

SOCIAL HOUSING IN NSW: A DISCUSSION PAPER FOR INPUT AND COMMENT

Legal Aid NSW submission

to Family and Community Services NSW

February 2015

About Legal Aid NSW

The Legal Aid Commission of New South Wales (Legal Aid NSW) is an independent statutory body established under the *Legal Aid Commission Act 1979* (NSW) to provide legal assistance, with a particular focus on the needs of people who are economically or socially disadvantaged. Legal Aid NSW provides information, community legal education, advice, minor assistance and representation, through a large in-house legal practice and through grants of aid to private practitioners. Legal Aid NSW also funds a number of services provided by non-government organisations, including 35 community legal centres and 28 Women's Domestic Violence Court Advocacy Services.

Legal Aid NSW welcomes the opportunity to respond to the Social Housing in NSW discussion paper released by Family and Community Services. Legal Aid NSW is currently working in partnership with Housing NSW and Corrective Services in tackling the legal and accommodation problems facing Aboriginal women who are leaving custody. Legal Aid NSW is also providing civil law services to children who are in out-of-home care, many of whom experience homelessness and have found difficulty in finding appropriate and stable accommodation. This submission addresses some of the issues that are experienced by these clients.

QUESTION 2.6

Given Tenants living in social housing often experience disadvantage which is disproportionate to other areas of the community, what measures are required to provide tenants of social housing with pathways to opportunity and independence?

Legal Aid NSW understands the enormous challenges facing social housing: ever decreasing budgets, increasing levels of complex needs in the client base and a huge unmet demand for housing, to name a few. The solutions to these problems require a whole of government response. Many of the pressures that have caused the current pressures are outside of the control of Family and Community Services (FACS), but must be addressed in order to increase the viability of social housing. The Discussion Paper identifies many of these issues.

There is no doubt that the social housing system is under pressure and that change is needed. While Legal Aid NSW understands the economic drivers behind the aspiration to make social housing self-sufficient, social housing should be treated in the same way as similar Government services such as, health (eighty-six percent (86%) subsidised), education (ninety-six percent (96%) subsidised) and public trains (fifty-two percent (52%) subsidised)¹. These services also receive annual capital funding for asset replacement and growth, while social housing receives no explicit annual capital income.

In order to have a sustainable social housing program, Government must contribute significant capital subsidies². Shelter NSW has produced various models to show the estimated contributions needed from Government to produce a growth in social and affordable housing. These provide a starting point for discussions around social housing sustainability³.

Transitioning people out of social housing is not in Legal Aid NSW's view a viable way to meet the overwhelming demand for social housing. The Discussion Paper acknowledges that some social housing tenants will not be able to transition out of social housing due to their personal circumstances: thirty-eight percent (38%) of household heads in social housing receive the age pension and thirty percent (30%) the disability support pension which means sixty-eight percent (68%) of the current households will be unlikely to have a viable pathway out of social housing⁴. Only five percent (5%) of households are in receipt of wages with ten percent (10%) in receipt of Newstart allowance. In reality this means that the most likely portion of candidates for transition programs is around fifteen percent (15%).

It is noted that sixty-two percent (62%) of lower-income renter-households in NSW are in rental stress⁵. Transitioning working tenants out of social housing also has the negative effects of concentrating disadvantage, and reducing revenue derived from rent subsidies or possible premiums for more desirable properties.

Rather than attempt to shift the policy and costs burden onto other government agencies and to the non-profit sector, it is suggested that FACS consider developing solutions that tackle the entrenched inter-generational disadvantage that exists amongst social housing tenants. An all-of-government approach could be taken to managing this problem with a view to looking at increasing funding to provide premium early childhood education and health services for disadvantaged families, state-of-the-art primary and secondary schools in disadvantaged communities. These types of early intervention initiatives will ultimately contribute to creating opportunity and independence much needed for social housing tenants.

Any proposal to exit tenants from social housing also needs to address the options that are available on exit. Each of the following broad recommendations are dealt with in this submission.

- Improving the private rental market through changes to the Residential Tenancies Act.
- Improving suitability of housing.
- Supporting current tenants.

¹ Ibid, p7.

² Above n1, p15.

³ Above n1.

⁴ Family and Community Services NSW, 'Social Housing in NSW: A Discussion Paper for Input and Comment' November 2014, p61 ('Discussion Paper').

⁵ Shelter NSW, 'NSW housing: a factsheet', <<http://www.shelternsw.org.au/publications-new/factsheets-new/227-nsw-housing-factsheet/file>>.

- Reducing policy barriers for the most vulnerable applicants.

The need to improve affordability and security of tenure in the private market

Home ownership is no longer an option for people exiting social housing as it was in the 1950's. As of March 2013, the median established house price in Sydney was \$605,000⁶ with the median price rising in the past two years. The private rental market is also unaffordable for most people on a low income. The 2014 Angllicare Australia Rental Affordability Snapshot reports shows that on the reported weekend, less than one percent (1%) of rental properties were affordable for anyone on a government payment.⁷

Young people are significantly overrepresented (24.6% of the NSW population⁸) in the numbers of people experiencing homelessness in Australia. Young people face significant barriers in private rental options given their age and their limited financial capacity to access private rental options.

Even if tenants on low incomes are able to secure housing, this housing is often not stable because private landlords can evict on no grounds subject only to the very limited notice requirements. Australians move house more than any other OECD citizens except Icelanders.⁹ Seventy-nine percent (79%) of renters in NSW have moved at least once in the last five years, and ninety-two percent (92%) of tenants worry about finding affordable housing if they had to move.¹⁰

Case Study- Bob

Bob attended a Legal Aid NSW outreach clinic: Bob had been renting his property from a private landlord for over 17 years. He had an excellent relationship with the landlord and was an impeccable tenant; he kept the property immaculate and was always ahead on his rent. Bob had a serious mental health condition but was able to manage it, due largely to his stable accommodation.

When his landlord became ill with cancer and transferred the management of the property to a real estate agent, without warning, the agent issued Bob with a 3 months no-ground termination notice. The landlord provided Bob with a glowing reference but would not intervene to stop the eviction because he wanted to leave the management to his agent.

⁶Andrew Haylen, NSW Parliamentary Research Service 'House Prices, ownership and affordability: Trends in New South Wales Briefing Paper No 1/2014' <[http://www.parliament.nsw.gov.au/prod/parliament/publications.nsf/key/Houseprices,owners-hip and affordability: trends in New South Wales](http://www.parliament.nsw.gov.au/prod/parliament/publications.nsf/key/Houseprices,owners-hip%20and%20affordability:trends%20in%20New%20South%20Wales)>.

⁷ Angllicare Australia 2014 Rental Affordability Snapshot <http://www.angllicare.asn.au/site/rental_affordability_snapshot.php>.

⁸ Australian Bureau of Statistics, *Census of Population and Housing: Estimating Homelessness*, 2012.

⁹ Choice 'Rental Rights' 2014 <<http://www.choice.com.au/reviews-and-tests/money/shopping-and-legal/legal/rental-rights/page.aspx>>.

¹⁰ Tenants' Union of New South Wales 'Affordable Housing and the New South Wales Rental Market: 2014 Survey Report' 2014.

Bob believes he will have great difficulty finding another affordable property and he fears that he will be homeless.

Case Study – Wendy

Wendy is a single mother who lives in private rental accommodation with her teenage son Max who has significant disabilities. Wendy works part time and studies.

Wendy and Max have been required to move home 13 times in 16 years for reasons including no grounds evictions and rent increases. The continuous movement has inevitably taken its toll on Max's mental health and his schooling.

In her most recent move Wendy was given a no grounds termination notice to vacate her current property. Wendy was unsuccessful in the Tribunal even though she argued the eviction was based on retaliation and was not proper.

Under s.85 of the *Residential Tenancies Act 2010* the Tribunal must order eviction provided it is satisfied the termination notice is proper. While the Tribunal does have discretion to extend the possession period which can be useful while a tenant is attempting to obtain new accommodation, it is currently the only remedy available in these types of circumstances.

Australia's rental laws are out of step with international norms: of the 34 OECD countries, Australia is one of the few that allows "no grounds" evictions¹¹. The graph on page 5 highlights that Australian renters have fewer protections than tenants in comparable countries.

Legal Aid NSW submits that the *Residential Tenancies Act 2010* (NSW) (the Act) should be amended to provide adequate protection from arbitrary or unfair eviction and excessive rent increases. This could be done by introducing the two following changes:

- remove the ability of a private landlord to seek termination without stating a ground, and
- improve the determination process for excessive rent increases

¹¹ Above n10.

	AUSTRALIA	NETHERLANDS	GERMANY	DENMARK	IRELAND	FRANCE
MINIMUM FIXED LEASE	Generally six months or a year, but leases can be shorter	Renters can stay indefinitely, even if the property is sold	Renters can stay indefinitely, even if the property is sold	In most cases, renters can stay indefinitely	Four years	Three years
COST CONTROLS	None for private housing. Landlords can charge as much as they like	Rents and rent increases are limited by government regulation	Rents and rent increases are limited by government regulation	Rent controls apply to most of the rental housing stock	None for private housing. Landlords can charge as much as they like	Rent increases cannot exceed the "reference rent index"
EVICITION	No reason required. Regulations allow "no-grounds" evictions for tenants on periodical leases (except in Tasmania)	Only permitted under specific circumstances listed in the Dutch civil code	Not permitted unless the tenant violates the terms of the lease	Only permitted under a limited range of circumstances	Only permitted during the first six months unless the tenant violates the lease or use of the dwelling changes	Not permitted unless the tenant violates the lease, the property is sold or the landlord intends to move in

Image courtesy of CHOICE¹².

Under the Act, a landlord may serve on a tenant a "no grounds" notice of termination, giving 30 days' notice to end the tenancy at the expiration of the term of the agreement, or 90 days' notice for a periodic agreement. If the landlord then applies to the NSW Civil and Administrative Tribunal (NCAT) to obtain possession of the property, the Tribunal has no discretion to refuse the order unless the tenant can establish that the eviction was retaliatory.

A landlord will always have a reason to seek to end a tenancy, and should not be able to shelter behind a "no grounds" notice if that reason is discriminatory, retaliatory or otherwise unfair. Notices of this type are not used under social housing policy and Legal Aid NSW is of the view that the same rule should apply to the private market.

The Act already contains a number of grounds on which a landlord may terminate a tenancy, including for breach, or to require the property to live in or sell. However, in our experience, private landlords rarely use termination notices other than "no grounds" notices, except in the case of rent arrears. It is submitted that the ability to serve a "no grounds" notice should be removed from the legislation.

Improving the determination process for excessive rent increases

Currently the Act places the burden of proof on the tenant to establish that a rent increase is "excessive". This places a significant burden on tenants and can leave them vulnerable if they are not able to obtain sufficient information to challenge a rent increase.

¹²Above n10.

Legal Aid NSW recommends that the onus of proof in excessive rent increase determinations should be placed on the landlord.

Recommendation 1

That the *Residential Tenancies Act 2010* (NSW) is amended to provide adequate protection to tenants from arbitrary or unfair eviction and excessive rent increases. This could involve two changes:

- remove the ability of a private landlord to seek termination without stating a ground, and
- improve the determination process for excessive rent increases

Safety Net for those exiting social housing

Tenants in private rental accommodation will always be more vulnerable to eviction than social housing tenants because private rent does not make adjustments for loss of employment or illness. When social housing tenants voluntarily vacate they are sacrificing the security of subsidised rent for some other benefit, such as a better location, or having a property that better suits their needs. For tenants with reoccurring illnesses or those in casual employment, the risk of losing their income and therefore their private rental accommodation is very real. The only sensible way of transitioning these tenants into private housing is to provide pathways back into social housing if they become too unwell to work, or are unable to find employment to pay for their rent.

A safety net for tenants who voluntarily vacate social housing could be created by amending the current Housing NSW reinstatement policy. That policy currently provides that if a social housing tenant is forced to leave the property for a designated reason (such as hospitalisation, entering custody etc) and they reapply again within six months of vacating, they will be placed on the priority rehousing list if they are eligible for social housing. Legal Aid NSW submits that this policy could be amended to include those who voluntarily vacate a property as a designated reason. If this proposal is adopted then it is recommended that the time limit to reapply would also have to be extended, possibly for a number of years, to ensure that the pathway back was meaningful.

While this could potentially increase the number of people on the priority rehousing list, the flipside is that the number of people vacating could potentially increase and therefore increase turnover of current social housing tenancies.

Recommendation 2

That Housing NSW amend the reinstatement policy to include voluntarily vacating a property as a designated reason for absence from dwelling. The time limit to reapply would also have to be extended, possibly for a number of years for those who voluntarily vacate.

Recognition that for many vulnerable individuals/communities the private market is not accessible

The competition for private rentals at the low end of the market due to the lack of affordable housing is high. In NSW there is a shortfall of 75,600 rental properties that are affordable and available for very low income renters, and around 130,000 for very low and low incomes combined¹³. In this environment real estate agents and landlords are free to discriminate against potential tenants based on their own prejudices. This discrimination may very well be unlawful under various discrimination laws, however, unless the landlord is explicit then the discrimination will be difficult to prove. Our experience demonstrates that certain groups, in particular Aboriginal people and young people, have difficulty securing private accommodation. Although Housing NSW has made efforts to overcome these barriers through products such as rental brokerage, and tenancy guarantees, in our experience these have not been sufficient to secure housing for some of our clients because the demand is so intense.

This issue has been particularly highlighted with work Legal Aid NSW is doing in partnership with Housing NSW and Corrective Services in tackling the legal and accommodation problems facing Aboriginal women who are leaving custody. Many of these women have described the discrimination they face when they try to secure a private rental property which they believe is based on their Aboriginality, their economic circumstances and history of incarceration. This has severely affected their ability to enter the private rental market.

Legal Aid NSW is also providing civil law services to children who are in out-of-home care. Many of the young people have experienced homelessness and have found difficulty in finding appropriate and stable accommodation.

Case study - Jen

Jen attended the Legal Aid NSW outreach service for advice. Jen is on an income maintenance plan and payment to the real estate agent was guaranteed every week in addition to the assistance from St George Youth Housing. However, despite these guarantees real estate agents would not agree to renting accommodation to Jen. In many cases the income most young people receive from youth allowance is too low to service the rental properties on the market, leaving them with nothing left to budget with. This has contributed to the increased competition for the lower priced rental properties.

Recommendation 3

That Housing NSW housing priorities and strategies reflect the fact that social housing provides housing for many people who would otherwise not be able to secure accommodation in the private market.

¹³ Shelter NSW Policy on Private Rental Markets
<<http://www.sheltersw.org.au/policy/private-rental-markets>>.

The need for supported accommodation for people with serious mental illness

In our experience many of the people evicted from social housing are evicted as a result of a manifestation of their mental illness. In some cases this results in evictions for nuisance or illegal use, but many more are rental arrears evictions that often are as a result of our clients' deteriorating mental condition. Once evicted from social housing these high needs clients then become unable to access social housing due to the former tenant classification policy.

Case study – Jess

Jess was originally provided with priority housing because Housing NSW found that she was unable to seek alternative accommodation because she "presents as extremely anxious, agitated, depressed, aggressive, but withdrawn when feels threatened." For various stated reasons Jess felt unsafe in her current accommodation and moved to her mother's home.

Housing NSW advised Jess to relinquish the property and apply for a transfer. However, the necessary support was not provided to Jess to assist her with making such a transfer application and given her mental health state Jess fell behind in her rent. Her tenancy was terminated with her rent in arrears of over \$3000. Jess was declared an "unsatisfactory tenant".

Case study – Ali

Ali has a long history of mental health problems and she has been regularly incarcerated. On release from custody Ali will initially stay with relatives but will often be homeless by the end of her first month of release. On this occasion with assistance from Legal Aid NSW Housing NSW advised Ali that she needed to submit a support plan before she would be eligible for social housing. Several support agencies were contacted but none were able to provide such a support plan. This meant that Ali was unable to access social housing on release from custody.

Recommendation 4

That Housing NSW create long term supported accommodation for people with serious mental health issues.

3.2. The need for more flexible housing arrangements

In our experience, many of our disadvantaged clients are living in unstable housing situations. These range from always living in other people's places or family members with little stability, to living with partners in volatile, violent relationships.

More flexible ways of providing support could be beneficial. For example, many older teenagers may be able to live independently in a home type environment, rather than a refuge, if they are supported with case management.

Case study - Pat

In 1997 Pat was evicted from her Housing NSW property for rental arrears. At the time she was a 19 year old single mother who had an abusive partner and she was suffering from depression. She was declared an "unsatisfactory tenant".

Over the next fifteen years Pat applied for social housing on six occasions and was refused each time based on her negative classification. Pat repaid her entire debt by instalments but was unable to meet the requirement to rent in the private market for six months in order to once again be eligible for housing. As a result of her exclusion from social housing and inability to find accommodation in the private market, she has been homeless, in unstable short term accommodation or in custody since 1997.

Sarah – 19 years old

Sarah has had an extensive history of out of home care. Her final placement of seven years broke down at the age of 15 and she became homeless. She is a young Aboriginal woman who was separated from her siblings and parents from the age of five years and disconnected from her culture. Sarah also had a history of repeated abuse and exploitation by men. As a result of experience high levels of abuse Sarah developed complex post-traumatic stress disorder and has been diagnosed with ADHD, ODD, anxiety and depression and with a borderline intellectual disability.

With the support of her case worker, Sarah provided Housing NSW with supporting documentation of her circumstances and background – despite her special needs, the accommodation that was offered to Sarah was not at all suitable to her needs. As she refused this placement, Housing NSW refused to support her with other temporary accommodation.

Sarah cannot afford the minimum rent required for most forms of private accommodation and sought to enter into a private rental arrangement. However, Housing NSW will not support Sarah with the bond or rent assistance in accommodation contracts unless the contract is through a registered real estate agent.

In an attempt to improve her chances of securing housing, Sarah has volunteered to be placed on a financial management plan with Centrelink but this has not made a difference

with real estate agents. Her Youth Allowance payment from Centrelink is too low for her to be able to afford property in the private rental market. Sarah remains homeless.

Housing NSW policy often creates barriers for the most disadvantaged communities as it is unable to accommodate the different needs of significantly disadvantaged people across NSW.

Recommendation 5

That Housing NSW consider amending its policies to acknowledge the prevalence and need for “informal” housing arrangements. This includes changes to the following policy:

- Unsatisfactory former tenant policy – the six month requirement in private rental is not possible for many disadvantaged clients.
- Rentstart and rent assistance should be available for share housing and other informal housing arrangements
- The rental fraud provisions should include greater flexibility for households where family members are “couch surfing” for various periods of time. This is especially so for Aboriginal and Torres Strait Islander communities.

Recommendation 6

That an appropriate mix of housing options be made available to young people, with varying levels of case management support, including single sex homes and group homes.

Recommendation 7

That more housing options are created for young people that go beyond crisis and temporary accommodation options, with case management support provided.

Encouraging pathways to Independence

Legal Aid NSW fully supports initiatives aimed at decreasing disadvantage within social housing communities by connecting tenants with employment, education, training and other community engagement. For these models to succeed they need to engage the tenant by offering them an opportunity to improve their life. Punitive models are less successful because tenants will avoid engagement. Examples of punitive models are those where tenants are punished for not complying with requirements or evicted from social housing.

Legal Aid NSW would welcome the opportunity to participate in partnerships with Housing NSW and with other government and non-government agencies that are aimed at looking at holistic approaches to managing problems facing social housing clients, including debt and disadvantage.

Recommendation 8

That Housing NSW engages in partnerships with other agencies and non-profit organisations, including Legal Aid NSW, to provide pathways to independence for tenants.

Assistance in maintaining tenancies is just as vital as encouraging independence

The Discussion Paper acknowledges that for some social housing tenants independence will never be a realistic option. However the paper also implies that sustaining tenancies should no longer be the core business of Housing NSW. Instead it focuses on addressing unmet need by exiting current tenants into the private rental market and applying a zero tolerance policy to tenants who do not comply with their obligations. Evicting vulnerable tenants into homelessness merely shifts (and increases) the expense to other government agencies as well as leading to negative social outcomes for the community, the homeless and their families. Many vulnerable tenants require intensive support to enable them to sustain their tenancy. In our experience, many tenants with severe mental health issues are not being properly supported and as a result find themselves at risk of eviction.

Question 3.6

The social housing system is often difficult to access for those most in need. What measures are required to create a system which is fair for those already in social housing, those on the waiting list and others who may need assistance?

The *Housing Act* creates a legislative mandate that Housing NSW shares the available supply of public housing equitably among people who are most in need¹⁴. The need of the individual must therefore be the gauge of fairness. The priority housing policy attempts to measure the greatest need by requiring that applicants are both in urgent need of housing and unable to resolve that need in the private rental market. The priority policy also acknowledges that there may be certain factors that affect the client's ability to rent privately such as their housing requirements, personal characteristics or a psychiatric, developmental, or intellectual disability or mental illness.

The Discussion Paper indicates that at any one time approximately 5950 people are approved for priority housing, with a wait time of approximately ten months. Given we are not currently meeting the need of these most in need, it may be worth considering whether there is any capacity to sustain a general list. The examples of allocations schemes in New York and London are good starting points for a discussion of these issues.

There is no doubt that the social housing tenant profile has shifted from the working families of the 1950's to single people, who often have complex needs. One factor in this is the deinstitutionalisation of people with mental health issues since the 1960s. The Discussion Paper estimates that thirty-five percent (35%) of all social housing tenants have a disability, with nineteen percent (19%) experiencing severe mental illness. These statistics indicate that Housing NSW policies are somewhat effective at targeting tenants most in need. However this

¹⁴ *Housing Act 2001 NSW* s5(1)(f1).

shift has placed the responsibility for a high needs community onto Housing NSW, at the same time that budgets have been shrinking.

The complex needs that place the individual in the greatest need can at times manifest as undesirable behaviours. The Discussion Paper proposes that a fair system is one where tenants value the support they are receiving, by taking care of their dwelling, paying rent and contributing positively to their community. In our experience the failure to comply with these obligations is most often a result of a person's complex needs. Evicting these people simply shifts the cost of housing these high needs individuals to prisons, emergency wards and shelter accommodation. Ensuring those with high needs are provided with secure and supported accommodation has a beneficial effect both for the individual and the community.

The need for intensive support services

The Housing and Accommodation Support Initiative (HASI) provides support to people who have mental health issues so they can maintain successful tenancies and participate in their communities. The 2012 evaluation of HASI confirmed that when housing is linked to appropriate clinical and rehabilitation support, people are better able to overcome the often debilitating effects of mental illness and to live more independent lives. The evaluation also found that around ninety percent (90%) of HASI consumers were successfully maintaining their tenancies, their mental health was improving and they were spending less time in hospital since they had joined the program. In addition, consumers were regularly using appropriate services in the community and demonstrating a high degree of independence in daily living.

In our experience many tenants who have mental health issues are not connected with mental health services. The Mental Health Commissioner of NSW states that "public community mental health services are commonly under-resourced"¹⁵, which leaves many individuals who suffer from mental illness no access to the treatment or support that they need. In addition, clients that have a dual diagnosis, ie addiction and mental illness, do not receive treatment.

Case study – Keisha

Keisha has multiple problems including manic depression and bi-polar conditions which was exacerbated following an assault. Keisha did not have any support services in place at this time and went off her regular medication and began self-medicating with drugs. As a result of these issues her life was unravelling quickly and she was unable to take care of her children. While Housing NSW was aware her drug dependency and her mental health issues, Housing NSW was unable to provide her with support workers to help her get back on track.

A month later, Keisha's tenancy was terminated by the Tribunal due to rental arrears. Although Keisha has made great progress in terms of rehabilitation and getting "her life back on track", she was classified as an unsatisfactory former tenant.

Since her tenancy ended in 2010, Keisha has been either homeless or in custody. She has not been able to regain custody of her three children. She has not been able to secure housing in the private market.

¹⁵ Feneley, J. *Living well in our community, Towards a strategic plan for mental health in NSW*, Mental Health Commission of NSW, May 2013, p4.

The following examples from other jurisdictions demonstrate how intensive and flexible support programs can be beneficial to individuals and communities.

Housing First

The Housing First approach that was initiated in New York City to address chronic homelessness. It has now been taken up in various USA jurisdictions including Colorado, Maine, Seattle, Chicago and Massachusetts. Housing First is an intensive program which focuses on accommodating individuals quickly and providing wrap around services. The program aims to support individuals through a multidisciplinary clinical support team, to break the cycle of chronic homelessness.

In Denver, the scheme offered housing and support to the “chronically homeless”, those with histories of repeat hospital, prison and rehab admissions. The average cost saving was estimated to be \$31,545 per person. In addition, the overall quality of life for both the individual and the community were improved. More than 80% of participants maintained their housing for six months, fifty percent (50%) of participants had documented improvements in their health status, forty-three percent (43%) had improved mental health status, fifteen percent (15%) decreased their substance use, and sixty-four percent (64%) improved their overall quality of life¹⁶. There is literature to suggest that the cost benefit would not be as significant in Australia as it is in the United States in terms of a dollar value, however, we would be likely to benefit in other benefits ways such as through reductions in hospitalisation, acute treatment and involvement with the criminal justice system.

Social Housing Advocacy and Support Program (SHASP) - Victoria

The SHASP is an outreach case management program funded by the Victorian Department of Human Services (DHS) with a 2014 state-wide annual funding of \$4.7 million. The service focuses on providing support to public housing tenants whose tenancies are at risk and those who need specialised support to establish their new tenancy. SHASP uses the case management model to assist clients that are at risk of being evicted to sustain tenancies. The service assist clients with problems such as rent arrears and debt, hoarding, behavioural issues, mental health problems and family violence.¹⁷

Recommendation 9

That Housing NSW investigate the benefits of providing consistent case management and 'wrap around' support for complex needs clients.

Punitive responses disproportionately target vulnerable clients

The Discussion Paper raises the “three strikes” policy and a “neighbourly behaviour statement” as examples of how other Australian jurisdictions are addressing tenant behaviour issues.

¹⁶ Colorado Coalition for the Homeless, ‘Denver Housing First Collaborative Cost Benefit Analysis & Program Outcomes Report’
<http://www.coloradocoalition.org/userfiles/Housing/Executive_Summary_DHFC_study.pdf>.

¹⁷ See the Salvation Army Social Housing Advocacy & Support Program (SHASP):
<<http://www.salvationarmy.org.au/en/Find-Us/Victoria/Social-Housing-and-Support-Network/Programs/Social-Housing-Advocacy--Support-Program/>>.

Legal Aid NSW is of the view that high needs tenants are often the target of these policies with the result being that many high needs tenants are moved out of social housing and into homelessness.¹⁸ The *Residential Tenancies Act* already provides mechanisms for terminating tenants based on breaches of their tenancy obligations. The two punitive examples listed attempt to remove the oversight of the Tribunal in determining whether the breaches are sufficient to justify termination. This removal of discretion and the oversight detracts from the fairness of the housing system. It is likely to disproportionately affect clients with complex needs as it removes the ability to explain the breach.

The NSW Supreme Court of Appeal in *Cain v New South Wales Land and Housing Corporation* examined the issue of the Tribunal's discretion to decline to terminate a tenancy due to consideration of the tenant's circumstances, in the case where a breach had been established. Removal of the Tribunal's discretion "...leads to results which are fairly described as "absurd" or "irrational" or "unjust""¹⁹. The Supreme Court of the Northern Territory found that there was a discretion in relation to a decision to terminate a tenancy pursuant to the three strikes policy²⁰. In particular, Hiley J found that the removal of the discretion "could lead to draconian results" and would be contrary to the NT *Residential Tenancies Act*.

A zero tolerance approach to tenancy compete with other Government priorities such as reducing recidivism, decreasing homelessness and keeping families together. For example, the Drug Court Program in NSW attempts to divert illicit drug users from incarceration into treatment programs for their addiction²¹. This is often not possible if the person does not have stable accommodation to return to. Evicting tenants as a result of their drug use defeats the aims of the drug court.

The case studies below demonstrate how high needs can lead to termination of tenancies and the negative effect of both the individual and the state.

Case study- Danika

Danika signed a Housing NSW lease in 2008 and by in 2011 she was behind in her rent as a result of depression.

While Housing NSW assisted Danika with a referral for her depression, Danika was advised by the counselling service that the wait list for counselling was around six months long. Danika's depression worsened, and she was unable to function effectively. She was unable to claim for Centrelink during this time due to her depression, and so received no income for two months.

By the end of the second month the Tribunal terminated the tenancy for rental arrears. Danika was not present at the hearing. Housing NSW tried to make contact with Danika but

¹⁸ Australasian Housing Institute and the Council to Homeless Persons, *Housing Insecurity and Homelessness Living on a knife's Edge: Public housing insecurity in the Northern Territory*, Housingworks and Parity, Vol 27, Issue 4 May 2014.

¹⁹ *Cain v New South Wales Land and Housing Corporation* [2014] NSWCA 28, Leeming JA at 53.

²⁰ *Williams v CEO Housing* [2013] NTSC 28 at 16-18.

²¹ Australian Institute of Criminology 'Australian responses to illicit drugs: Drug courts' <http://www.aic.gov.au/criminal_justice_system/courts/specialist/drugcourts.html>.

she was unable to engage due to her depression. Housing NSW executed the warrant to remove Danika and classified her as an unsatisfactory former tenant.

Danika was in custody a month later and has been homeless or in custody since. As a result of legal assistance Danika has had her “unsatisfactory tenant” status removed.

Case Study- Anna

Anna received a Notice of Termination from Housing for arrears of \$1800. Anna had been diagnosed with PTSD as a result of several assaults. Her only source of income was the Newstart Allowance.

Housing NSW and Legal Aid NSW engaged in lengthy negotiations about the amount of rent Anna should pay in instalments. Anna indicated that she would pay an amount which was less than Housing NSW requested. Housing NSW commenced termination proceedings in the former CTTT. Housing NSW eventually accepted the Tribunal’s decision which took into account Anna’s current income and also her mental health problems.

Case Study – Karen

The Tribunal made a finding against Karen under s 89(5) of the Act that she frequently failed to pay rent.

Despite Karen paying the arrears of about \$700, Housing NSW maintained that it would proceed with the eviction as ordered by the Tribunal. As there was a finding under s 89(5) of the Act the warrant for possession can be enforced even though the tenant is up-to-date on her rent prior to the execution of the warrant.

Karen was pregnant by the age of 15 and then she left home. Over the next fifteen years Karen has lived with mental health issues and has raised five children. She was in an abusive relationship, had problems with alcohol and gambling and was frequently in arrears with Housing NSW. In the past ten years Housing NSW have commenced around ten eviction proceedings for arrears.

Legal Aid NSW arranged for Karen to be assessed by a social worker who has been assisting Karen develop money management skills and to get her life on track. She has continued with the counselling and is getting out of the cycle of debt

Karen was very supportive of her children and wanted her children to all get an education and obtain employment. Her daughter had completed the HSC. Karen was also studying at TAFE and undertaking an apprenticeship.

Karen’s case demonstrates that with support, people can make positive changes to their lives and sustain their tenancies. However, this process can take time and may not succeed at first instance; this process requires sensitive management and support.

How the current process excludes some tenants who are most in need

In our experience there are three major issues that prevent the applicants most in need from accessing social housing. These are:

- The restrictions imposed as a result of the former tenant classification policy
- The document burden in applying for housing and in particular priority housing
- The difficulty remaining on the list for clients who are homeless or in unstable housing

1. The former tenant classification policy

The Legal Aid NSW component of the Aboriginal Women Leaving Custody Project found that over the first 12 months, sixty-four percent (46%) of clients were former social housing tenants. Just under sixty percent (60%) of those former tenants had a negative classification under this policy due to their former tenancy: thirty percent (30%) were classified as less than satisfactory, forty percent (40%) as unsatisfactory and four percent (4%) as ineligible. In most instances these negative classifications were a result of arrears caused by addiction, domestic violence or mental illness. In every instance the woman was not receiving sufficient support services to enable her to retain her tenancy. The negative classifications had the effect of excluding these vulnerable women from stable housing, sometimes for many years.

Case study - Pat

In 1997 Pat was evicted from her Housing NSW property for rental arrears. At the time she was a 19 year old single mother who was subject to violence from a former partner and was suffering from depression. She was in the property for less than a year and although she had failed to pay the first 6 weeks' rent, she had paid rent regularly after that. Housing NSW classified Pat as an unsatisfactory former tenant due to the eviction. They also imposed and a debt of about \$900 for cleaning and repairs (no Tribunal order) and \$600 arrears.

Over the next 15 years Pat applied for social housing on six occasions and was refused each time based on her negative classification. She also appealed the classification twice, was unsuccessful at the first tier and did not appeal to HAC. Pat repaid her entire debt by instalments but was unable to meet the requirement that she rent in the private market for six months in order to once again be eligible for housing.

As a result of her exclusion from social housing and inability to find accommodation in the private market, she has been homeless, in unstable short term accommodation and in custody since 1997.

Social housing tenants and applicants face fewer protections than tenants in the private market in relation to negative information stored on the database. People applying for social housing are less likely to be able to access the private market due to low income, unemployment, disability, race, history of incarceration, large family and other factors. The protections afforded to social housing tenants should be at least as robust as those for private tenants.

Recommendation 10

That Housing NSW should consider applying the restrictions that govern residential tenancy databases under the *Residential Tenancies Act 2010* to its database.

2. The document burden in applying for housing and in particular priority housing

Legal Aid NSW acknowledges that Housing NSW must have processes which allow for effective assessment of applications. However the document burden on vulnerable applicants may be overly onerous. Many applicants are unable to navigate the process and produce required documents due to homelessness, insecure housing or poverty and resultantly have their applications closed.

Housing NSW ordinarily expects priority housing applicants to provide a rental diary detailing unsuccessful rental applications. In our experience this requirement can filter out the most vulnerable clients. Given that the priority list was created for the benefit of people in urgent need and disadvantage, document requirements which particularly vulnerable applicants struggle to satisfy may be counterproductive.

Case Study - Catrina

Catrina is a 25 year old woman with bi-polar disorder. Catrina had faced discrimination based on her young age and aboriginality in the private rental market. In 2008 Catrina was homeless and applied for priority housing. Her application was unsuccessful as she could not satisfy the document requirements.

In 2012, Catrina again applied for priority housing. At this time she had a 3 month old baby and was experiencing domestic violence. Housing NSW accepted that there were no vacancies at refuges, no safe place to stay and that Catrina was unable to rent privately. Despite this, her application was rejected because Catrina could not sufficiently demonstrate that she was in urgent need of housing and unable to satisfy this need in the private rental market.

In 2013 Catrina applied for reactivation. Housing NSW interviewed her and she disclosed that she was experiencing domestic violence and staying in a refuge. Housing NSW advised her to supply more evidence of the domestic violence, and to apply for temporary accommodation. The reactivation request does not appear to have been processed.

In 2014 Catrina requested reactivation and asked that she be considered for priority assistance. In the interim Catrina was hospitalised due to her mental illness and Partners in Recovery and Waminda became involved. The Nowra office of Housing NSW worked with these support agencies and a support plan was put in place for Catrina. Housing NSW approved Catrina for reactivation back to 2008 and for priority housing. She was housed in September 2014.

Case study- Sarah

Due to her intellectual disability, Sarah struggled to complete and gather all the necessary documents required to complete the initial process of her application. Without casework support, Sarah was unable to complete the process. Gathering medical assessments, psychological assessments and identity information was difficult, particularly when each organisation had different processes to attain documents; e.g., the Community Services or Aboriginal Land Councils. Additionally, strict time frames Housing NSW had provided increased difficulty.

Sarah struggles to advocate for herself and negotiate the conditions of her application. Despite being aware of Sarah's intellectual disability, Housing NSW did not provide Sarah

with support services or assistance in the application process. When the application time lapsed, Housing NSW closed Sarah's application. Sarah was forced to begin another application and start the process once again, delaying any time for her to be placed on the Housing list. This reinforced a sense of hopelessness in Sarah who was already vulnerable and at risk.

In order to maintain her position on the Housing list, Sarah was required to record her attempts of actively pursuing private housing. This is a difficult task to undertake for clients like Sarah who have many clinical appointments, meetings, court appearances, and varying degrees of organisation, communication and literacy skills.

Recommendation 11

That Housing NSW 'requests for documents' should be subject to consideration of the applicants' circumstances including literacy, housing circumstances and disabilities.

This includes implementing a document burden appropriate for the applicant's situation at time of application. If a client applies from in custody the application should be assessed in the absence of income confirmation documents and identification documents regardless of subsequent release.

Recommendation 12

That Housing NSW determination of eligibility for priority housing involves assessment of the applicants' circumstances based on their whole Housing NSW file. If the applicant has made applications that indicate significant periods of homelessness, this should be sufficient evidence of urgent housing need and an inability to rent in the private market.

3. Staying on the List

Once an applicant is on the social housing list they must respond to annual Housing NSW correspondence asking the applicant if they still require social housing. If the applicant fails to respond, their application is closed. Once applications are closed, applicants are most often told they must reapply. In many cases reactivation is more appropriate and will preserve the applicants place on the register.

It is difficult for clients who are homeless or in unstable accommodation to keep their place on the social housing register. If an applicant's eligibility was assessed at point of offer, this would reduce Housing NSW processes and increase access to housing by preventing unnecessary closure of applications.

Recommendation 13

That Housing NSW routinely considers whether a closed application is eligible for reactivation, before requiring an applicant to make a new application.

Recommendation 14

That Housing NSW assesses an applicant's continued need for housing at time of offer rather than annually.

Recommendation 15

That Housing NSW uses client consents to obtain relevant information from agencies rather than applicants directly. A consent section integrated into application forms would greatly reduce the need to request further information and closures of applications.

Young people as a priority group

The NSW 2021 state plan includes a goal to ‘better protect the most vulnerable members of our community and break the cycle of disadvantage’²². In a recent report commissioned by the NSW Department of Premier and Cabinet on families with multiple and/or complex needs²³, young people were identified a key cohort of FACS’ services, with evidence that their circumstances worsened over time. The report recommended that early intervention targeted to young people was key to more effective service delivery.

Young people leaving care are a particularly vulnerable group of young people who have a high risk of experiencing homelessness. Currently there are very few housing options tailored to the needs of young people leaving care in NSW. Existing supported accommodation options are characterised by short-term stays and no clear exit strategy.

The CREATE foundation’s report card on young people leaving care, found that:

- Levels of homelessness and involvement with juvenile justice remained unacceptably high.
- 34.3% of care leavers indicated that they had been homeless at some stage while transitioning.
- 37.5% of care leavers never accessed any homeless support service.

There is an identified need to provide appropriate, accessible support for young people leaving care to achieve stability and reduce their risk of transitioning into homelessness. There is a distinct cost benefit to providing targeted, early intervention support to young people leaving care who are attempting to access social housing.

Recognition of young people as a priority group allows for:

- Greater case management support to be provided to the young person as they transition from care;
- A wider range of housing options to be made available to young people taking into account their background and circumstances; and
- Greater flexibility in the application of Housing NSW policies to this group.

Recommendation 16

That young people be given preferential access to priority social housing. In particular, all young people leaving care should be able to register automatically for priority housing from age 15, as occurs in Western Australia.

²² NSW 2021 State Plan, Goal 13.

²³ NSW Department of Premier and Cabinet, *Cross-agency data matching exercise: Families with multiple and/or complex needs*, June 2014.

