

24 July 2020

Housing Strategy Implementation Unit
Land and Housing Corporation
Department of Planning, Industry and Environment
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Dear Housing Strategy Implementation Unit

Discussion paper: A Housing Strategy for NSW

1. Women's Legal Service NSW (**WLS NSW**) thanks the Department of Planning, Industry and Environment for the opportunity to comment on the discussion paper on a housing strategy for NSW. We will be commenting primarily on *Theme 3: Housing with improved affordability and stability*.
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. Our specialist legal services include the Legal Education and Advice in Prison (**LEAP**) program for women in custody which was established in 2009 and received the 2009 NSW Law and Justice Foundation Community Legal Centre Award. WLS NSW works in partnership with Wirringa Baiya Aboriginal Women's Legal Centre and Western Sydney Community Legal Centre (formerly Hawkesbury Nepean Community Legal



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Centre) to deliver the LEAP program in metropolitan prisons in Sydney. This program was established due to the high levels of unmet need amongst women in custody for civil and family law services, many of whom have experienced child sexual abuse, sexual assault and family violence. LEAP addresses unmet legal need by providing and facilitating access to civil and family legal services for incarcerated women. Since 2009, LEAP has provided legal advice to hundreds of women in prison, many of whom need assistance in the areas of family violence, sexual assault, family law, care and protection, housing and victims support.

4. WLS NSW has an Aboriginal Women's Legal Program (IWLP). This program delivers a culturally safe 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.
5. An Aboriginal Women's Consultation Network guides the IWLP. It meets quarterly to ensure we deliver a culturally safe 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.

Recommendations

6. In summary we recommend:
 - 6.1 Expanding the Staying Home Leaving Violence program across all of NSW;
 - 6.2 Expand the definition of 'competent person' in section 105A of the *Residential Tenancies Act 2010* (NSW) to make it accessible to all domestic violence victims-survivors, particularly First Nations communities and people with a disability as well as refugee and migrant communities, people living in regional, rural and remote areas and LGBTIQ+ communities;
 - 6.3 Amend the *Anti-Discrimination Act 1977* (NSW) prohibiting discrimination on the grounds of being a victim of domestic violence;
 - 6.4 The NSW Rent Choice Start Safely subsidy should be available until the recipient can gain employment sufficient to support themselves, or until a social housing property is available;

- 6.5 Increasing social housing and safe, accessible and affordable housing stock sufficient to meet the demand;
- 6.6 Increasing funding for specialist, culturally safe women's refuges and emergency accommodation;
- 6.7 Increase refuges and crisis accommodation as well as long term housing stock which is accessible, safe and affordable;
- 6.8 Implementing the recommendations in the *Blueprint for Reform: Removing Barriers to Safety for Victim-survivors/Survivors of Domestic and Family Violence who are on Temporary Visas (Blueprint for Reform)*;
- 6.9 Implementing the recommendations in the *Pathways Home Report* to ensure women are adequately supported when exiting prison which will impact on recidivism;
- 6.10 Adequately address the housing needs of older women;
- 6.11 Adequately funding work to prevent homelessness, including access to early legal advice and support.

Women and children experiencing domestic violence

7. 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
8. Violence against women also comes at an enormous economic cost. It is estimated that the total costs of violence against women and their children in 2015-16 was \$22 billion.²

¹ VicHealth and Department of Human Services (2004) *The Health Costs of Violence. Measuring the Burden of Disease Caused by Intimate Partner Violence - A Summary of Findings* <https://www.vichealth.vic.gov.au/-/media/ResourceCentre/PublicationsandResources/PVAW/IPV-BOD-web-version.pdf?la=en&hash=9965632AF1FC7E4C92EFB50705AFADD5A9CF6139>.

² KPMG (2016) *The Cost of Violence against Women and their Children in Australia*, Department of Social Services, Australian Government, https://www.dss.gov.au/sites/default/files/documents/08_2016/the_cost_of_violence_against_women_and_their_children_in_australia_-_summary_report_may_2016.pdf.

9. It is acknowledged that Aboriginal and Torres Strait Islander women, pregnant women, women with disability, and women experiencing homelessness are underrepresented in the Personal Safety Survey, which taking these groups fully into account, may add \$4 billion to the costs in 2015-16.³
10. Domestic and family violence is a significant cause of homelessness. Specialist homelessness services (**SHSs**) assisted 290,300 clients in 2018-2019, 116,400 (40%) of whom had experienced domestic or family violence, with 76.2% being women.⁴ SHSs assisted 68,900 Indigenous Australians, 61.2% of which were women.⁵
11. It is also our experience that many women who are victim-survivors of domestic violence remain in a violent home and/or relationship, as they simply have nowhere else to go.
12. We submit that the lack of safe and affordable housing options for women experiencing domestic violence can have devastating consequences. Not only is the safety of women and children at risk, but lack of safe and affordable housing may also result in a child(ren) being removed from the care of their victim parent by the State for being seen as unprotective.
13. Where children are removed, it can be difficult for mothers to obtain housing sufficient to house the children they seek to have restored to their care, which in turn makes it difficult to succeed in having their children restored to their care.
14. This highlights the need for early legal advice and support as a preventative measure, to help address issues which may leave women at risk of imprisonment to reduce this risk and the need to support mothers and children so children can remain safely in the care of their mothers.
15. In our experience, removing children from the care of their family can be a catalyst for drug and alcohol abuse. Some women use drugs and alcohol to try to manage the symptoms of complex trauma resulting from domestic violence. Drug and alcohol abuse can lead to a range of criminal offending, such as theft, driving and violent offences.

³ Ibid.

⁴ Australian Institute of Health and Welfare (2019) *Snapshot: Homelessness and homelessness services*
<https://www.aihw.gov.au/reports/australias-welfare/homelessness-and-homelessness-services>

⁵ Ibid.

16. Women may also have been criminalised as a result of a failure to correctly identify the predominant victim and aggressor.
17. A lack of safe and affordable housing can mean that offenders are bail refused.
18. For women who had primary care of their children, going into custody can result in their children entering into the out of home care (OOHC) system. The over-representation of Aboriginal and Torres Strait Islander women in prison is impacting on the over-representation of Aboriginal and Torres Strait Islander children in OOHC.
19. We submit that the inadequacy of housing options for victim-survivors of domestic violence stems from systemic failures in emergency, temporary and long-term housing options across public, social and private housing systems.

Staying safe at home

20. Many women who have experienced domestic violence want to be able to continue living safely in their homes with their children. They may want to continue to send their children to their local schools and maintain ties with their local community and services.
21. Many of our clients have benefited from the Staying Home Leaving Violence (SHLV) program that supports victim-survivors of domestic violence to stay safely in their home and prevents homelessness by carrying out home safety audits and safety planning and helping pay to upgrade the security of their homes. SHLV operates in 33 locations across NSW.

Recommendation: Expand the SHLV program across all of NSW.

Strengthening tenancy laws

22. We support the recent reforms to the *Residential Tenancies Act 2010* (NSW) which makes it easier for victim-survivors of domestic violence to end their tenancies immediately, without liability, by giving a domestic violence termination notice attaching prescribed evidence of domestic violence, including a declaration by a 'competent person'.⁶

⁶ *Residential Tenancies Act 2010* (NSW), Part 5, Division 3A.

23. While recent reforms broaden the definition of a 'competent person', we believe the definition should be further expanded to make the reforms more accessible, particularly for Aboriginal and Torres Strait Islander people, people with disabilities, LGBTIQ+ communities, migrant and refugee communities, and people in regional, rural and remote areas.

Recommendation: Expand the definition of 'competent person' in section 105A of the *Residential Tenancies Act 2010* (NSW) to make it accessible to all domestic violence victims-survivors, particularly First Nations communities and people with a disability as well as refugee and migrant communities, people living in regional, rural and remote areas and LGBTIQ+ communities.

24. We support the prohibition on the disclosure of any information in a domestic violence termination notice.⁷ However despite this prohibition, we understand that some real estate agents are asking prospective tenants if they have ever been a protected person on an apprehended domestic violence order. We are concerned that prospective tenants may be asked this question because landlords do not want to lease to a victim of domestic violence, perhaps fearing that a perpetrator of domestic violence may attend and damage their property or that the tenant victim-survivor may seek in future to exercise their rights as a tenant experiencing domestic violence and end their tenancy.

25. There is currently no protection against discrimination on the basis of being a victim of domestic violence. This is making it more difficult for victim-survivors of domestic violence to secure safe and affordable housing.

Recommendation: Amend the *Anti-Discrimination Act 1977* (NSW) prohibiting discrimination on the grounds of being a victim of domestic violence.

Increasing access to private rental subsidies

26. Many of our clients who have escaped domestic violence are in receipt of the Rent Choice Start Safely rental subsidy, which assists them to rent in the private rental

⁷ *Residential Tenancies Act 2010* (NSW), subsection 105C(3).

market. The subsidy is available for up to 36 months, gradually tapering off with the expectation that women secure employment and support themselves.

27. We support this initiative. We understand that while other forms of private rental assistance, such as bond payments, are available in other jurisdictions, Rent Choice Start Safely is unique to NSW and no other state or territory had an equivalent subsidy, although the payment of a targeted rental subsidy was a recommendation of the Victorian Royal Commission into Family Violence.⁸
28. However, we believe the initiative could be improved. Many of our clients have complex trauma as a result of domestic violence experienced as children and adults. It can be difficult for people with complex trauma to address their mental health and associated issues within 36 months to the extent necessary to obtain employment to support themselves. It is also difficult for single parents with the primary responsibility for young children to be able to gain employment with hours of work and a salary capable of supporting a private rental within 36 months.

Recommendation: The NSW Rent Choice Start Safely subsidy should be available until the recipient can gain employment sufficient to support themselves, or until a social housing property is available.

Increasing access to social housing and safe and affordable housing stock

29. As at June 2019, there were 46,530 people on the general list and 4,484 people on the priority list for social housing in NSW, with expected wait times of up to 10 years.⁹
30. It is important that housing is safe, affordable and accessible, including being accessible to and responsive to the needs of people with disability.

Recommendation: Increase social housing and safe, affordable and accessible

⁸ Flanagan, K, Blunden, H, Valentine, k. and Henriette, J (2019) Housing outcomes after domestic and family violence, AHURI Final Report 311, Australian Housing and Urban Research Institute Limited, Melbourne https://www.ahuri.edu.au/__data/assets/pdf_file/0026/37619/AHURI-Final-Report-311-Housing-outcomes-after-domestic-and-family-violence.pdf.

⁹ NSW Communities & Justice (2019) Expected wait times <https://www.facs.nsw.gov.au/housing/help/applying-assistance/expected-waiting-times>.

housing stock sufficient to meet the demand.

Crisis and temporary accommodation

31. We believe that wherever possible victim-survivors of domestic violence should be assisted in finding long-term permanent housing options as quickly as possible. However, given that victim-survivors often need to leave their homes at very short notice, there will always be a need for emergency accommodation and women's refuges.
32. Under the NSW *Going Home, Staying Home* reforms, homelessness service contracts were reduced by 43% with services consolidated into larger consortiums. This resulted in many specialist domestic violence women's refuges changing into general women's homelessness shelters.¹⁰
33. 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".¹¹ It is also important that there are culturally responsive specialist women's services, including specialist Aboriginal women's refuges.
34. WLS NSW sees that there is an increasing demand for women's refuges and emergency accommodation, particularly since the COVID-19 pandemic. 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

¹⁰ Clarke, Jemma, Women's Electoral Lobby, 'Specialist Women's Refuges Needed Now' https://www.wel.org.au/specialist_women_s_refuges_needed_now.

¹¹ Regina Graycar and Jenny Morgan, 'Disabling Citizenship: Civil Death for Women in the 1990's?' 17 Adel LR, 1995 at p 76.

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

35. 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.
36. It is also important that refuges and crisis accommodation as well as long term housing is accessible for people with disability as well as safe and affordable.

Recommendation: Increase funding for specialist, culturally safe women's refuges and emergency accommodation.

Recommendation: Increase refuges and crisis accommodation as well as long term housing stock which is accessible, safe and affordable.

Women and children on temporary visas

37. Women and their children have the right to be safe from all forms of violence in Australia, regardless of their visa status.
38. Women and children experiencing sexual, domestic and family violence on temporary visas are in particular need of support. Depending on their visa type, some women may be eligible for Special Benefit and Medicare, but this is only a small group of women out of all the women on temporary visas experiencing violence.
39. Besides this support, women who are experiencing sexual, domestic and family violence and their children are relying on food vouchers and living in refuges for lengthy periods of time. The option of living in a refuge is not available to all who may need this option. Many remain with the perpetrator because there is no other option. Proper and comprehensive supports for women and children experiencing sexual, domestic and family violence on temporary visas are imperative - including income, housing, healthcare and legal support.
40. The temporary visa status of women experiencing domestic violence has been a key issue of concern raised in the last two NSW Domestic Violence Death Review

Team Reports. In 2015-17, the Domestic Violence Death Review Team report recommended the Commonwealth Government work with State and Territory Governments and other relevant stakeholders to ensure women and children on temporary visas experiencing violence have access to medical care, crisis accommodation and ongoing safe housing, income and legal support.¹² The current NSW Domestic Violence Death Review Team report says there has been little, if any, action on this recommendation and again recommended action on domestic and family violence and vulnerable immigration status.¹³

41. During the COVID-19 pandemic, the increased risks to safety and need for women and children on temporary visas experiencing violence to be able to access safe housing, income, medical and legal support has again been highlighted with limited action.
42. We are deeply saddened by the recent domestic violence homicide of Ms Sidhu in Quakers Hill. Ms Sidhu was on a student visa. It should not take the preventable deaths of women to galvanise the Government to act.
43. On 11 April 2020, the Commonwealth Government announced \$7 million funding for Red Cross to provide emergency relief for people who are on temporary visas and in severe financial hardship over the next 6 months.¹⁴ While welcome, these are only one-off payments for people who cannot afford medicine or food and are therefore limited in their effectiveness.
44. We note some state/territory governments have also acted on this issue, including Tasmania, Victoria, South Australia, Queensland, the Northern Territory, the ACT and more recently NSW.¹⁵ But further additional support is required.
45. We implore the NSW Governments to take urgent action now to protect and support women and their children on temporary visas experiencing violence, including access to safe and affordable housing. Medical, income and legal support is also required.

¹² NSW Government, *NSW Domestic Violence Death Review Team Report 2015-2017*, Recommendations 20.1- 20.5.

¹³ NSW Government, *NSW Domestic Violence Death Review Team Report 2017-2019*, Recommendation 17 and p 100, 181-182.

¹⁴ Minister for the Department of Social Services Media Release, 'Urgent support for 300 charities and community organisations', 11 April 2020 access at: <https://ministers.dss.gov.au/media-releases/5726>.

¹⁵ NSW Government media release: NSW Government Supporting Multicultural Communities through COVID-19, 3 June 2020 accessed at: <https://www.dvnsw.org.au/wp-content/uploads/2020/06/Geoff-Lee-med-rel-NSW-Government-supporting-multicultural-communitues-through-COVID-19.pdf>.

46. In 2018, the National Advocacy Group on Women on Temporary Visas Experiencing Violence produced a *Path to Nowhere* report that examined the issues for women on temporary visas experiencing domestic, family and sexual violence and their dependants.¹⁶
47. The *Blueprint for Reform: Removing Barriers to Safety for Victim-survivors/Survivors of Domestic and Family Violence who are on Temporary Visas (the Blueprint for Reform)* sets out necessary reforms to achieve safety for all women.¹⁷ We support these proposed reforms and call for their immediate implementation.

Recommendation: Implement the recommendations in the Blueprint for Reform.

Women exiting prison

48. Sexual, domestic and family violence are often the pathway to prison for women and a key risk factor in the removal of children from their care.
49. Many of our clients experience complex trauma as a result of being sexually abused as children and are then often victim-survivors of sexual and domestic violence as adults. Their children are often removed either after being exposed to domestic violence or being homeless as a result of trying to leave a violent relationship. The removal of children can compound already existing complex trauma and can lead to abuse of drugs and alcohol, which can in turn lead to criminal offending.
50. Access to safe and affordable housing serves to keep women and children safe and can also help reduce the risk of women being incarcerated.
51. Women leaving prison are also at a significant risk of exiting into homelessness.
52. Women in prison may have lost the contents of their homes, including important identification documents. This may be because it may have been too difficult or expensive to store their goods or because their incarceration did not afford them the opportunity to make arrangements for their housing and possessions. The loss

¹⁶ National Advocacy Group on Women on Temporary Visas Experiencing Violence (2018) *Path to Nowhere: Women on Temporary Visas Experiencing Violence and Their Children*

https://www.homelessnessnsw.org.au/sites/homelessnessnsw/files/2018-12/Path%20to%20Nowhere_0.pdf.

¹⁷ National Advocacy Group on Women on Temporary Visas Experiencing Violence (2019) *Blueprint for Reform: Removing Barriers to Safety for Victim-survivors/Survivors of Domestic and Family Violence who are on Temporary Visas*

https://www.wlsnsw.org.au/wp-content/uploads/Blueprint-for-Reform_web-version-021019.pdf.

of important documents makes it difficult to access social welfare and to complete tenancy applications. Welfare benefits are low and it may be difficult to gain employment, limiting the housing stock they can afford. The loss of possessions - including basic furnishings such as beds and household goods such as a fridge, microwave or washing machine compounds poverty, making it even more difficult in entering into the housing market.

53. Aboriginal and Torres Strait women, who constitute 30% of the people leaving prison, and can find it particularly difficult to secure safe and affordable housing given they are more likely to have experienced socio-economic disadvantage prior to going into custody, are more likely to experience discrimination and may have had multiple short-term custodial sentences, making it difficult to accumulate goods and maintain connection to community.¹⁸
54. Single women with children are also identified as facing particular difficulties accessing safe and affordable housing post-release due to prior housing debts, social isolation and poverty.¹⁹
55. Where children are removed from women on entering into custody, difficulties securing safe and affordable housing can decrease their chance of having their children returned to their care and increase the risk of recidivism and return to custody.
56. Some women, including women being protective of their pregnancy, tell us that it is safer for them to be in custody while pregnant, as it is an escape from violence and a place where they can access health care and nutrition and they may be supported to address their addiction to drugs.
57. It is an indictment on our society that some children and women see prison as a safe refuge and that this is accepted amongst this group because they feel they have nowhere to turn for support and assistance. This is compounded for women in rural and regional areas where there is very limited social housing stock with highly vulnerable people waiting on priority housing lists for many years.

¹⁸ Dr Tony Gilmour, Housing Action Network (February 2018) *Pathways Home: NSW community housing's role delivering better outcomes for people exiting corrective services* <https://www.homelessnessnsw.org.au/news/pathways-home>

¹⁹ Ibid.

58. It is crucial that we assist women to either retain the housing they had before entering into custody or support them to secure housing and basic furnishings and household goods on their release.
59. In our experience, women have been taken into custody without being given the opportunity to make arrangements for the management of their Housing NSW property, including properly securing their home. Some women have told us that their home has been broken into after going into custody and they now have a debt with Housing NSW.
60. 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*.
61. 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. However, there is no discretion to retain their tenancy beyond six months.
62. For women who are on the waiting list for social housing, their application is suspended while they are in custody. 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.
63. *Pathways Home: NSW community housing's role delivering better outcomes for people exiting corrective services (Pathways Home Report)* provides a snapshot of the complex relationships between public, not-for profit and private organisations that help people exiting prison in NSW with the aim to minimise homelessness and re-offending.
64. Pathways Home examines what works well, what doesn't work well and makes recommendations for improvement. We support the recommendations and call for their immediate implementation.

Recommendation: Implement the recommendations in the *Pathways Home Report* in all states and territories to ensure women are adequately supported when exiting prison which will impact on recidivism.

Older women

65. 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.
66. It is important to consult with organisations such as the Older Women's Network, Older Persons' Tenant Service and Senior Rights Service regarding strategies to reduce the risk of homelessness for older women.

Recommendation: Adequately address the housing needs of older women.

Preventative measures

67. While it is vital that the Government responds to homelessness, greater efforts also need to be focused on preventing homelessness.
68. As discussed above, early legal advice and support can play an important role in helping to prevent homelessness. Access to early legal advice and support can help address issues which may leave women at risk of homelessness due to domestic violence, or at risk of imprisonment due to risk of homelessness or to risk of removal of children which can also impact on access to housing and to reduce these risks. Access to early specialist legal advice and support can also assist mothers and children so children can remain safely in the care of their mothers.

Recommendation: Adequately funding work to prevent homelessness, including access to early legal advice and support.

69. 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

Philippa Davis
Principal Solicitor