

Aboriginal Women Leaving Custody

REPORT INTO BARRIERS TO HOUSING

In October 2013, Legal Aid NSW received 12 months funding under the National Partnership Agreement on Homelessness to establish a service for Aboriginal women leaving custody. The funding enabled a partnership project with Corrective Services NSW and Housing NSW to assist Aboriginal women in Silverwater Women's Correctional Centre (Silverwater) transition from custody into the community. The Legal Aid NSW component focused on the legal needs of Aboriginal women, particularly in relation to housing.

This Report outlines legal and policy issues identified in the course of providing this Service.

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EXECUTIVE SUMMARY

As at 15 February 2015, there were 773 women held in custody in New South Wales. Just over one third were Aboriginal. Over half of those women in custody will be released without conviction.¹

This Report identifies the barriers Aboriginal women experience in attempting to access social housing when released from custody. A range of systemic issues have been identified that require a policy response. These are discussed in more detail in the body of this Report.

Our findings are based on a period of about 12 months in which we assisted 153 women at Silverwater Women's Correctional Centre (Silverwater).² At Silverwater, roughly two thirds of women are released after 6 months or less in custody³.

Our service identified 16% of women had a current tenancy with a social housing provider of some kind.⁴ 46% of the women we assisted were former social housing tenants, of whom 85% had had tenancies with Housing NSW. 38% of the women we assisted had never held a social housing tenancy, although they may have received other products such as Rentstart assistance.

Only 12% of women believed they had access to stable housing on release from prison (in the form of private, community or public housing). Most of these women had no prospect of being able to afford private rental and had no home to return to after leaving custody. Yet more than two thirds of women were not on the wait list for social housing.⁵ Housing NSW policy, in particular the Former Tenant Classification policy⁶ and the Managing the NSW Housing Register policy, played a large role in this.

Stable housing matters to everyone, but has been shown to be especially important in helping people released from custody reintegrate into society. Housing is an important factor in preventing recidivism⁷.

Former Tenant Classification policy

Our findings identified 92% of women who were former tenants of Housing NSW with a negative

classification were not on the wait list (compared with 41% of women who were former tenants with a satisfactory classification). Of the negative classification cases we investigated, almost a third were the result of domestic violence, 20% due to mental illness, 16% addiction and 12% as a result of coming into custody.

Aboriginal women are statistically more likely to experience these issues due to their social and economic disadvantage.⁸

Overcoming a negative former tenant classification was the most significant challenge for Aboriginal women in accessing stable and affordable housing on release from custody.

The challenge begins with difficulties finding out what former tenant classification has been applied by Housing NSW. The classification is relevant as it determines the next step a prospective tenant needs to undertake to try and obtain housing after their release. It is logistically difficult for inmates to request information about their classification via phone or under the Government Information (Public Access) Act 2009 (NSW) (GIPA Act). This difficulty means that inmates are dependent on CSNSW staff or outside agencies such as Legal Aid to determine their former tenant classification status with Housing NSW.

The various requirements in order to be eligible again for housing support (once a negative classification is made) posed the most significant barriers to obtaining suitable accommodation for Aboriginal women leaving custody.

The rules for the expiration or removal of a negative classification for public housing tenants are different from the rules for people renting in the private market. A negative listing arising from a private tenancy can be challenged at the NSW Civil and Administrative Tribunal (the Tribunal) and must be removed after three years. In contrast Housing NSW keeps negative classifications on file indefinitely and there is no right of appeal to the Tribunal. Recommendations made by the Housing Appeals Committee (HAC) to remove a negative classification also do not have to be followed.

¹ Source Corrective Services NSW

² 129 women are used in the data sample as we did not get sufficient consents for the remaining 24 women.

³ Source Corrective Services NSW

⁴ The project statistics referred to in this report are taken from the database created by Legal Aid NSW. We have done our best to ensure the figures are accurate but they are not exact.

⁵ This figure excludes current tenants and 9 invalid responses

⁶ Former tenants can receive a negative classification of less than satisfactory, unsatisfactory or ineligible

⁷ Eileen Baldry, Desmond McDonnell, Peter Maplestone, Manu Peters 'Ex-Prisoners, Homelessness and the State in Australia' Australian and New Zealand Journal of Criminology April 2006 vol. 39 no. 1

⁸ The Speak Out Speak Strong Aboriginal Women in Custody Research Project (2003) P5-77

Access to social housing generally

There are many challenges for Aboriginal women who have not previously been Housing NSW tenants when applying for social housing. 63% of women who had never been social housing tenants were not on the waiting list and for nearly two thirds of those it was because their application had been closed.

While Housing NSW has an internal document that exempts inmates from the requirement to provide ID and income confirmation documents whilst in custody, this exemption ends when they are released. Many women remained unable to produce the required documents due to their homelessness, insecure housing or poverty and as a result their housing applications were closed.

The requirement to respond to annual Housing NSW correspondence in order to remain on the wait list is also a barrier. Many women had their applications closed due to failure to keep in contact with Housing NSW because they did not receive correspondence due to homelessness or incarceration.

Access to priority housing

Despite the often urgent need for housing when released from custody, only four women out of the 153 we assisted were approved for priority housing.

Housing NSW will not assess a woman's eligibility for priority housing while she is in custody. Women can prepare and lodge an application for priority housing while in custody but it will only be assessed once they are released.

It is also difficult to comply with the documentary requirements to establish eligibility for priority while in custody. The female inmates we worked with found it difficult to obtain medical assessments, care plans and living skills assessment for women. Without access to relevant services while in custody, many women were unable to comply with the requirements to demonstrate their need for priority housing before they were released. In addition, Housing NSW often required documentary evidence of inability to rent in the private market. This evidence is difficult for women to obtain while in custody.

Once released from custody and approved for priority housing, the average wait time for a property is about 10 months.

Absence from dwelling policy

Roughly 20% of women relinquished their housing when they were in custody under the **Absence from dwelling policy**⁹. Under this policy, tenants may be absent from their housing for certain periods of time and for specified reasons. If a tenant is absent from their property because of hospitalisation, holiday or any other specified reason, they can be absent for up to six months. In contrast, inmates (whether sentenced or on remand) can only be absent from their property for three months unless a discretion to extend the period is applied.

Access to assistance while in custody

The outcomes obtained for the women we helped clearly demonstrates the need for legal assistance in order to overcome the legal and policy barriers to obtain stable housing on release. This includes assisting women with associated issues such as fines debt and access to Centrelink benefits.

It was also difficult for women to access other services because of the high volume of competing demands placed on welfare and other support staff at Silverwater.

⁹ The relevant policy information is under the heading "During a tenancy – being away from the property" within the Tenancy Policy Supplement. We refer to this as the "absence from dwelling" policy.

SUMMARY OF RECOMMENDATIONS

1. Housing NSW routinely consider whether a closed application is eligible for reactivation before requiring an applicant to make a new application.
2. Housing NSW assess an applicant's continued need for housing at the time of offer rather than annually.
3. Housing NSW reserve or quarantine mid-term housing for Aboriginal women released from custody while their applications are assessed and that Housing NSW review the documentary evidence required to establish priority housing.
4. Housing NSW assess an applicant's eligibility for priority housing while they are in custody.
5. When assessing eligibility for priority housing, Housing NSW include a review of the applicant's file and evidence of significant periods of homelessness, which should be sufficient to demonstrate an urgent housing need and an inability to rent in the private market.
6. Housing NSW refer applicants to care providers to conduct necessary assessments on a bulk-billed basis. If referral cannot take place, Housing NSW consider waiving the relevant document requirement.
7. Housing NSW extend the period of allowable absence for inmates from three months to six months in line with the time periods in place for other absences under the **Absence from Dwelling** policy.
8. The **Absence from dwelling** policy explicitly state that there is a discretion to increase the period of absence in certain circumstances.
9. Housing NSW inform tenants of their classification and its implications at the time of asking them to relinquish their tenancy.
10. Housing NSW places tenants on the priority housing list at the time they relinquish their tenancy to avoid delay in providing housing on release
11. Housing NSW remove the six month time limit to reapply under the reinstatement policy.
12. Housing NSW establishes a means by which social housing applicants/tenants and their advocates can easily find out their social housing status. This could be an advocate's hotline, similar to the one the State Debt Recovery Office operates, or an online portal.
13. Classification as **ineligible** should require an order from the Tribunal for termination for a relevant breach.
14. Housing NSW remove the requirement to rent privately for six months in circumstances where the prospective tenant has demonstrated that it is not possible to comply with this requirement and employ alternative assessments where possible.
15. Housing NSW extend time limit of appeal from three to six months.
16. Housing NSW consider bringing in line the regulations that govern the retention and availability of information in a way that is consistent with the **Residential Tenancies Act**.
17. Corrective Services NSW ensure SAPO's have the capacity to assist inmates with housing information.
18. Corrective Services NSW review the current referral pathways to SAPO's to better help inmates receive the assistance they require.
19. Corrective Services NSW require SAPO's to assess each inmate's social and legal needs and provide appropriate referrals to ensure inmates receive the assistance they require.
20. Corrective Services NSW implement an alternative method of communication between support services, government agencies and inmates that reduces reliance on SAPO's.

1. INTRODUCTION

The Service

Legal Aid NSW received funding under the National Partnership Agreement on Homelessness to assist Aboriginal women resolve legal needs in relation to housing. This was part of a project with Corrective Services NSW and Housing NSW to address more broadly the needs of Aboriginal women leaving Silverwater Women's Correctional Centre (Silverwater). It included a Support Transition and Referral Service (STARS) component, provided by the Community Restorative Centre (CRC). STARS provided needs-based housing and transitional support through case management, case coordination and referrals. STARS commenced on 1 June 2014, and we referred 37 clients to STARS up until November 2014.

We provided legal advice and representation to Aboriginal women through weekly advice clinics and additional appointments when necessary. Assistance was also provided in a range of legal problems in addition to housing, such as fines debt, Centrelink disputes and debts generally, and issues relating to victims of violence.¹⁰

In a period of 12 months, we assisted 153 women, providing 903 occasions of legal service, an average of almost 6 per client. There were 394 advice sessions, an average of 2.5 per client, with 94 sessions delivered by audio visual link.

Each legal service comprised of a discrete task such as obtaining information from a government agency, appealing a decision or applying for waiver of a debt.

Housing histories of Aboriginal women in custody

Women universally identified a common experience of unstable housing. These ranged from living in other people's places, to living with partners in volatile or violent relationships, to living with extended family members with little security or stability.

Of the 153 women assisted:

- 28% reported that prior to coming into custody they were staying with family
- 52% planned to stay with family on release; and
- 57% reported that they had stayed with family on their first night out of custody.

"I can stay with my mum but it is short term only. I sleep on her lounge and my mum is an alcoholic, so she is staying up drinking till 4am and I cannot sleep, I'm right in the middle of it all ... House jumping makes you depressed ... then back in prison because of a relapse."

"Without housing every day is uncertain. You are unstable. It is hard to live day by day."

"I really need housing. If I don't get housing I will have to stay at my mum's place. Her house is overcrowded, we will start arguing, then I'll take off and get back on drugs and then re-offend ... I've applied for private housing. I put in a lot of forms and got nothing back because I've got no previous rental history, and it's not good enough. Being Aboriginal, people don't want to rent to you ... I've had to give my daughter up to my mum and my son to his father because I don't have housing ... You give up in the end ... I just want to have a roof over my head. I want to have a home to call my own."

"This time when I get out I'll stay at mums at Newcastle, but only for one night. After that I'll be staying in parks or hotels ... I need a house that my children can live in. My children have been with my aunty and cousin while I've been homeless and in custody ... My applications for private housing have been refused heaps of times. I think it is because of my criminal history, no job, I'm on Centrelink ... I've been raped and electrocuted when homeless. "

⁹ See figures 5 and 6, Appendix A

“I am homeless at the moment. I’m hot couching at friends and family’s homes but I can’t do that every night, so I walk around and sleep on the streets... Not having housing is very stressful and depressive. I don’t worry about not having money but I do worry where I am going to sleep tonight... I can’t keep hot couching at everyone’s place, I feel like a burden to others. At least if I had somewhere stable to stay for a month it would help me. I’d be less stressed and less likely to re-offend.”

Aboriginal women and the role of social housing

In December 2013, there were 58,206 applicants waiting for social housing in New South Wales. The waiting lists are over ten years in many areas.¹¹

Aboriginal women are one of the most vulnerable groups in the community.¹²

This is reflected in the fact that Aboriginal women have higher rates of recidivism than non-Aboriginal women. In 2011, 39.9% of Aboriginal women returned to custody within a year, compared with 25.9% of non-Aboriginal women. The rate of return to custody within two years was 50.2% for Aboriginal women as opposed to 32.9% for non-Aboriginal women.¹³

The profile¹⁴ of Aboriginal women we assisted was as follows:

- 67% identified having a mental illness
- 64% experienced domestic violence
- 83% had an addiction to drugs or alcohol
- 22% were homeless prior to their incarceration
- 86% had been homeless at some stage in their life
- 68% had dependent children

- 50% had never been employed
- 88% were in receipt of Centrelink prior to incarceration
- 5% were in private rental before coming into custody
- Nearly 100% had a fines debt
- 40% of women who were social housing tenants owed a debt to Housing NSW.

This profile is consistent with research on the link between unstable housing, debts and recidivism.¹⁵ For example in a study conducted in 2006, 59% of prisoners who moved twice or more following release from custody were back in prison after nine months, compared with 22% who had not moved, or moved only once. 63% of prisoners with housing debts and 45% with other debts also returned to custody.¹⁶ 70% of the women we assisted had been in custody more than once in the past 5 years.¹⁷

Access to private housing

It is estimated that less than 1% of private rental properties are affordable for a person on a government payment.¹⁸ Work and rental references are the most important factors in assessing applications for rental properties.¹⁹

Aboriginal women are disproportionately disadvantaged in the private market because of racial discrimination, reliance on government payments, and a lack of work and rental history.

One real estate agent asked our client questions about her alcohol consumption and personal history and told her that “all Aboriginals drink”. Another client was only approved for private rental places when she said she had a non-Aboriginal partner.

¹¹ <http://www.housingpathways.nsw.gov.au/How+to+Apply/Expected+Waiting+Times/>

¹² Aboriginal people have higher rates of poverty than non-Indigenous Australians. In 2011-2013, 27.1% of Aboriginal people were in the lowest quintile of income, as opposed to 15.8% non-Aboriginal people. [Overcoming Indigenous Disadvantage: Key Indicators 2014, Productivity Commission, Chapter 12]

¹³ Karen Barbara, Comparative profiling of Female Inmates in NSW by Indigenous Status, p4

¹⁴ For more detail see appendix A

¹⁵ Eileen Baldry, Desmond McDonnell, Peter Maplestone, Manu Peeters ‘Ex-Prisoners, Homelessness and the State in Australia’ Australian and New Zealand Journal of Criminology April 2006 vol. 39 no. 1 20-33, 24

¹⁶ Eileen Baldry, Desmond McDonnell, Peter Maplestone, Manu Peters ‘Ex-Prisoners, Homelessness and the State in Australia’ Australian and New Zealand Journal of Criminology April 2006 vol. 39 no. 1 20-33, 27.

¹⁷ These figures were calculated by removing blank responses from the sample

¹⁸ Anglicare Australia ‘2014 Rental Affordability Snapshot’ Report <http://www.anglicare.asn.au/site/rental_affordability_snapshot.php>.

¹⁹ https://www.tuv.org.au/articles/files/housing_statistics/Research_Report_Access_to_the_private_rental_market.pdf

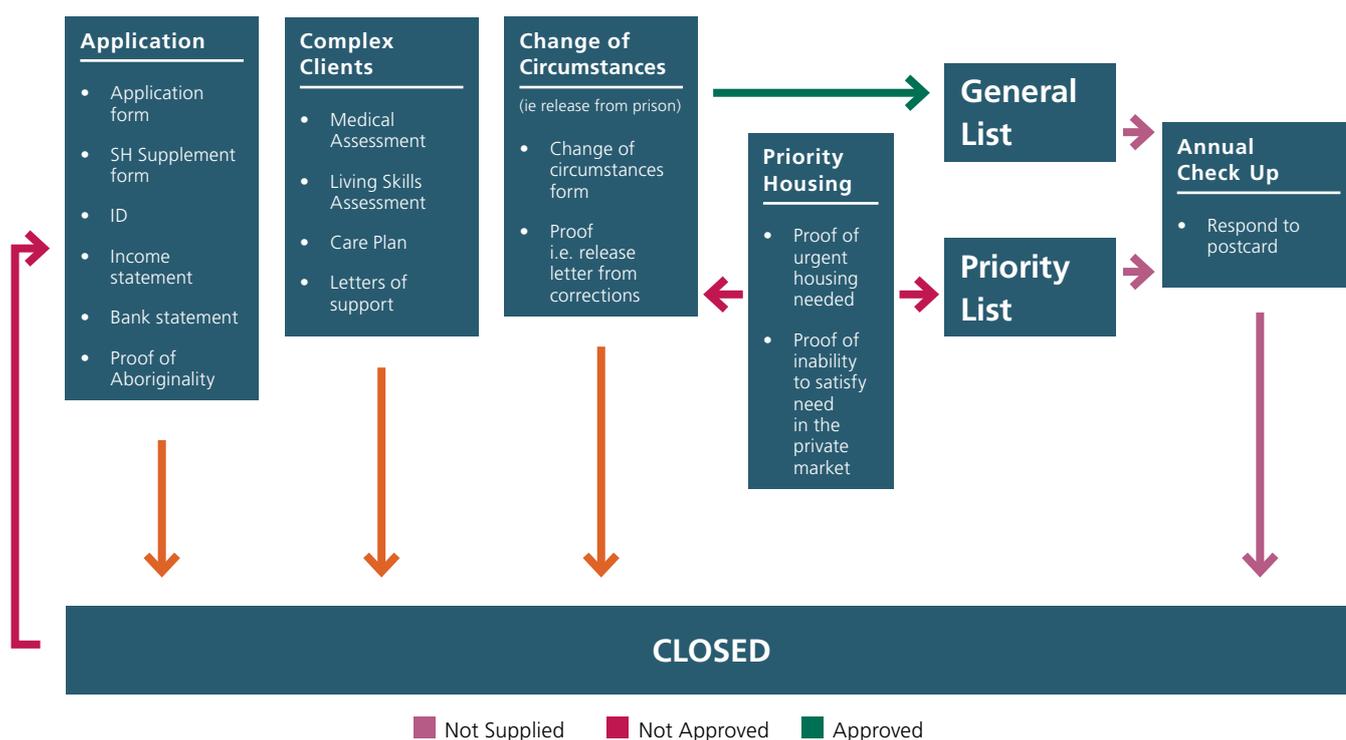
2. APPLICATIONS FOR HOUSING

Documentary burden applying for housing support

All applicants for social housing apply through the **Pathways** program and are required to lodge two forms outlining financial and personal circumstances. Although some of these requirements are relaxed when applying while in custody, this is not the case after an applicant's release.

The documentary requirements to support applications for housing are illustrated below. Many women were unable to produce the required documents when they were released. Housing NSW often requested additional information such as proof of Aboriginality, medical assessments or evidence of an inability to satisfy their need for housing in the private market. In some cases the additional information requested was already on file. Women were also asked to resubmit full applications and supporting documents when an update of a change in circumstances would have sufficed. If documents are not produced, Housing NSW will close the application.

Document Requirements for Social Housing Eligibility



Once on the wait list, applicants must keep in regular contact with Housing NSW and respond to annual correspondence, which asks if the applicant still requires social housing. Again, if the applicant fails to respond their application is closed.

We found that 63% of the women we worked with, who had never been social housing tenants, were not on the wait list. 64% of them were not on the wait list because their application had been closed. Our examination of Housing NSW files obtained under the GIPA Act showed that many files were closed because of a failure to provide documents or stay in contact. Women told us that these failures were because they were homeless, transient or in custody.

Once an application is closed, an applicant must generally submit a fresh application for housing to get back onto the wait list. Housing NSW's reactivation policy allows for a closed application to be reactivated and backdated subject to specific criteria. If successfully reactivated, it gives an applicant credit for the number of years they have waited for housing rather than requiring a new application and placing them at the bottom of the wait list.

We obtained 15 reactivations for the Aboriginal women in custody we worked with. Seven were backdated for more than four years and four were backdated between one and three years.

CASE STUDY: ANGELA, RUBY AND JULIE

Angela, Ruby and Julie had housing applications that were closed because they did not respond to Housing NSW correspondence. All three were either in custody or homeless when the correspondence was sent out. We applied for reactivation in each case and it was approved.

Eligibility for priority housing

In 2012/13 the average wait for priority housing was approximately 10 months.²⁰

Inmates cannot be assessed for priority housing whilst in custody. This results in women (without access to stable or secure housing on release) effectively being released into homelessness.

In order to be eligible for priority housing, applicants must demonstrate an urgent need for housing **and** an inability to satisfy this need through the private market. These requirements pose significant challenges for all women in custody. Long term homelessness is not in itself considered to be an indicator of urgent need.

If the application is based on disabilities or special needs, a medical assessment and/or a living skills assessment and in some cases a care plan is required. It is difficult to obtain this supporting material while in custody. Justice Health does not complete Housing NSW medical assessments because of resource constraints. Additionally Housing NSW, NSW Health and Corrective Services NSW do not provide referrals to support providers who can complete care plans. Justice Health recently agreed to refer Aboriginal women leaving custody to Aboriginal Medical Service (AMS) in order to assess the inmate and complete the required medical assessment. We haven't had any feedback as to whether this is working.

Not being able to obtain this supporting material while in custody extends the delay in determining whether a woman is eligible for (and if so, then obtaining) priority housing.

²⁰ Social Housing in NSW: A discussion paper for input and comment. FAC, 2014, p23

Despite the profound disadvantage of the women we assisted, only four were assessed as eligible to receive priority housing post release.

CASE STUDY: TAMI

Tami was in custody when she applied for housing in 2013. Her application showed that she had been homeless since 1999 and included a medical assessment evidencing issues including bipolar disorder, drug and alcohol abuse, Hepatitis C, pelvic fracture and chronic pain. In the medical assessment, the doctor indicated that Tami's conditions were ongoing and affected her ability to seek and obtain private accommodation. Housing NSW asked Tami to apply for a minimum of 3-4 private rental places and to contact refuges on a daily basis in order to establish eligibility for priority housing. Tami was unable to supply evidence of these applications so was unable to demonstrate her inability to rent in the private market.

CASE STUDY: CLAIRE

Claire lodged an application for priority housing in January 2014, which included a medical assessment and letters of support from an Aboriginal organisation. In March, Housing NSW asked for further letters of support, proof of Aboriginality and income documents and suspended the application awaiting receipt of these documents. A month later Housing NSW indicated that they in fact had all the necessary documents they needed on their file. By that stage Claire had gone back into custody. Housing NSW indicated they needed to interview Claire to assess priority but could not do so while Claire was in custody. Claire was subsequently released and we lost contact with her.

CASE STUDY: CATRINA

Catrina, a 25 year old woman in custody with bi polar disorder, described facing discrimination based on her young age and Aboriginality in the private rental market. In 2008, Katrina was homeless and applied for priority housing. Her application was unsuccessful as she could not satisfy the documentary requirements. In 2012, Katrina 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 Katrina was unable to rent privately. Her application was rejected despite these facts, because she could not sufficiently demonstrate she was in urgent need of housing and unable to satisfy this need in the private rental market. In 2013 Katrina again applied for priority housing. She told Housing NSW 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 other temporary accommodation. In 2014 Katrina requested assistance again. In the interim, Katrina was hospitalised due to her mental illness. She was finally housed in September 2014.

CASE STUDY: ALI

Housing NSW told Ali that she needed to submit a care plan before she would be eligible for social housing. Housing NSW did not suggest any suitable services. We contacted five different support services asking them to prepare a support plan while Ali was in custody. None were able to assist.

RECOMMENDATIONS:

- 1.** Housing NSW routinely consider whether a closed application is eligible for reactivation before requiring an applicant to make a new application.
- 2.** Housing NSW assess an applicant's continued need for housing at the time of offer rather than annually.
- 3.** Housing NSW reserve or quarantine mid-term housing for Aboriginal women released from custody while their applications are assessed and that Housing NSW review the documentary evidence required to establish priority housing.
- 4.** Housing NSW assess an applicant's eligibility for priority housing while they are in custody.
- 5.** When assessing eligibility for priority housing, Housing NSW include a review of the applicant's file and evidence of significant periods of homelessness, which should be sufficient to demonstrate an urgent housing need and an inability to rent in the private market.
- 6.** Housing NSW refer applicants to care providers to conduct necessary assessments on a bulk-billed basis. If referral cannot take place, Housing NSW consider waiving the relevant document requirement.

3. RETAINING PUBLIC HOUSING TENANCIES

Absence from dwelling

Under the **Absence from Dwelling** policy, tenants may be absent from their housing for certain periods of time and for specified reasons. If a tenant is absent from their property because of hospitalisation, holiday or other specified reason, they are permitted to be absent for up to six months.

In contrast, tenants who are absent from their housing because they are incarcerated can only be absent for up to three months unless a discretion is exercised. The discretion to extend this period is not currently expressed in the policy. If Housing NSW is of the view that a tenant is or, in their opinion, is likely to be in custody for longer than three months, they will tell the tenant that they must relinquish the tenancy. If the tenant refuses to relinquish, Housing NSW will apply to the Tribunal for termination based on their anticipated absence from the dwelling.

Aboriginal women are particularly affected by this policy and the way it is applied because they are more likely to spend between three to six months in custody. In 2011, 18% of Aboriginal women inmates spent three to six months in custody (as opposed to 13.1% of non-Aboriginal women inmates).²¹ 80.5% of Aboriginal women are in custody for less than 6 months.²²

Of the women we assisted, 45% were in custody for three months or less and 20% were in custody for three to six months.²³

Despite the policy permitting an absence of up to three months and the discretion to extend this period, women reported feeling pressured by Housing NSW to relinquish their tenancy as soon as they enter into custody. About one third of women relinquished their tenancy due to entering custody. The case studies of **Bonnie and Bobbie** below illustrate this.

Housing NSW often cited security concerns, a lack of discretionary power, or ongoing criminal proceedings as reasons why women must relinquish their tenancy. The approach taken by Housing NSW seemed to vary

between offices and there were inconsistencies in the way the policy was applied.

Women who relinquished their Housing NSW property were advised that they would be eligible to be placed on the priority waiting list. However reinstatement does not apply if the applicant has a negative former tenant classification (for example because of rental arrears). A number of women we assisted were told that they would be rehoused when released, but their application was later refused because of a negative former tenant classification.

While Housing NSW considers several important factors when exercising the discretion to extend the allowable absence under the **Absence from Dwelling** policy, broader considerations of long term housing needs and the impact of homelessness when released from custody are appropriate and relevant factors which should be considered. There is also scope to think creatively to address risks associated with absences such as letting friends or family members play a caretaker role.

Reinstatement and time limits

The reinstatement policy is subject to time restrictions. Applicants must reapply for housing within six months of release from custody and people in custody for three years or more are excluded from reinstatement. These time limits are significant barriers for Aboriginal women leaving custody.

One woman did not apply for reinstatement within the six month period because she didn't know she was required to. She did not make contact with Housing NSW because she was living with family on a short term basis and was focused on reconnecting with her son who has special needs. Despite being effectively homeless and extremely disadvantaged, because she exceeded the time limit, her only option was to reapply for housing again and supply new evidence to show her priority need.

²¹ Comparative profiling of female inmates. P 40

²² Comparative profiling of female inmates. P 40

²³ 10% did not know how long they would be in custody

CASE STUDY: LAUREN

Lauren is a Housing NSW tenant who was sentenced to six months and seven days imprisonment. Housing NSW asked her to relinquish her tenancy and issued her with a Notice of Termination based on the absence of dwelling policy. Around the three month mark, we lodged an appeal based on the discretion to extend the period of absence. We argued that the discretion should be exercised because Lauren suffered from chronic Schizo Affective Disorder. We supplied letters of support from her psychiatrist at Silverwater and stated that the loss of Lauren's housing would negatively affect her mental health. Housing NSW informed us that they were concerned that the lawns were not being mown while Lauren was in custody. We suggested that they arrange a contractor to mow the lawns, with Lauren repaying the cost of this service once released. Housing NSW allowed Lauren to return to her home on release.

CASE STUDY: STEPH

When Steph entered custody we told Housing NSW that we would contact Steph's criminal law solicitor to find out how long she is likely to be in custody. Housing NSW said that they had to make a decision very quickly because the property was in a bad area and was at risk of arson. Steph had only been in custody for ten days. Steph was eligible for parole after 6 months. We asked Housing NSW to extend the allowable absence for 6 months. We also asked that Housing NSW allow Steph's daughter to move into the property in her absence to care for the property to minimize the risk of damage or arson. Housing NSW refused this request on the basis that Steph was only eligible for parole at six months which meant her release date was not certain. Steph had to relinquish her tenancy.

CASE STUDY: LIBBY

Libby was approved for reinstatement. She has been in and out of custody since being placed on the priority wait list. Each time she goes back into custody her application for priority housing is suspended. On release and she has to attend Housing NSW fill in new forms.

CASE STUDY: SALLY AND OLIVE

Sally and Olive were in custody for more than three months. They relinquished their properties on advice from Housing NSW. Sally received a letter from Housing which stated that she had to give up her tenancy if she was in custody longer than three months, but that she would be rehoused on release subject to her eligibility for housing. Once released, both women reapplied for housing. Instead of being approved for reinstatement and placed on the priority list, their applications were suspended while they repaid their debt to Housing NSW. Both debts were for around \$1000. Sally's debt was for arrears that accrued before she went into custody. The majority of Olive's debt was for rent and water charges for the period she was in custody. Olive was eligible for the reduced rent of \$5 a week for this period, so the actual amount owed was less than what Housing NSW was claiming.

Both women made payments on the debt, but these ceased when they went back into custody. Due to failure to continue debt repayments, both applications were closed. These events occurred well before the involvement of the Legal Component. The clients did not know what had happened and we were only able to get this chronology through GIPA requests for both women.

We successfully appealed Sally's negative classification and the decision not to reinstate her.

We appealed Olive's debt and successfully reduced it. Housing HNSW are currently assessing her for reinstatement.

CASE STUDY: BONNIE

Bonnie had been absent from the property for some time before going into custody. Her tenancy was terminated due to arrears. We advocated on her behalf with Housing NSW to retain Bonnie's tenancy. Housing NSW were receptive to this if Bonnie was released quickly. We asked Housing NSW if Bonnie would be eligible for reinstatement if she relinquished and Housing NSW assured us that she would, despite the eviction orders they had sought and received. Bonnie was adamant that she would not relinquish the property unless she had written confirmation of reinstatement from Housing NSW. Even though Housing NSW knew we were acting for Bonnie, one of their workers approached her in prison and asked her to sign a relinquishment form. The housing worker informed us in writing that she told Bonnie that it was in her best interests to relinquish her tenancy because she could reapply for housing assistance when released and that this would be either on the High Priority Transfer register or priority register. However, Housing NSW has now classified Bonnie as unsatisfactory due to the Tribunal eviction orders. Bonnie will have to successfully appeal that classification in order to be eligible for reinstatement.

CASE STUDY: BOBBIE

Bobbie went into custody in June 2014. We saw her about a week later. Housing NSW activated the \$5 reduced rent and agreed to wait to see what happened in her criminal matter. We also spoke to Bobbie's Criminal lawyer who told us that Bobbie was applying for Supreme Court Bail. The Supreme Court Bail hearing was listed in mid August.

When we next spoke to Bobbie, she said that a Housing NSW worker had been in to see her just 4 days after we had last spoken to Housing NSW. The worker told her she had to sign the relinquishment form. Bobbie told her that she didn't want to sign the form because her Supreme Court bail hearing was coming up. The Housing NSW worker said that Bobbie had to relinquish the property because "her time was up" although she was within the 3 months and the length of the imprisonment was not known as bail had not been determined. Bobbie relinquished the tenancy and a Housing NSW officer collected the keys from Bobbie's mother.

Absence from Dwelling Policy



RECOMMENDATIONS:

- 7.** Housing NSW extend the period of allowable absence for inmates from three months to six months in line with the time periods in place for other absences under the **Absence from Dwelling** policy.
- 8.** The Absence from dwelling policy explicitly state that there is a discretion to increase the period of absence in certain circumstances.
- 9.** Housing NSW inform tenants of their classification and its implications at the time of asking them to relinquish their tenancy.
- 10.** Housing NSW place tenants on the priority housing list at the time they relinquish their tenancy to avoid delay in providing housing on release.
- 11.** Housing NSW remove the six month time limit to reapply under the reinstatement policy

4. FORMER TENANTS: NEGATIVE CLASSIFICATIONS

Determining classifications

Housing NSW classifies all former tenants as **'satisfactory'**, **'less than satisfactory'**, **'unsatisfactory'** and **'ineligible'**.

Satisfactory former tenants are eligible to re-apply for housing when they wish.

Less than satisfactory former tenants usually have a Housing NSW debt, which they must repay for six months before they can re-apply for housing²⁴.

Unsatisfactory former tenants were usually evicted for breaches in their tenancy agreement and must demonstrate an ability to sustain a tenancy by renting in the private market for six months before applying for housing.

Ineligible former tenants have committed a serious breach of their tenancy agreement, such as illegal use or arson. An **ineligible classification** prohibits any future application for housing and excludes them from living in any social housing property, as a tenant or even as an occupant.

Many women did not know their classification. Inmates are unable to call HNSW to find out their classification because the calls are timed. In our experience, the call queue time to get to a HNSW worker exceeds the times period allowed for inmates calls. If a classification has been made, inmates can request this information by making a request under the GIPA Act, which is time consuming and requires a fee. Without some form of assistance there is effectively no way for women in custody to find out their classification which determines whether they are eligible to re-apply for housing.

RECOMMENDATION:

12. Housing NSW establishes a means by which social housing applicants/tenants and their advocates can easily find out their social housing status. This could be an advocate's hotline, similar to the one the State Debt Recovery Office operates, or an online portal.

Impact of negative classifications

There were 74% of former Housing NSW tenants in the group of women we assisted that had a negative classification: 30% were classified as **less than satisfactory**, 40% as **unsatisfactory** and 4% as **ineligible**. Because of these classifications, these women faced major barriers to re-apply for social housing while in custody.

92% of these women were not on the housing wait list and for many, this was because they were not able to comply with the requirements for eligibility once a negative classification had been made.

There was a strong correlation between rent arrears, being absent from the dwelling and women's experiences of domestic violence, mental illness, drug use and violence. Of the negative classification cases we investigated, almost a third were the result of domestic violence, 20% due to mental illness, 16% addiction and 12% as a result of coming into custody.

Tenants who have a less than satisfactory classification must make regular repayments to Housing NSW for six months before their application for housing can be re-activated. If payments stop, the application will be closed. Women in custody are at more risk of having their applications closed because payments will cease upon entry into prison. Only one out of the 15 women classified as less than satisfactory was on the housing waiting list (the rest had their applications closed).

Tenants who have an unsatisfactory classification must show they can sustain a private tenancy by renting in the private market for at least six months before they can lodge another application for housing. This proved to be very difficult for the women to comply with because of the lack of opportunities and the disadvantage Aboriginal women face in the private rental market. None of the women were able to remove their negative classification by satisfying this requirement.

Housing NSW could use alternative methods to demonstrate whether tenants have capacity to maintain a tenancy such as a skills assessment, medical assessment or a care plan. Housing NSW policy already contains an option of implementing a fixed term lease for the first six months²⁵.

²⁴ There are a range of reasons that former tenants can be classified as less than satisfactory or unsatisfactory. Most, if not all, of less than satisfactory classifications we saw were due to a debt, and unsatisfactory classifications due to eviction. See the Social Housing Eligibility and Allocations Policy Supplement.

²⁵ Social Housing Eligibility and Allocations Policy Supplement

The classification of ineligible is given where there has been a serious breach of the tenancy agreement. This may include illegal use of premises, arson, nuisance or serious threats directed at neighbours or Housing NSW staff. Ineligible tenants must appeal their classification in order to be eligible for social housing. This classification excludes a person from living in social housing as a tenant and occupant.

Despite the serious implications of this classification, a person can be classified as ineligible even if the allegation has not been tested by the Tribunal. Housing NSW may simply rely on documents from the police or other sources. This is problematic as not all police attendances will constitute a serious breach of the tenancy and yet can have far reaching effects.

CASE STUDY: TARA

Tara pleaded guilty to supply of a prohibited drug. Her involvement was limited to being the driver who picked up the drugs and transported them from one location to another. These activities had no connection to her Housing NSW property. Housing NSW applied to the Tribunal to terminate the tenancy due to non occupancy rather than illegal use. Tara agreed to relinquish the property. The records indicate that at the time Tara relinquished the property, she was not told that she would be classified as **ineligible**. On file was information from NSW Police which stated that Tara “was not charged with any offences relating to the search conducted at [her property]”. Despite this, Housing NSW classified her as **ineligible**. Tara appealed the classification and it was refused. An appeal was made to HAC, who agreed there was no connection between the crime and the property. HAC recommended that the **ineligible classification** be removed as there was no breach of the tenancy agreement. Housing NSW has declined to follow HAC’s recommendation.

CASE STUDY: DANIKA

Our client signed a Housing NSW lease in 2008. After three years of paying rent on time she started to fall behind. Danika told Housing NSW that she was suffering from depression and could not leave the house. Housing NSW referred Danika to a community centre for counselling but they had a six month waiting list. Danika’s depression worsened and she could not take care of simple tasks. Her Centrelink benefits were cut off. The Tribunal terminated the tenancy for rental arrears. Danika was not present at the hearing. 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 homelessness or in custody since. We appealed the unsatisfactory classification and were unsuccessful at the first tier. We then appealed to HAC and they recommended the negative classification be removed. In response, HNSW downgraded her classification to **less than satisfactory** and said that she had to repay a debt from a previous tenancy for six months before her application could be activated. We are currently negotiating with Housing NSW in relation to the debt.

Appeals of negative classifications

Tenants can appeal a negative classification through the Housing NSW internal appeal process (a first tier appeal reviewed by the local office or the District Director). This often requires a GIPA request to obtain documents from Housing NSW and the police. This time consuming and can be expensive.

We lodged a first tier appeal to challenge negative classifications for 19 women. At the end of the 12 month project, over a third of first tier appeals lodged were still pending.

Of the first tier appeals that were decided, none were wholly successful. 26% were partially successful, including the reduction of debt but no change to classification, or a downgrading of a classification from unsatisfactory to less than satisfactory. 37% were unsuccessful.

The second tier of appeal is to the Housing Appeals Committee (HAC), an independent agency that makes unbinding recommendations to social housing providers. We filed 11 HAC appeals, six of which have been decided by HAC at the time of writing.²⁶ Five resulted in either the removal of the negative classification or the removal of the requirement to rent in the private market for six months. We were unsuccessful in one HAC appeal. Of the five matters in which we were successful at HAC, Housing NSW refused to follow the HAC recommendation in one matter; and partially accepted the HAC recommendation in two matters.²⁷

There is a three month time limit to appeal at both levels. This is particularly problematic at the first tier because time runs from the date Housing NSW makes a decision, rather than the date the tenant learns of the decision. Women rarely receive timely notifications of their classification because of their transient or unstable housing circumstances.

This system causes significant delays as clients outside the three month time limit must start the process anew, make a fresh application for social housing, receive another negative classification decision and appeal that decision. For one woman we filed a fresh application for this purpose in May 2014. In August, Housing NSW sent a response that related to a previous application from September 2013. In October 2014 Housing NSW contacted us seeking a bank statement. By that time we had lost contact with the client and so could not get any further instructions. We presume the application was subsequently closed.

RECOMMENDATIONS:

13. Classification as ineligible should require an order from the NCAT for termination for a relevant breach.
14. Housing NSW remove the requirement to rent privately for six months in circumstances where the prospective tenant has demonstrated that it is not possible to comply with this requirement and employ alternative assessments where possible.
15. Housing NSW extend time limit of appeal from three to six months.

CASE STUDY: KIM

Kim moved into a Housing NSW property after leaving a violent relationship. A month later Kim contacted police saying that her former partner was trying to get into the property. She obtained an Apprehended Violence Order, fled the property and stopped paying rent. Housing NSW obtained orders for termination from the Tribunal based on rental arrears. Housing NSW classified her as an unsatisfactory former tenant. The Service lodged a first tier appeal which was refused. We appealed to HAC who agreed Kim should be reinstated as her absence was caused by domestic violence. They recommended the removal of the unsatisfactory status and waiver of the debt. Housing NSW accepted the recommendation in relation to reinstatement. On release Kim went to a Housing NSW office as was told that she had to enter into an agreement to repay the debt, which she did. We advocated on her behalf with Housing NSW and the debt was waived. Housing NSW has now demanded a debt from an old tenancy that was not raised at first instance. We continue to negotiate in relation to this debt.

CASE STUDY: RHONDA

Our client Rhonda became involved with drugs and cancelled her direct debit rental payment to Housing NSW. As a result, she was evicted for non payment of rent and was classified as an unsatisfactory former tenant. Since her eviction, she has lived in unstable accommodation, living with abusive partners and family for short periods of time. She has been unable to satisfy the requirement that she rent privately for six months and so remains ineligible for social housing. We appealed the classification and the requirement that she rent privately for six months, arguing that Rhonda had been drug free for 18 months and was motivated to regain custody of her youngest children. Housing NSW declined our application. We appealed to HAC and they recommended that Housing NSW waive the requirement to rent privately for six months and assess Rhonda for priority housing. HNSW agreed to waive the 6 months requirement to rent privately. We lost contact with the client so we don't know if she was assessed for priority housing.

²⁶ HAC appeals were filed in the absence of a first tier decision as the first tier decision was not made within a reasonable time frame, all of these were subsequently decided at the first tier stage. One other matter is still pending with HAC.

²⁷ In 2 matters Housing NSW accepted all of HAC's recommendations

The tenancy database

Approximately 30% of women had negative classifications made one to three years ago; 40% had classifications that were four to seven years old; and almost 30% had classifications that were over 8 years old.

A negative former tenant classification indefinitely effects eligibility for housing from all social housing providers - including community housing providers and the Aboriginal Housing Office. Former tenant classifications are entered onto the Housing NSW system which is not subject to protections under the Residential Tenancies Act 2010.

The Residential Tenancies Act 2010 (NSW) restricts information kept in Residential Tenancy Databases. These include:

- no time limit on contesting a negative listing;
- a three year limit on the retention of information;
- only information relating to breaches of the tenancy agreement can be stored; and
- on request, the landlord must supply a written copy of the information contained in the database to the tenant within 14 days,

Housing NSW do not consider their tenancy database to be subject to the database restrictions in the Residential Tenancies Act. Under Housing NSW's interpretation, social housing tenants and applicants face fewer protections than tenants in the private market in relation to negative information stored on the database. Some of these are explored below.

Time limits to contest a negative listing

The Residential Tenancies Act provides that a tenant can apply to the Tribunal to correct a negative listing. The Tribunal can consider whether the information is inaccurate, incomplete, ambiguous, and out of date; or whether the listing is unjust in the circumstances, including the tenants' role in the acts/omissions giving rise to the listing and any adverse consequences suffered by the tenant as a result. This is not subject to any time limit.

In contrast, social housing tenants and applicants must appeal a negative classification to Housing NSW and

then to HAC within three months of the classification being made.

No limit on the retention of negative classification

While negative listings are permitted on a Residential Tenancy Database, they can only be retained for three years pursuant to the Residential Tenancies Act. This recognises that circumstances and capacity to maintain a residency may alter over time, and may not indicate future risk or loss.

Housing NSW retains negative classifications indefinitely.

Information relating to the tenancy

Under the Residential Tenancies Act only information about a tenant regarding breaches to tenancies can be stored.

In contrast, Housing NSW indefinitely stores a wide range of information including details of the applicant's mental health conditions and other general history, which has an impact on the documentary requirements for future applications.

The Residential Tenancies Act further requires that on request, landlords must supply a written copy of the information contained in the database to the tenant within 14 days.

Social housing applicants must request (and pay for) a GIPA application to view their information, and the wait time to receive the information is generally about one month.

RECOMMENDATION:

16. Housing NSW consider bringing in line the regulations that govern the retention and availability of information in a way that is consistent with the Residential Tenancies Act.

²⁸ The introduction of housing pathways has meant that there is a single application form and wait list for all social housing providers in NSW, including Community Housing, Housing NSW and Aboriginal Housing Office. The eligibility criteria for housing pathways are outlined in various policy documents including the Social housing eligibility and allocations policy supplement. That policy contains the eligibility criteria for former tenants with negative classifications. If former tenants with negative classifications cannot satisfy the criteria they will not be able to access any social housing.

5. CORRECTIVE SERVICES NSW

We worked closely with Corrective Services NSW at Silverwater. Most of our interaction was with Services and Programs Officers (SAPO's)

The referral process

When we began, we intended to obtain clients through referrals from SAPO's. The referral numbers were initially very low, so we changed this approach and requested to meet with all Aboriginal woman who entered into custody (subject to them wanting to meet with us). This had a dramatic effect and numbers of women seeking assistance rose significantly.

Corrective services informs us that SAPO's have large workloads which may hinder their capacity to make referrals. Corrective services have made the following comments in relation to this:

The role of OSP staff is diverse with inmates' needs prioritised according to a level of immediacy, as per the following hierarchy:

1. Crisis assessment and intervention – immediate self-harm/suicide risk; AOD detox; adjustment into custody; management of crisis family issues (e.g. death in family, children at risk) and legal issues (e.g. bail). These activities are prioritised and dealt with immediately;
2. Assistance and Support Needs – e.g. housing issues, identification, contacting community agencies, finances etc. After "Intake Screening" staff respond to these issues via referrals with priority based on immediacy of need (i.e. date of release) and /or resources;
3. Program delivery;
4. Wellbeing issues.

Silverwater Women's Correctional Centre comprises a number of specialist units related to complex needs / crisis management which take priority over "non-crisis" matters.

There are continual tensions between the demand for services and programs at Silverwater and the capacity to meet this demand. Silverwater can hold 200

women at any one time. A key function of Silverwater is as an intake centre, with the "throughput" of 1557 women received in 2013-2014. Of these receptions, 971 (62%) are at Silverwater for 28 days or less, which indicates a high turnover and continual crisis management/triage.

Referrals to OSP staff for Assistance and Support Needs can be made at "Intake Screening" or via self-referral (at any time in custody) through an electronic system that records details, including the reason for the referral. Each inmate is assessed at "Intake Screening" (on reception into custody) on a number of immediate and support factors. After this time, if needs change, inmates can request assistance from OSP staff. As many women are unaware of available services, relying on inmates to pursue SAPO's for referrals can be problematic.

Without assistance from staff, it is very difficult for inmates to find accommodation upon release or to contact support services. This is because of lack of internet access and time-restricted or expensive access to phone calls.

Training in housing law and other everyday life legal issues is critical for SAPO's to make referrals for assistance. Legal Aid NSW engaged the Tenants Union NSW to conduct such training in 2015.

Women are unable to search for low cost housing while in custody. We distributed a list of housing providers to inmates, but this list should be more regularly updated and made widely available.

RECOMMENDATIONS:

17. Corrective Services NSW ensure SAPO's have the capacity to assist inmates with housing information.
18. Corrective Services NSW review the current referral pathways to SAPO's to better help inmates receive the assistance they require.
19. Corrective Services NSW require SAPO's to assess each inmate's social and legal needs and provide appropriate referrals to ensure inmates receive the assistance they require.

Link to support services

SAPO's play the critical role of facilitating an inmate's contact with the community. This includes enabling communication to and from support agencies or government departments.

However because of resource constraints, emails, calls and requests for assistance often received a delayed response. Given the need for expediency in many cases, this delayed response time makes effective advocacy difficult.

Corrective Services NSW could investigate alternative methods of communication between support services, government agencies and inmates to reduce reliance on SAPO's. Possibilities could include a system which utilises a fax or email access point, and routinely distributing the faxes or printed emails to inmates.

CASE STUDY: ROSIE

Rosie has an intellectual disability, schizophrenia and Multiple Sclerosis. She applied for housing prior to release from custody. Housing NSW declined Rosie's application for housing because they did not think Rosie had adequate living skills to maintain a tenancy.

In June 2014 we referred Rosie to Partners in Recovery (PIR) to provide support services and obtain reports addressing Housing NSW's concerns regarding Rosie's living skills. If Rosie were deemed unable to live independently, we asked PIR to refer her to agencies that could organise appropriate housing.

We gave PIR the name and contact details of a SAPO at Silverwater. In late November 2014, PIR contacted us to say that they had left two messages for the SAPO in June 2014 that had not been returned. PIR then sent a letter to the SAPO saying if no contact were received they would close their referral. There was no response to this letter. As a result the referral was closed.

RECOMMENDATIONS:

20. Corrective Services NSW implement an alternative method of communication between support services, government agencies and inmates that reduces reliance on SAPO's.

6. CONCLUSION

The favourable outcomes achieved for women following access to legal assistance demonstrates the need for a service of this kind to be available on an ongoing basis.

However there are clearly policy changes that could be made, which would systematically address some of the issues we addressed on an individual level. Addressing these needs would have the longer term impact of reducing the overall rate of homelessness, and as the research demonstrates, ultimately reducing rates of recidivism amongst Aboriginal women.

APPENDIX

FIGURE 1: INCOME SOURCE PRIOR TO INCARCERATION

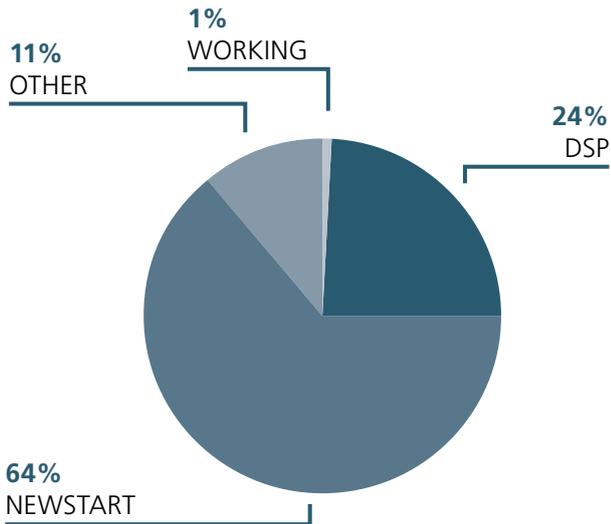


FIGURE 2: TIME SINCE LAST EMPLOYED

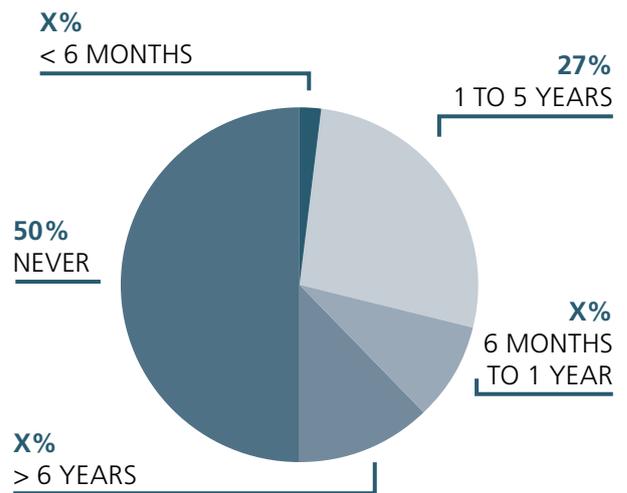


FIGURE 3: HOUSING PRIOR TO INCARCERATION

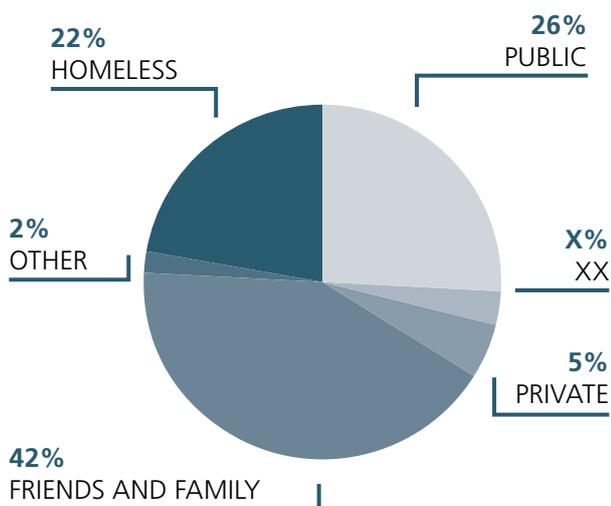


FIGURE 4: NUMBER OF LEGAL ISSUES PER CLIENT

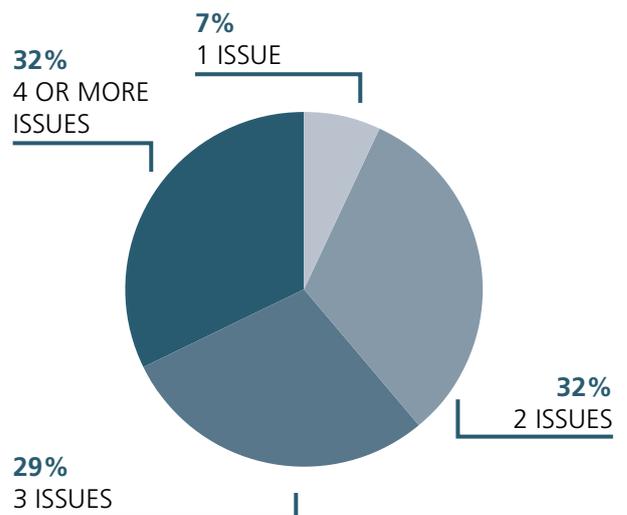


FIGURE 5: NATURE OF LEGAL ISSUES

