commonwealth Government will provide \$115 million to the NPAH until 30 June 2015, which is \$44 million less than money committed 2013-14.<sup>20</sup> WLS NSW is concerned that there has been no commitment to renewed funding for the NPAH beyond 30 June 2015.
18. For further information we refer to the Australian National Equality Rights Alliance submission to the Australian Senate Standing Committee on Finance and Public Administration Committee inquiry into domestic violence in Australia.<sup>21</sup>

### **Sub-national level legislation and housing strategy**

19. State and territory governments are primarily responsible for the allocation of funding for social housing and the regulation of social housing policies.
20. The *Housing Act 2001 (NSW)* establishes the New South Wales Land and Housing Corporation which is empowered to:

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transgender status (section 38N), sex (section 34), race (section 20), homosexuality (section 49ZQ) and marital or domestic status (section 48).

<sup>19</sup> Australian Government Department of Social Services, *National Partnership on Homelessness 2013-14*, 2012

[http://www.federalfinancialrelations.gov.au/content/npa/housing/homelessness\\_superseded/national\\_partnership\\_superseded.pdf](http://www.federalfinancialrelations.gov.au/content/npa/housing/homelessness_superseded/national_partnership_superseded.pdf)

<sup>20</sup> Latika Bourke, 'Homelessness agreement between states and Commonwealth extended with \$115m funding promise' ABC News 31 March 2014 <http://www.abc.net.au/news/2014-03-30/kevin-andrews-homeless-funding-extended-115m/5354654>.

<sup>21</sup> Australian Equality Rights Alliance, *Submission of the Equality Rights Alliance to the Finance and Public Administration Committee Inquiry into Domestic Violence in Australia*, 2014 [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Finance\\_and\\_Public\\_Administration/Domestic\\_Violence/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Domestic_Violence/Submissions) submission 59.

- acquire land for present or future residential development and for public purposes,
- from time to time, as prevailing circumstances require, to develop and make available, or to make available for development by others, such of the land so acquired as the Corporation considers necessary or expedient for residential development and for public purposes.<sup>22</sup>

21. The objects of the *Housing Act 2001 (NSW)* are:

- to maximise the opportunities for all people in New South Wales to have access to secure, appropriate and affordable housing,
- to ensure that housing opportunities and assistance are available to all sections of the community with housing needs,
- to ensure that public housing is developed as a viable and diversified form of housing choice,
- to ensure that public housing and community housing reflects the housing standards of the general community and is designed to cater for the ongoing needs of consumers,
- to maximise the opportunities for tenants of public and community housing programs to participate in the management of their housing and in the development of public and community housing policies,
- to ensure that the public housing system focuses on housing people who are most in need,
- to ensure that the available supply of public housing is shared equitably among people who are most in need,
- to promote equity between levels of assistance provided to people living in public housing, community housing, private rental housing and those who own or are purchasing their homes,
- to maintain an efficient housing administration to ensure the effective co-ordination and provision of all housing services,
- to encourage social mix and the integration of different housing forms in existing and new communities,
- to ensure that registered community housing is developed as a viable and diversified component of the New South Wales social housing sector,
- to support the provision of registered community housing for people on a very low, low or moderate income,
- to facilitate the provision of assistance to home purchasers on low to moderate incomes,
- to provide for the management of such existing and future home purchase assistance schemes (including the portfolio of loans under HomeFund schemes) as the Minister directs,
- to provide for the funding of such other rental and home purchase assistance

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<sup>22</sup> *Housing Act 2001 (NSW)*, section 8(2)

schemes as the Minister directs,

- to encourage the development of flexible and innovative financial arrangements to facilitate access to home ownership for persons in receipt of low and moderate incomes,
- to ensure appropriate mechanisms and forums are established to allow input into housing policy by representative community organisations and non-government agencies involved in housing policy and provision,
- to attract investment in public housing, including related activities such as tenant employment and the provision of integrated services,
- to enable the provision under this Act of corporate, technical and information technology services, in or outside New South Wales, to government and non-government agencies.<sup>23</sup>

22. The New South Wales Auditor-General's Performance Audit of Housing New South Wales and the New South Wales Housing Corporation found that:

*HNSW's and LAHC's internal objectives have not achieved a balance between the objects of the Housing Act 2001.*

*HNSW's and LAHC's internal objectives, indicators and measures only show a limited picture of each agency's performance. None demonstrate how the agency is delivering on objectives to achieve social sustainability, or allow an assessment against the objects of the Housing Act 2001 in total.*

*The application of some HNSW policies focus on the urgent needs of priority clients, elevating the achievement of one legislative objective. This limits the achievement of others such as social mix and maintaining efficient housing administration.<sup>24</sup>*

23. State and territory legislation regulates the private rental market, for example the *Residential Tenancies Act 2010* regulates the private rental market in NSW.

### **Compliance with the right to adequate housing**

24. Neither Australia, nor the state of New South Wales, have a Human Rights Act. Australia therefore has no enforceable right to adequate housing. There are no compliance mechanisms at either the national or sub-national levels.

25. We have inadequate housing options for victims of domestic violence stemming from systemic failures across emergency, temporary and long-term housing options across public, social and private housing systems.

26. The right to adequate housing is linked to the right to live free from violence. We submit that the failure to have compliance mechanisms to ensure the right to adequate housing can have devastating consequences for victims of domestic

<sup>23</sup> *Housing Act 2001* (NSW) section 5.

<sup>24</sup> Auditor-General of New South Wales, *New South Wales Auditor-General's Report Performance, Audit Making the best use of public housing, Housing NSW and NSW Land and Housing Corporation 2013* [https://www.audit.nsw.gov.au/ArticleDocuments/280/01\\_Public\\_Housing\\_Full\\_Report.pdf.aspx?Embed=Y](https://www.audit.nsw.gov.au/ArticleDocuments/280/01_Public_Housing_Full_Report.pdf.aspx?Embed=Y).

violence forcing them to remain living in violent homes or forcing them into homelessness.

### **Problems arising from the failure to have an enforceable right to housing**

27. As there is no enforceable right to adequate housing, many of our clients are not able to afford adequate housing. The following is a brief summary of some of the problems we see arising from the lack of an enforceable right to adequate housing and lack of compliance mechanisms.

#### **Housing NSW Policies**

28. Many of our most disadvantaged clients are reliant on social housing. While Housing New South Wales and other social housing providers in New South Wales have policies in place to provide for the specific needs of victims of domestic violence there is no enforceable appeal mechanism to contest decisions made by social housing providers. The New South Wales Housing Appeals Committee may in some circumstances review policy decisions, however Housing NSW is not bound by these decisions and therefore there is no external mechanism to ensure compliance.

#### **Public housing waiting lists and rental subsidies**

29. One of the most significant problems encountered by our clients trying to access public housing in New South Wales is the lack of available properties which result in unacceptable waiting times to access long-term stable accommodation. At 31 December 2013 there were 58,206 applicants waiting for social housing in New South Wales.<sup>25</sup> 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 public 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.

30. In New South Wales some of our clients can access rental subsidy programs such as Start Safely, which is designed to provide some initial assistance to victims of domestic violence in the private rental market as they regain their financial independence. Start Safely is allocated under Housing New South Wales policy. 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 provides a quick and efficient solution to their housing needs, which enables them to quickly escape domestic violence while at the same time providing them with the ability to choose where they live.

31. 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

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<sup>25</sup>Housing Pathways: viewed on 26/6/2014 at:  
[http://www.housingpathways.nsw.gov.au/NR/rdonlyres/9C300EE3-F53A-46C9-A43B-48A8CBA05003/0/Expected\\_Waiting\\_Times.pdf](http://www.housingpathways.nsw.gov.au/NR/rdonlyres/9C300EE3-F53A-46C9-A43B-48A8CBA05003/0/Expected_Waiting_Times.pdf)

appropriate. 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.

32. 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.<sup>26</sup> We understand Address Housing plans to be operational in the first half of 2014/15.

33. 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 risks clients demonstrates that our clients rights to housing are not adequately protected.

### **Emergency Accommodation and Refuges**

34. 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.

35. Specialist women's services are important as they have a thorough understanding of the nature and dynamics of domestic and family 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".<sup>27</sup>

36. 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.

### **Staying Home Leaving Violence**

37. In New South Wales there is a program called Staying Home Leaving Violence,

<sup>26</sup> New South Wales 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](http://www.housing.nsw.gov.au/NR/rdonlyres/B16C0197-E56B-48D3-9D0D-8BB3F4F9F138/0/Specialist_DV_HousingCompany.pdf)

<sup>27</sup> Regina Graycar and Jenny Morgan, 'Disabling Citizenship: Civil Death for Women in the 1990's?' 17 *Adel LR*, 1995 at p. 76.

which provides assistance in upgrades in security of premises in New South Wales where there are concerns about domestic violence. The program is funded by New South Wales Department of Family and Community Services.

38. Our clients often report that while Apprehended Violence Orders 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.
39. 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 with which they are familiar and remain near family and support services. Increased security can be one way to ensure adequate housing.

#### *Case study*

*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 Apprehended Domestic Violence Order. 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, he 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 the 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.*

40. We are concerned, however, that currently the program is only available to clients in a small geographical area within New South Wales. 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.
41. While we welcome the New South Wales Government's recent announcement that the 'number of Staying Home Leaving Violence sites will expand from 23 to 27 over five years',<sup>28</sup> it is important that such a service is offered across the state and that

<sup>28</sup> 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.

current funding 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.

### **Residential Tenancies Act 2010 (NSW)**

42. In New South Wales the public and private rental markets are regulated by the *Residential Tenancies Act 2010 (NSW)*. This legislation 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 debts which can greatly diminish their capacity to remain either in public or private rental accommodation. In effect, the tenancy legislation 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.
43. 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 legislation. The problems faced by victims of such violence when navigating the *Residential Tenancies Act 2010 (NSW)* 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**

44. 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.
45. If a victim who is a co-tenant simply abandons the property this will not end the liability of the victim under the RTA. They can still be held liable for all of the rent while their violent partner remains living in the property.

#### *Case study*

*Corrine\* and her partner Martin\* were co-tenants on a fixed term lease agreement for six months. One month into the agreement 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 \$2000.*

*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.*

46. While there are some options to terminate sole or co-tenancies early under the *Residential Tenancies Act 2010 (NSW)*, these options are only useful in very limited and narrow circumstances.
47. For example, if the victim of a co-tenancy has a final Apprehended Violence Order (AVO), which is a court order that places restrictions on a person who is violent or abusive towards another person, 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 risk of penalty.
48. However it is our experience that this is an unnecessarily high threshold requirement for a number of reasons.
49. 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.
50. 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.
51. 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.
52. While exclusion orders have an important role to play, in practice they are only useful when the victim chooses to remain in the property.
53. 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.
54. 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.
55. 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 New South Wales Civil and Administrative Tribunal (NCAT).
56. While a victim of such violence can make an application to the NCAT for an order terminating their RTA they face a risk of a compensation order for early termination

being made against them. We are concerned that this punishes the victim by enforcing what is, in effect, a monetary penalty and is a considerable disincentive to leave.

### **Liability for damage to property**

57. It is very common for our clients to report that violent family members have caused damage to their home. 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.

58. 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.

59. 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 her 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 they 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.*

### **Blacklisting on tenant databases**

60. 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, rental arrears or damage to property.

61. WLS NSW welcomed the changes that were introduced in 2010 to the *Residential Tenancies Act 2010 (NSW)* 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.' 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. Currently victims have to wait until after they have been listed before they take any action.

**Most significant challenge to effective accountability to the right to adequate housing**

62. WLS NSW submits that a significant obstacle to the protection of the right to adequate housing is that we do not have a National Human Rights Act.

63. In 2009 the Australian Government conducted a National Human Rights Consultation. Of the 35,000 submissions, which raised the issue of a Human Rights Act, 87% recommended the introduction of a Human Rights Act.<sup>29</sup> The National Human Rights Consultation Committee recommended the introduction of a Human Rights Act.<sup>30</sup>

64. We believe that a National Human Rights Act would significantly increase the protections of this right.

65. If you would like to discuss any aspect of this submission, please contact Gabrielle Craig, Senior Solicitor, or Kellie McDonald, Solicitor on +612 8745 6900.

Yours faithfully,

**Women's Legal Services NSW**

Janet Loughman  
Principal Solicitor

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<sup>29</sup> National Human Rights Consultation Committee, *National Human Rights Consultation Report* (September 2009), 264  
<http://www.ag.gov.au/RightsAndProtections/HumanRights/TreatyBodyReporting/Documents/NHRCR-ThecaseforaHumanRightsAct.pdf>

<sup>30</sup> National Human Rights Consultation Committee, *National Human Rights Consultation Report* (September 2009), xxxiv  
<http://www.ag.gov.au/RightsAndProtections/HumanRights/TreatyBodyReporting/Documents/NHRCReport.pdf>.