

## Responses to Homelessness

Legal Aid NSW submission to the  
Audit Office of NSW

*January 2021*

323 CASTLEREAGH ST  
SYDNEY NSW 2000

**Legal Aid**   
NEW SOUTH WALES

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## 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). We provide legal services across New South Wales through a state-wide network of 25 offices and 243 regular outreach locations, with a particular focus on the needs of people who are socially and economically disadvantaged. We offer telephone advice through our free legal helpline LawAccess NSW.

We assist with legal problems through a comprehensive suite of services across criminal, family and civil law. Our services range from legal information, education, advice, minor assistance, dispute resolution and duty services, through to an extensive litigation practice. We work in partnership with private lawyers who receive funding from Legal Aid NSW to represent legally aided clients.

We also work in close partnership with community legal centres, the Aboriginal Legal Service (NSW/ACT) Limited, and pro bono legal services. Our community partnerships include 27 Women's Domestic Violence Court Advocacy Services, and health services with a range of Health Justice Partnerships.

The Civil Law Division provides advice, minor assistance, duty and casework services from the Central Sydney office and 20 regional offices. It focuses on legal problems that impact on the everyday lives of disadvantaged clients and communities in areas such as housing, social security, financial hardship, consumer protection, employment, immigration, mental health,

discrimination and fines. The Civil Law practice includes dedicated services for Aboriginal communities, children, refugees, prisoners and older people experiencing elder abuse.

The Legal Aid NSW Family Law Division provides services in Commonwealth family law and state child protection law. Specialist services focus on the provision of Family Dispute Resolution Services, family violence services and the early triaging of clients with legal problems through the Family Law Early Intervention Unit. Legal Aid NSW provides duty services at a range of courts, including the Parramatta, Sydney, Newcastle and Wollongong Family Law Courts, all six specialist Children's Courts and in some Local Courts alongside the Apprehended Domestic Violence Order (**ADVO** or 'protection order') lists. Legal Aid NSW also provides specialist representation for children in both the family law and care and protection jurisdictions.

The Criminal Law Division assists people charged with criminal offences appearing before the Local Court, Children's Court, District Court, Supreme Court, Court of Criminal Appeal and the High Court. The Criminal Law Division also provides advice and representation in specialist jurisdictions including the State Parole Authority and Drug Court.

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## Introduction

Legal Aid NSW welcomes the opportunity to contribute to the Audit Office of NSW's audit of whether actions in the NSW Homelessness Strategy 2018-2023 (**NSW Homelessness Strategy**) are effectively implemented and producing outcomes in reducing homelessness, and whether the department's response to COVID-19 is effectively supporting people experiencing homelessness.

We consider that legal services to assist people to obtain and maintain secure housing are integral to reducing homelessness. This includes specialist housing law assistance, as well as wider legal services to address legal issues known to contribute to homelessness such as consumer debt, fines, social security disputes and employment problems.

This submission outlines the civil law services that Legal Aid NSW provides to people who are homeless or at risk of homelessness, and the work that we do to try to reduce the barriers to re-enter housing and assist people to maintain secure housing. We also comment on systemic issues from our casework relevant to the three focus areas in the NSW Homelessness Strategy (intervening early and preventing crisis; providing protective supports and responses; and creating an integrated person-centred service system), which we consider are creating barriers for many of our clients to maintain stable and secure accommodation. We suggest that these issues could be ameliorated by:

- Increasing the availability of tenancy support programs to assist tenants to address issues undermining their tenancy and/or repay debts through participation in health, social or educational programs.
- Ensuring consistent tenancy policies across social housing landlords, and requiring community housing providers to adhere to minimum standards or adopt the Department of Communities and Justice's (**DCJ**) policies.
- Increasing support and services to assist people exiting government services to secure stable housing, including people leaving out of home care, health and rehabilitation facilities and prison. Part of this should involve changes to DCJ's policies including increasing the amount of temporary accommodation a person can access, allowing people to apply for priority housing while still in custody, and allowing greater discretion for tenants to exceed the current length of permissible absences.
- Streamlining and improving administrative processes for applying for social housing, including having more a flexible approach regarding when and how applicants are required to identification documents and a postal address, and allowing applicants who do not respond to DCJ's correspondence to reactivate their application without losing their place in the waiting list.
- Reforming the negative classification system for former tenants, including introducing a 3-year time limit in line with the private rental system.

While addressing these issues would have a significant positive impact on people experiencing or at risk of homelessness, in our view there remains a fundamental lack of

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social and affordable housing in NSW. In 2013 the NSW Auditor-General concluded that “*There is an increasing shortfall between the supply of and demand for public housing.*”<sup>1</sup> We are concerned that the NSW Homelessness Strategy does not adequately address this issue.

## Legal Aid NSW’s services for people experiencing or at risk of homelessness

This submission predominantly focuses on the services provided by Legal Aid NSW’s Civil Law Division to assist clients to maintain or access stable housing.

Our Civil Law Division has over 200 staff and a presence in almost all of our 25 offices throughout NSW. It focuses on ‘everyday’ legal problems that will often negatively impact a person, or exacerbate their disadvantage, if left unaddressed. Most relevant to this submission, this includes legal problems relating to housing, fines, consumer debt, social security, discrimination, employment and immigration. The Civil Law Division’s structure includes specialist and generalist teams and the services provided vary according to the level of client vulnerability and the area of law involved.

In addition, Legal Aid NSW provides over 190 civil law outreach services located in Aboriginal and Torres Strait Islander, culturally and linguistically diverse (CALD) and regional and remote communities throughout NSW, and in venues often accessed by our clients such as at health services and community centres. Outreach services are place-based and designed to respond to the particular needs of disadvantaged communities and address barriers to accessing legal services.

Legal Aid NSW’s Family Law Division also assists people experiencing homelessness. For example, it provides a holistic, wrap around service to clients experiencing domestic and family violence. Legal Aid NSW’s Domestic Violence Unit (**DVU**) is a trauma-informed multidisciplinary service made up of lawyers, paralegals, social workers and financial counsellors who work together to assist clients escaping domestic and family violence to address their legal and non-legal needs. The DVU social workers can assist clients with access to emergency relief, Centrelink crisis payments, housing, Victims Services and other services. As part of their psychosocial assessment, they undertake safety planning and risk assessment. Where necessary, they can refer clients into the Safer Pathways Safety Action Meetings for a coordinated safety response from NSW government agencies, including Police, Housing, Education, Health etc.

Through the Women’s Domestic Violence Court Advocacy Program (**WDVCAP**), Legal Aid NSW administers NSW Government funding to 27 non-government organisations to provide Women’s Domestic Court Advocacy Services (**WDVCASs**). WDVCASs provide women experiencing domestic and family violence and their children with information, safety planning, referrals and support in relation to the court process at all NSW Local

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<sup>1</sup> NSW Auditor-General, *Making the Best Use of Public Housing*, (Performance Audit, 30 July 2013), 2.

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Courts. WDVCSAs also provide women with information and referrals for their ongoing legal, social and welfare needs, including in relation to housing.<sup>2</sup>

## Civil Law Specialist Services

The Civil Law Division also provides specialist legal services for priority client groups. Some of these teams have multidisciplinary models, with solicitors working alongside social workers, financial counsellors, lay advocates and community engagement officers.

Our specialist services include Housing Law, Homeless Outreach Program, Civil Law Service for Aboriginal Communities (includes Aboriginal Women Leaving Custody), Children's Civil Law Service, Consumer Law (including Disaster Recovery Solicitor), Elder Abuse Service, Refugee Service, Mental Health Advocacy Service, Work and Development Order (WDO) Service, Employment Law and Human Rights Law. All these practice areas provide legal services that assist clients who are experiencing homelessness, remove barriers to re-entry to housing or prevent homelessness.

## Housing Law Service

Housing law solicitors advise tenants in relation to their housing rights and obligations, litigate matters to prevent homelessness and provide services to clients who are homeless, including appealing negative classifications that prevent a person from being eligible for social housing. In the 2019/20 financial year, Legal Aid NSW provided more than 3,370 housing advice and assistance services.

Legal Aid NSW also provides a specialist Housing Appeals Service, which represents clients in litigious matters after a first-tier decision has been made by the NSW Civil and Administrative Tribunal (**NCAT**). In the 2018/19 financial year, the Housing Appeals Service filed 15 appeals where DCJ Housing was the other party. All appeals were successful.<sup>3</sup>

In total Legal Aid NSW provided 238 representation services in housing matters in the 2018/19 financial year, and 242 representation services in housing matters in the 2019/20 financial year, mainly before the Housing Appeals Committee (HAC) and NCAT. Outcomes for representation services included the client retaining their housing, reduction or waiver of money owed, removal for negative classification of former tenants and restoring the client's eligibility for social housing. The following case studies illustrate the critical role of legal services to assist people who are experiencing vulnerability, for

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<sup>2</sup> For more detailed information, see Legal Aid NSW submission to the Standing Committee on Social Policy and Legal Affairs inquiry into family, domestic and sexual violence, [https://www.legalaid.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0020/41177/200622-Legal-Aid-NSW-submission-to-Inquiry-into-family,-domestic-and-sexual-violence.pdf](https://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0020/41177/200622-Legal-Aid-NSW-submission-to-Inquiry-into-family,-domestic-and-sexual-violence.pdf)

<sup>3</sup> Ten appeals settled in the tenant's favour prior to hearing. Four matters went to hearing and were decided in the tenant's favour. The remaining matter was withdrawn because the client was successful in concurrent set aside proceedings.

Note: More detailed Housing Appeals data for 2019/20 is not yet available due to Legal Aid NSW transitioning to a new case management system recently.

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example people in custody and people experiencing domestic and family violence, to retain their housing.

***Housing Team assists client to retain tenancy while in prison***

Our client was 43 years old, had a history of trauma, with a diagnosis of post-traumatic stress disorder and anxiety when he was taken into custody. His offending was closely related to his personal drug use. He had been away from his property for two other periods during the tenancy while he was undertaking residential drug and alcohol rehabilitation. After being in custody for 6 months his social housing provider issued a Termination Notice on the basis that he had been absent from the property for longer than their policy allowed.

His Legal Aid NSW Housing lawyer appealed the administrative decision and provided a letter to his Legal Aid NSW Crime lawyer for use in his criminal proceedings in support of a non-custodial sentence so that he could retain his social housing. After 7 months away from the property he was released on an Intensive Corrections Order 2 days before his Housing Termination Proceedings were to be heard in the NSW Civil and Administrative Tribunal (NCAT).

On release from custody our client's social housing provider withdrew the NCAT proceedings. Without stable housing to return to, he would not have received a non-custodial sentence and if his tenancy had terminated, he would have been released from custody into homelessness on completion of his sentence. Our client had been homeless for 20 years prior to being offered social housing. Since being released from custody he has continued with drug and alcohol treatment, regained custody of his 15-year-old daughter and is actively looking for work.

***Margaret's story***

Margaret was a single parent living in a DCJ Housing property. Our client's new partner soon started living there too. Margaret reported this change to DCJ Housing. Our client was a victim of domestic violence. Her partner refused to give his income details to DCJ Housing, or have his name included on the lease. In 2015, her subsidy was cancelled for failing to provide income details, the cancellation was backdated to the beginning of her tenancy, she was evicted from the premises for rent arrears, a debt raised due to the cancellation and she was given a less than satisfactory former tenant classification, which would exclude her from the housing register unless she made repayments for 6 months.

Legal Aid NSW first met with Margaret at the homeless refuge where she was receiving case work assistance from St Vincent De Paul. At that time, our client's relationship had broken down and she had given birth to a second child. She was at risk of homelessness

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as she was living with her foster parents but the living arrangement was strained, and our client was attempting to get back on the housing waitlist.

Legal Aid NSW submitted a first-tier appeal in December 2018 with DCJ, in relation to the decision to raise a debt and impose a negative classification. Legal Aid NSW provided evidence to DCJ that Margaret was a victim of domestic violence and her abusive partner refused to provide his details. DCJ Housing upheld its original decision on the basis that at the time of cancellation, it had no reason to suspect our client was experiencing domestic violence, and she had never disclosed any information to that effect. DCJ Housing maintained the debts must be repaid and Margaret's first-tier appeal was unsuccessful.

In June 2019, the NSW Housing Appeals Committee (**HAC**) considered the evidence available and reversed this decision. HAC made a finding that Margaret was a victim of domestic and family violence at the time of her tenancy and that she did not have capacity to provide additional information requested by DCJ Housing. The debt was waived in full.

## Homeless Outreach Program

DCJ and Legal Aid NSW jointly fund the Homeless Outreach Program to provide legal services to clients who are homeless or at risk of homelessness. There are six Legal Aid NSW civil solicitors across NSW, in Lismore, Coffs Harbour, Newcastle/Gosford, Western Sydney, South Coast and Wagga Wagga, who work to remove barriers to re-entry into housing or to prevent homelessness. In addition to providing assistance around tenancy issues, our lawyers assist people to resolve civil law problems that contribute to homelessness, such as debts, fines and social security disputes.

In the period from 1 July 2020 to 31 December 2020, solicitors from the Homeless Outreach Program provided around 600 services, some of which are ongoing.<sup>4</sup>

The following case studies demonstrate typical types of assistance that the Homeless Outreach Program provides to clients to remove barriers to housing.

### ***Debts interfering with ability to pay rent***

A women's homelessness service referred a client to Legal Aid NSW, who had multiple debts including rent arrears and a pay day loan. Legal Aid NSW assisted her to obtain a write off \$3000 of her debts, allowing her to redirect available funds to rent and rent arrears.

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<sup>4</sup> This includes advice, minor assistance, extended legal assistance and grants of aid.



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### ***Debts from financial abuse undermining ability to pay rent***

A Specialist Homelessness Service provider referred a client to Legal Aid NSW who had fled a domestic and family violence relationship. She was pregnant and living in her car. Legal Aid NSW assisted her with 5 separate consumer issues that arose from financial abuse, including credit card debt and loans that her ex-partner accrued in her name. Over \$30,000 of consumer debts were waived and our client was able to pay rent and retain her housing.

## Work and Development Order (WDO) Service

The Legal Aid NSW WDO Service helps vulnerable people with fines they are unable to pay, by linking them to services where they can clear their debt by participating in treatment programs, education, volunteer work and other approved activities. NSW Government partners that offer WDOs include DCJ, Corrective Services and all NSW Local Health Districts.<sup>5</sup>

Homeless people living in public places often receive fines for a wide range of offences including transit offences. Diverting homeless clients from the fines enforcement system, clearing outstanding debt and providing links to community and health services through a WDO can assist clients to obtain housing.

### ***WDO service assists client to clear debts, enabling him to access stable housing***

A young man with mental illness who was scheduled at Macquarie Hospital Mental Health Unit, had been living under a bridge prior to admission and was very unwell following a relapse of schizophrenia. He had over \$23k fines debt. The type of fines were typical for a person experiencing homelessness, including fare evasion, trespassing and lighting fires.

After our client was stabilised in hospital, he was discharged on a Community Treatment Order (CTO). The Legal Aid NSW WDO team worked with the social worker and arranged for him to be sponsored on a WDO for the duration of the 6-month CTO. We also lodged a successful write off application for some residual debt that was not cleared under the WDO. The social worker was able to link him with a housing provider who found him stable accommodation.

### ***WDO team assists clients to clear fines arising from homelessness***

A Bundjulong woman, homeless and sleeping in her car at a truck stop for over eight months, was fined \$900 as the car was unregistered. She said “*I wanted to throw the towel in.*” But through Legal Aid NSW she was linked with the local homelessness service, a WDO sponsor, who assisted her to clear her fines through an education program.

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<sup>5</sup> In 2019 the WDO service won a Premier’s Award in the category of “tackling longstanding social challenges”.



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## Elder Abuse Service (EAS)

Legal Aid NSW's Elder Abuse Service is a Commonwealth funded pilot for 3 years. It is focussed on providing support to older people living on the Central Coast who are experiencing or at risk of abuse. The abuse of older people is a complex health and social problem with devastating consequences including homelessness. Older women, aged 55 and over, were the fastest growing cohort of homeless Australians between 2011 and 2016. Legal Aid NSW lawyers work together with a social worker to address the different aspects of elder abuse and provide support and advocacy for clients.

### ***Older person with abusive family member tenant***

The EAS is assisting an 81 year old woman who was being treated in hospital for health problems including malnutrition. Prior to discharge she was referred to the EAS. The client disclosed that her adult son who lived with her was abusive and controlling and contributed to her health problems. The client was unable to get her son to leave the property and as a result our client could not return home.

The EAS was able to support the client to reunite and live temporarily with her daughter while the EAS pursued evicting the client's adult son from her property.

### ***Recognising older person's financial interest in property***

The EAS is assisting a 68 year old woman whose son was attempting to evict her from her home. The woman had a significant financial interest in the property but was not registered on title. The son was trying to evict his mother so that he could redevelop the property. The EAS was able to assert the client's financial interest in the property so that she was able to stay in her home.

## Children's Civil Law Service (CCLS)

The Legal Aid NSW Children's Civil Law Service (CCLS) is a multi-disciplinary team of lawyers, paralegals, and two youth workers who provide civil law and youth casework assistance to highly disadvantaged young people in the criminal justice system who are based in Sydney.

A large proportion of CCLS clients (up to 83%) are homeless or at risk of homelessness. Often, CCLS clients are also in (or have been in) out-of-home-care, and/or in (or have been in) youth detention.

CCLS takes a holistic approach that involves young people being supported not just for one civil law issue, but for many civil law issues and by both lawyers and, in some cases, by youth casework team members.

Often, CCLS's legal assistance and/or youth casework assistance is directed at preventing or reducing the risk of clients experiencing homelessness. For instance, CCLS

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will often advocate on behalf of young people leaving Out of Home Care to receive a Leaving Care Plan tailored to meet their needs and goals, including support to exit care into stable independent housing. CCLS also provides traditional tenancy law assistance.

CCLS youth caseworkers often assist clients with applications for social housing. CCLS youth caseworkers may also help clients address issues which impact on their ability to obtain or maintain a tenancy, and have supported clients to undertake the *Rent It Keep It* program (a DCJ training package for young people to assist them to maintain a tenancy).

## Civil Law Service for Aboriginal Communities

Legal Aid NSW's Civil Law Service for Aboriginal Communities (**CLSAC**) is a team dedicated to the legal needs of Aboriginal clients, predominantly those living in regional and remote areas of NSW, and Aboriginal women in custody. CLSAC is based in Legal Aid NSW's Sydney, Orange, Lismore and Nowra offices and conducts outreach services to Aboriginal communities throughout regional and rural areas of NSW.

CLSAC aims to provide holistic civil law services to Aboriginal people. It provides targeted legal assistance focused on addressing civil law problems impacting on its clients' lives. It seeks to address barriers to housing, including assisting current tenants to remain in public housing, advocating for high priority tenancy reinstatements, challenging debts and negative classifications which are often related to domestic and family violence, and challenging poor-quality decisions of housing providers. CLSAC provides financial counselling support to clients, in recognition that many legal problems can emerge from financial hardship.<sup>6</sup>

CLSAC also assists Aboriginal and Torres Strait Islander women leaving custody through fortnightly advice clinics. Due to restrictions on accessing correctional centres during the COVID-19 pandemic these services are currently delivered via audio visual link (**AVL**), and previous monthly community legal education sessions at Silverwater Women's Correctional Centre have been temporarily suspended.

Many of CLSAC's staff are Aboriginal people who have invaluable insights into working with Aboriginal communities. CLSAC's Aboriginal staff hold regular meetings to discuss cultural and community issues and events affecting CLSAC's service delivery.

## Prisoners Legal Service

There are currently two dedicated civil solicitors providing services through the Prisoners Legal Service (PLS). PLS works with Legal Aid NSW solicitors across each practice

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<sup>6</sup> M Williams and M Ragg, *Evaluation of Legal Aid NSW Civil Law Service for Aboriginal Communities*, Girra Maa Indigenous Health Discipline Graduate School of Health, UTS (May 2019). The evaluation found that 'CLSAC can be considered an exemplar of how a mainstream service works with Aboriginal and Torres Strait Islander people and communities' (at 54).

The CLSAC has also been a finalist for the NSW Premier's Award nominated for the Tackling Longstanding Social Challenges Category in 2019 and 2020.

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division to deliver legal services to people in custody. The housing team works closely with the PLS to advise and assist prisoners maintain their tenancies where their period of incarceration is short term, or to remove the barriers to securing housing on their release from prison.

Legal Aid NSW's prisoner specific services includes providing services to inmates of High Intensity Program Units (**HIPUs**), which are located in seven correctional centres across NSW. The HIPUs have over 400 inmate places across NSW for prisoners on short sentences and the provision of service is tailored to meet the needs of the prisoners and their levels of capability. A prisoner specific Law Check-Up tool has been developed to assist staff working with prisoners to identify unmet civil law needs. Those prisoners are then referred to Legal Aid's civil lawyers who assist clients to resolve their issues with the aim of removing the barriers to homelessness and reducing the risk of recidivism on their release.

## Health Justice Partnerships

Legal Aid NSW is a strong contributor in the development of a model of service delivery known as Health Justice Partnerships (**HJPs**). HJPs recognise that legal issues are a social determinant of health. A Health Justice Partnership is a collaborative approach in which legal services work closely with health services to help address legal and related issues that may be impacting on a person's health and wellbeing.

Legal Aid NSW (including the legal services of the Civil Outreach team, Community Legal Education Branch, and Family Law Early Intervention Unit) is currently participating in a HJP with the We Help Ourselves (**WHOS**) drug and alcohol treatment facility at Rozelle in Sydney. WHOS is a therapeutic residential program aimed at achieving recovery from drug and alcohol dependence, incorporating harm minimisation and co-existing mental health initiatives.<sup>7</sup>

People come to WHOS to overcome substance dependence. Many people with substance dependency issues also have other complex health and social issues, including experiencing or being at risk of homelessness. There is an established evidential link that shows that people with complex social and health issues such as drug or alcohol use, mental health conditions, homelessness, domestic or family violence are more likely to have legal issues across a range of areas of law.<sup>8</sup>

Management at WHOS identified the need for specialist legal advice onsite and a HJP was established with Legal Aid NSW in late 2016. Currently, the Civil Law outreach team attends WHOS weekly to provide onsite legal assistance to residents, and the Family Law Early Intervention Unit attend fortnightly. Community Legal Education sessions on various topics is provided onsite to residents with between six and eight sessions delivered per year.

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<sup>7</sup> See: <https://whos.com.au/>

<sup>8</sup> Coumarelos, C, Macourt, D, People, J, MacDonald, HM, Wei, Z, Iriana, R & Ramsey, S 2012, Legal Australia-Wide Survey: legal need in Australia, Law and Justice Foundation of NSW, Sydney

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The Legal Aid NSW WHOS HJP was evaluated in late 2020. Residents of WHOS who received legal assistance from Legal Aid NSW were surveyed with key findings including:<sup>9</sup>

- 94% of clients felt stress about legal issues prior to seeing a solicitor.
- 100% of clients felt better or much better about their legal issues after an advice session.
- 79% of clients reported that they were a great deal or a lot more confident to take steps to address their legal issues after seeing a lawyer.
- 94% of clients considered substance dependence to be related to their legal issues to varying degrees.
- 97% of clients believed resolving their legal issues would contribute to assisting in their recovery.

## Systemic issues relevant to the NSW Homelessness Strategy

### Homelessness strategy focus area one: intervening early and preventing crisis

The NSW Homelessness Strategy focus area of intervening early and preventing crisis includes actions of supporting people to maintain their tenancies and avoid entering the homelessness system; and preventing exits from government services into homelessness.

Legal Aid NSW strongly supports these goals, however we consider there to be significant aspects of current practise that are not aligned with achieving them.

#### *Tenancy support programs*

Legal Aid NSW strongly supports programs that assist people to maintain their tenancies and endorses comments in the NSW Homelessness Strategy regarding the high efficacy of tenancy support programs (consistently between 80 and 90 per cent) and the range of benefits such programs can deliver in addition to sustaining tenancies. These include reducing the number of children taken into care, reducing neighbourhood disputes, reducing rent arrears and other debt, increasing employment and education engagement and improved links to health and social services.<sup>10</sup>

However, in our experience, tenant support programs are not widely offered by social housing landlords including DCJ Housing. We continue to see tenants evicted for rent arrears and/or behavioural issues without the opportunity to participate in support

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<sup>9</sup> Legal Aid NSW, *An Evaluation Report (Executive Summary) on the Health Justice Partnership Outreach Between Legal Aid NSW and We Help Ourselves (WHOS)*, (2020), <[https://www.legalaid.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0007/42010/WHOS-Evaluation-Executive-Summary-October-2020.pdf](https://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0007/42010/WHOS-Evaluation-Executive-Summary-October-2020.pdf)>. To find out how clients perceived the effects of the HJP, 33 surveys were conducted with those who sought legal advice from Civil lawyers between August 2019 and October 2019. Clients were asked about their level of stress regarding the legal issues prior to seeing a solicitor, and after.

<sup>10</sup> NSW Homelessness Strategy 2018 – 2023, 17.

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programs, or reduce debts through means other than money payments. There are limited opportunities to participate in health or educational programs to address issues that may be jeopardising their tenancy.

Legal Aid NSW considers that tenancy support programs similar to the WDO scheme discussed above should be widely available. However, we are aware that there is currently a lack of available services in some areas, particularly drug and alcohol services and mental health services in regional areas, to support tenants to address issues undermining their ability to maintain housing.

#### *Lack of consistent policies across social housing landlords*

We consider that support for tenants to maintain their social housing tenancy would be greatly enhanced by transparent and consistent policies across social housing landlords.

In NSW there has been a transfer of a large portion of Housing NSW stock to community housing providers, which has led to differences in the policy positions of Housing NSW and community housing providers. Concerningly, there are no minimum standards regarding social housing landlords' approaches to managing issues such as domestic violence, rental arrears, behavioural issues or tenants at risk of homelessness. Community housing providers are not required to adopt the same policies as DCJ, and in our experience, some community housing providers' policies can be difficult to access, and/ or are not publicly available. This creates an additional barrier for tenants in highly vulnerable circumstances to understand their options and take steps to seek to maintain their tenancy.

The Tenants' Union of NSW and Law and Justice Foundation of NSW's March 2020 report, *Change Management: Social Housing Management Transfers Program Best Practice Report – Tenants' Experience*, drew attention to this issue regarding domestic and family violence policies:

As former FACS tenants transferees were covered by a detailed and explicit policy that builds upon Residential Tenancies Act provisions to clearly protect the tenancies of victims of domestic violence. CHIA [Community Housing Industry Association] and a number of CHPs [Community Housing Providers] have also done significant policy development work on tenancy management policies related to this issue but this has not been taken up by all providers. The DCJ policy statement reflect baseline best practice but it is not mirrored by all CHPs some of whom provide referral and support but, for example, were still found to require co-tenant victims to pay for domestic violence related damage.<sup>11</sup>

We consider that all social housing landlords should be required to adhere to minimum standards regarding issues such as tenants experiencing domestic violence, rental arrears, tenants at risk of homelessness and behavioural concerns.

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<sup>11</sup> Tenants' Union of NSW and Law and Justice Foundation of NSW, *Change Management: Social Housing Management Transfers Program Best Practice Report – Tenants' Experience* (Report, March 2020).

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In addition, unlike DCJ Housing tenants who may complain to the NSW Ombudsman, there is no external complaints process for tenants of community housing providers. In our view, there should be an external oversight body accessible to all social housing tenants.

#### *Exits from government services into custody*

Legal Aid NSW has been consulted on the *No Exits from Government Services into Homelessness Framework (No Exits Plan)*, which was released in October 2020. Legal Aid NSW supports the policy intent of the No Exits Plan that no person exits from a government service into homelessness, and its recognition that many highly vulnerable people leaving government services have multiple and complex needs or experience unpredictable exit pathways that significantly increase their risk of homelessness.

#### *Exit from out of home care into homelessness*

Legal Aid NSW's casework experience aligns with comments in the No Exits Plan regarding the significantly increased risk of homelessness for young people leaving out of home care. We continue to assist many clients who leave out of home care without stable accommodation. While there are a range of reasons for this, a significant contributing factor is the lack of available appropriate accommodation.

There is often inadequate planning and support provided to the young person from either DCJ Community Services or the residential Out of Home Care service prior to them leaving care. Many clients of our Children's Civil Law Service (CCLS) have left care without having a Leaving Care Plan (**LCP**) developed at all, despite the statutory obligation on designated agencies to do so. For clients who do have a LCP, they are often template plans developed with limited or no participation from the young person with little relevance to their needs or circumstances. Legal Aid NSW's CCLS often advocates on behalf of young people leaving OOHC to receive a LCP tailored to meet their needs and goals, including support to exit care into stable independent housing.

Issues commonly faced by young people leaving out of home care are demonstrated by the following case studies.

#### **Sean's story**

Sean was placed in the care of the Minister until he turned 18 years of age. Despite having involvement with DCJ Community Services, Juvenile Justice and an OOHC NGO, Sean approached the age of leaving care with no Housing Pathways application lodged. Legal Aid NSW assisted Sean to complete an online application just before he turned 18. Not long after, Housing NSW threatened to close the application as they had not received adequate supporting documents. Legal Aid NSW advocated for an extension and coordinated the collection of supporting material from other agencies, including living skills assessment from the Out of Home Care NGO.

Without Legal Aid NSW coordinating and driving this process, it is likely Sean would have left care with no housing application. Sean remained homeless and moved into a family member's residence where he was exposed to violence and substance



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use. When Sean's homelessness and vulnerability hit crisis point, his DCJ Community Services caseworker agreed to advocate for his housing application to be prioritised, escalating it to the Director before any progress was made.

Throughout this process there was no coordination with DCJ Housing and DCJ Community Services to provide a smooth transition from care into independent accommodation.

### ***Jessie's story***

Jessie is an 18-year-old Aboriginal young person who was in the care of Minister to 18 years of age. She was in the criminal justice system and was sentenced to a control order in a Youth Justice Centre. Jessie's earliest release date was approximately 5 months after her 18<sup>th</sup> birthday.

As Jessie's release date approached, her Youth Justice case worker in custody attempted to plan for her release. Although there was a leaving care plan in place which placed responsibility for making referrals for accommodation with FaCS (as it then was), the Regional FaCS District office would not participate in the pre-release case conferences. Jessie was homeless and Youth Justice had difficulty planning for her release without the assistance of FaCS.

Jessie expressed a wish to move to a different regional town where she had a supportive adult or to move to Sydney. Youth Justice attempted to make referrals to services in different areas and referred Jessie to Legal Aid NSW for assistance. In the end, Jessie was assisted on her release by a youth service local to the Youth Justice Centre (and not in the area where Jessie lived prior to custody or wished to live upon release) who tried to secure accommodation in a refuge upon her release.

FaCS confirmed that the Aftercare Financial Plan had not been signed off almost 5 months after Jessie turned 18 years. There were items requested in that plan that would have assisted Jessie significantly on her release such as a mobile phone and credit to stay in contact with services and money for groceries.

### *Exit from custody into homelessness*

Access to housing is one of the biggest challenges for people leaving custody. Currently, the process for acquiring temporary accommodation in NSW is complex and lengthy, and people are allocated only 28 days per year (temporarily increased to 40 days during COVID-19), which is insufficient to enable someone to transition effectively into the community. Part of this allocation may have been used before incarceration, leaving less than 28 days upon release. Temporary accommodation is usually provided for short blocks of one or two days at a time, rather than as a consecutive block. This undermines the ability of clients to gain the stability needed to engage with other support services and DCJ Housing about their longer-term needs.

These difficulties contribute to the large number of people released into homelessness each year. Improving access to stable housing is critical, given that the lack of stable accommodation is a key contributor to reoffending. We are also aware of forensic patients who are kept unnecessarily in facilities because there is a lack of housing and supported



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accommodation available.

There is a clear need to increase the availability and duration of transitional accommodation and resources to enable support services to meet demand. Specifically, we recommend that transitional housing should be provided for a consecutive period of three to six months upon release, in order to increase the likelihood of successful transition to the community. This quota should be in addition to the ordinary 28-day allocation of temporary accommodation.

#### *Specific issues for Aboriginal and Torres Strait Islander women in custody*

Legal Aid NSW's Aboriginal and Torres Strait Islander women clients in custody frequently – if not entirely – report being homeless before entering, and on release from, custody. Homelessness takes the form of unstable or unsuitable housing arrangements, such as couch-surfing, sleeping rough, living in overcrowded housing, and entering domestic relationships with men who have secure housing. These situations expose our clients to risks of domestic and sexual violence, risks to their mental and physical wellbeing, as well as risks of drug and alcohol dependency, related or re-offending, and returning to custody. Additionally, for women with children, secure accommodation is vital to retaining care of their children following release.

Legal Aid NSW's experience of delivering legal services to Aboriginal and Torres Strait Islander women in custody has shown the link between homelessness, an absence of support services and recidivism, which is reflected in the data on women released from custody in NSW:

During 2019, of the 2760 women released from NSW prison, at least 900 were released into homelessness or unstable accommodation. There are, at most, only 9 dedicated beds available in NSW for women immediately after leaving prison. Five of these are short term beds and 4 are negotiated transitional placements (beds in transitional community housing properties that providers agree to use for women leaving custody if they also have community support).

...At best, only 22% of women (615 individuals) receive any kind of service on release from prison.<sup>12</sup>

#### ***Talina's story***

Talina was homeless for a number of years after abandoning her previous public housing tenancy to escape domestic violence. While a tenant, Talina had requested an urgent transfer on the basis of domestic violence. However, this transfer request was not processed as Talina had failed to provide sufficient evidence. She was not supported to provide that information and evidence.

Because Talina abandoned her tenancy, she was given a less than satisfactory former classification and the evidence of domestic violence does not appear to have been taken into account in assigning her that classification. After abandoning her tenancy,

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<sup>12</sup> Keeping Women Out of Prison Coalition, *Profile of Women in Prison in NSW* (Report, December 2019).

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Talina became homeless and her drug and alcohol use escalated, resulting in her admission to a drug and alcohol rehabilitation centre and ultimately her incarceration.

In Legal Aid NSW's experience, the lack of affordable housing, declining public housing stock, long waitlists and other barriers to housing undermine women's ability to achieve stability and independence once they leave custody. There is a clear need to increase the availability and duration of transitional accommodation and resources to enable support services to meet demand.

In addition, a large proportion of women in custody that Legal Aid NSW assists who are former tenants of Housing NSW or community housing providers have a negative classification and are therefore not on the waitlist for social housing. Our solicitors continue to assist a large number of these clients who have fallen into rental arrears or have a debt raised against them for property damage due to domestic and family violence, or where the tenancy is terminated due to the woman abandoning the property or due to 'breach' and a negative classification is applied. This is illustrated by the case study below.

Negative classifications are discussed in more detail on page 21.

#### *Delta's story*

Delta was involved in a domestic violence relationship where she was subjected to both verbal and physical abuse. She was a social housing tenant at the time. After the relationship broke down, her ex-partner commenced breaking into her property. She would frequently come home and find him in her property, hiding in a manhole in the roof, or hiding in common areas (e.g. he set up a makeshift bed near the bins).

Delta eventually abandoned her property fearing for her safety. She had nowhere to go and stopped paying rent in order to cover temporary accommodation.

Delta reported the domestic violence to Housing NSW but did not receive any assistance. She has since been in and out of custody, and after each release, has had periods of homelessness and living rough.

We assisted Delta by appealing Housing NSW's decision to classify her as an unsatisfactory former tenant, and we have since assisted her to re-apply for priority housing.

Following a recommendation made in the *Aboriginal Women Leaving Custody Report*,<sup>13</sup> DCJ Housing implemented a priority housing pilot. The aim of the pilot was to trial whether women in custody could be assessed for priority housing before being released, as current policy requires a person to be out of custody to be eligible to apply and be assessed for

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<sup>13</sup> Legal Aid NSW, *Aboriginal Women Leaving Custody: Report into Barriers to Housing* (Report, 2015).

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priority housing.

The following two case studies demonstrate the differences in outcomes for those who had access to the pilot, and those who did not. The current status of the pilot is unclear. Legal Aid NSW strongly supports DCJ Housing being able to assess the housing needs of people in custody, in partnership with CSNSW, before their release.

### *Anne's story*

Our Civil Law Service for Aboriginal Communities (CLSAC) first saw Anne, an Aboriginal woman, at Silverwater Women's Correctional Centre in July 2014. She was then 29 and living on the streets of Redfern and Woolloomooloo. She talked about the connection between being in and out of custody over many years and her homelessness.

CLSAC helped Anne to apply for social housing. Housing NSW (as it was known then) accepted her application to the general waitlist and suspended it for the remainder of her time in custody. At that time, Housing NSW was not making assessments for priority housing while people were in custody, and so our advice was that she needed to wait to be released before being able to apply for priority housing.

Anne was released in 2015 with no supports and no housing. She struggled to engage with Housing NSW and her application was eventually closed. Anne continues to experience drug dependency issues and has been a victim of serious domestic and personal violence while homeless.

In April 2020, CLSAC saw Anne at Silverwater Women's Correctional Centre again. They assisted her to re-apply for housing and reiterated advice that she cannot get her need for priority housing assessed while in custody, as the pilot project is not currently operating. Anne is likely to be released into homelessness.

### *Paula's story*

Paula is a 47-year-old Aboriginal woman who has been homeless for most of her adult life. She had gone through cervical cancer, was involved in a serious car accident that led to a brain injury and significant memory loss, and drug dependency.

CLSAC saw Paula at the Dillwynia Correctional Centre in September 2018. At that time, Housing NSW was conducting its pilot priority housing project for women in custody. CLSAC referred Paula to the pilot. She was assessed for priority housing while in custody and her application for social housing was accepted in November 2018. Paula was released from custody at the end of 2018 and she was offered a priority property in Newcastle within several months. Paula moved in and was elated at renting her own home for the first time in her life.

CLSAC understands that Paula has not returned to custody since securing housing, which has also allowed her the stability to access medical and other support services.

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For further information, please see 'Access to housing and preventing exit from custody into homelessness' in Legal Aid NSW's September 2020 submission to the Inquiry into the high level of First Nations people in custody and oversight and review of deaths in custody,<sup>14</sup> 'Specific issues for Aboriginal and Torres Strait Islander women in custody' in Legal Aid NSW's 2020 submission to the inquiry into family, domestic and sexual violence,<sup>15</sup> and 'Housing post release' in chapter 9 of our 2017 ALRC submission.<sup>16</sup>

*Exit from health care/ rehabilitation to homelessness*

DCJ's policy regarding the length of time tenants can be absent from their premises without relinquishing their tenancy in some instances leads people to exit health settings including drug and alcohol rehabilitation, into homelessness.

Generally, a person may be away from their premises for up to 6 months for an acceptable reason which includes, amongst other things, hospitalisation, institutional care, nursing home care, rehabilitation or prison. In special circumstances, a person can apply to extend the absence beyond 6 months. A person cannot be absent from their premises for more than 12 months in total over a 5 year period.

The length of time needed to complete residential rehabilitation treatment programs run by drug and alcohol services varies, with some services providing short term programs (a matter of weeks) to longer term programs (months). In residential treatment services such as We Help Ourselves (WHOS) in Rozelle and William Booth House in Surry Hills, residents often stay for the complete program which can run for up to a year. In addition, it is not uncommon for residents to enter treatment after being released from prison or as part of the Drug Court or MERIT Program, which could mean they have already been absent from their property prior to entering treatment.

Legal Aid NSW conducts outreach to both WHOS and William Booth House. Many of the clients we see in these locations are social housing tenants, most commonly in DCJ Housing properties. A common issue that arises for clients / residents is DCJ's policy regarding temporary absence.

In some instances, we have seen examples of DCJ Housing client service officers exercising their discretion to allow residents to stay in treatment longer than 6 months, so that they can complete the program. More commonly however, we have seen DCJ Housing put pressure on residents in treatment to either resume their tenancy once they

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<sup>14</sup> Legal Aid NSW, Submission to the NSW Parliament Select Committee, *Inquiry into the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody* (September 2020) <[https://www.legalaid.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0019/41509/200709-Legal-Aid-NSW-submission-First-Nations-people-in-custody.pdf](https://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0019/41509/200709-Legal-Aid-NSW-submission-First-Nations-people-in-custody.pdf)>

<sup>15</sup> Legal Aid NSW, Submission to the Standing Committee on Social Policy and Legal Affairs, *Inquiry into Family, Domestic and Sexual Violence* (July 2020) <[https://www.legalaid.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0020/41177/200622-Legal-Aid-NSW-submission-to-inquiry-into-family,-domestic-and-sexual-violence.pdf](https://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0020/41177/200622-Legal-Aid-NSW-submission-to-inquiry-into-family,-domestic-and-sexual-violence.pdf)>.

<sup>16</sup> Legal Aid NSW, Submission to the Australian Law Reform Commission, *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples* (September 2017) <[https://www.legalaid.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0007/27592/Legal-Aid-NSW-submission-to-the-Australian-Law-Reform-Commissions-Inquir....pdf](https://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0007/27592/Legal-Aid-NSW-submission-to-the-Australian-Law-Reform-Commissions-Inquir....pdf)>.

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are approaching the 6-month period or relinquish their property. When asked to relinquish their property, DCJ Housing generally tells the client / resident that they will be placed on the priority list to be housed as soon as possible after completing their rehabilitation. In practice, there can still be a considerable delay in housing clients, even when they are on the priority waiting list.

The case studies below illustrate the varying experiences of our clients regarding temporary absences from their properties to attend rehabilitation programs.

***Relinquishing tenancy leading to homelessness***

Cheryl is an Aboriginal woman who was undertaking the WHOS rehabilitation program. She came to see Legal Aid NSW after she had already agreed to relinquish her property while in WHOS. She said that she had done so because she was told she would be placed on the priority list and housed as quickly as possible.

A few weeks after leaving WHOS Cheryl contacted Legal Aid NSW, telling us that she was living in a refuge on a temporary basis and had not yet been housed. Legal Aid NSW contacted DCJ Housing on her behalf and were told that there were currently no available properties. Unfortunately, Legal Aid NSW lost contact with Cheryl before she was rehoused.

***Client centred application of policy***

Nina has a long history of substance dependence, including methadone use. She has a number of serious health issues and wanted to get clean. Nina went to WHOS and entered the OSTAR (Opioid Substitution to Abstinence Residential) program. It took Nina many months to completely reduce to the point where she was opioid free. After this Nina wanted to go on to complete the abstinence-based program at WHOS. Nina contacted her Housing Support officer and explained her situation. A decision was made to allow Nina to keep her flat while she stayed in treatment to complete her program. In total Nina was absent from her flat and in WHOS for 12 months. This enabled Nina to complete her treatment without having the additional pressure of risking homelessness if did not return to her unit.

Homelessness strategy focus area two: increase access to supports, including housing, that prevent homelessness and re-entry into homelessness

Legal Aid NSW strongly supports actions to increase the availability of social and affordable housing, which we consider to be a key contributor to homelessness, including for groups at high risk of homelessness such as women and their children experiencing domestic and family violence.

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In our view, the availability of housing is a critical component of support for domestic and family violence victims.<sup>17</sup> Unaffordable housing can increase the risk of homelessness and create unsafe situations for women and children.

In NSW, it is currently difficult to find long-term housing options for women escaping abusive relationships. Commonly, women are placed in temporary accommodation which may only be available for two to three nights. After this, victims are required to move properties again. If a woman has children with her, they are usually taken out of school at this time. Without a long-term housing option, women are unable to re-enrol their children in school. Extended leave from school can then lead to involvement from Community Services which can increase the stress and trauma when leaving a violent relationship.

Legal Aid NSW supports legislative reforms that give victims' choice around housing. For example, the *Residential Tenancies Act 2010* (NSW) was amended in 2019 to allow tenants subject to domestic and family violence to end their tenancy without penalty, particularly in circumstances where the perpetrator is a co-tenant. This enables tenants, particularly private tenants, experiencing domestic and family violence to choose to leave their tenancy. However, in the experience of our solicitors, in practice these safeguards are often not accessible to public housing tenants. Due to an overall lack of affordable housing stock, people in public housing and those on low incomes risk becoming homeless if they terminate their tenancy on the above grounds, where they do not have any alternative place to live.

### Homelessness strategy focus area three: create an integrated, person centred service system

We strongly support the NSW Homelessness Strategy's goal of providing person centred support and case management. However, many of our clients experience procedural and administrative barriers to accessing or maintaining social housing, and systems that do not take into account their acute vulnerability.

We would strongly support multi-disciplinary teams being co-located in local housing offices. Along with their specialist professional skills, they would also have an understanding of DCJ housing policies. Mixed practice teams could include financial counsellors, health/social workers and specialist prisoner support officers who are familiar with DCJ's policies for people in custody.

#### *Administrative requirements to apply for social housing*

Applicants for social housing must complete an application process which generally involves filling out a number of forms and providing identification and a postal address.

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<sup>17</sup> For example, this is recognised through the NSW Premier's Priority on reducing homelessness, <<https://www.nsw.gov.au/premiers-priorities/reducing-homelessness>>



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We consider that greater flexibility needs to govern approaches to identification, particularly when in the process it is required, in what form, and what support is provided to obtain it. Overly proscriptive identification requirements can create a significant barrier for people who do not have access to government identification documents, such as people urgently fleeing family and domestic violence or where documents are retained by the perpetrator, for Aboriginal and Torres Strait people who face barriers in obtaining and retaining identification documents, and for people experiencing homelessness who may not have personal documents. In some instances, DCJ has insisted our clients provide identification documents to apply for social housing when the person does not have access to their identification or has already provided their identification to DCJ for a previous tenancy.

Requirements to provide a postal address can also be prohibitive for some people seeking to apply for social housing, for example, people rough sleeping, in temporary accommodation or frequently moving.

We are aware that in some instances DCJ has waived these requirements. For example, we understand that homeless people living in Belmore Park did not need to provide identification documents or a postal address to apply for social housing.

In addition, DCJ requires people on the waiting list for social housing to respond to regular correspondence confirming they still need housing. If they do not respond, their application is removed from the waiting list. If the person contacts DCJ in the future about their application, it is not reactivated. Instead, they must return to the back of the waiting list.

Many of our clients encounter problems responding to DCJ's correspondence. Often, they do not receive it because they are homeless or moving frequently. We suggest that DCJ consider also sending this correspondence by email. We also recommend that applicants who are removed from the waiting list for failing to respond to correspondence should be able to reactivate their application if they re-establish contact with DCJ, without having to go to the back of the waiting list.

#### *Problematic application of the eligibility for priority housing assistance policy*

To be eligible for priority housing assistance an applicant must demonstrate that they have an urgent need for housing. Reasons for this may include severe ongoing medical condition or disability, being a member of the Stolen Generation, having experienced institutional child sex abuse, or when there is a need for safe and secure accommodation for a child.

We have assisted clients who meet some of the relevant criteria but have been told by DCJ that they are not eligible because they can satisfy their housing needs in the private market. This often means a boarding house or similar dwelling. For many clients these types of dwellings are not appropriate, do not meet their needs and/ or are not sustainable. Boarding houses can be considered a form of homelessness because of the instability of this type of accommodation, and also often expose people to violence or risk of relapse into drug and/or alcohol use.



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Lack of housing availability in some areas means that even when a client is on the priority waiting list, there is still a considerable delay. For example, one of our clients has been on the priority waiting list in the Inner West of Sydney for over 3 years, without being offered a property.

#### *Negative classification of former social housing tenants*

A large proportion of clients that Legal Aid NSW assists who are former social housing tenants have a negative classification and are therefore are not able to join the wait list.

Former tenants can be given a negative classification for issues including rental arrears, damaging a property, abandoning the property, or antisocial behaviour.

Former tenant classifications can create indefinite barriers to victims accessing public housing, as they do not have an end or expiry date unless the tenant takes action to rectify the issue. These classifications include:

- less than satisfactory former tenant (e.g. for debt) – any new application is suspended for six months while debt payments made)
- unsatisfactory former tenant (eviction) – must rent in private market for 6 months before applying again, and
- ineligible former tenant (illegal use or nuisance) – not eligible for social housing ever.

This is different to a person blacklisted for a private rental, which lasts for 3 years and is then removed.

Until they seek legal assistance, our clients are often not aware that they have a negative classification, how this impacts on their ability to obtain public housing, or that they can challenge a negative classification. DCJ policy requires a former tenant to take steps before their classification is removed, but often these steps are too onerous, and a former tenant is not be able to comply. In our casework experience, negative classifications that create barriers to getting onto public housing waitlists, often results in homelessness and for clients leaving custody, recidivism.

As discussed above, in it is not uncommon for former tenants to receive a negative classification for debts or damage that they are not responsible for, including as a result of domestic and family violence. In some circumstances, the housing provider is aware of the domestic and family violence but has not taken steps to review their decision in light of the impact of the violence on the woman's liability. In others, due to the stigma and judgement often attached to domestic and family violence, or the absence of an opportunity, the former tenant may not notify the housing provider of the violence. Legal Aid NSW advocates for clients in these circumstances by lodging appeals to the housing provider and if necessary the Housing Appeals Committee, to have the client's negative classification removed, debt incurred because of the violence waived, and the client placed on the waitlist for high priority tenancy reinstatement.

Information obtained by Legal Aid NSW under the *Government Information Public Access Act 2009* (NSW) (GIPA Act) showed that as 22 February 2020, 26, 864 people were listed

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with a negative classification which will mean their housing application would be declined. Listings date back to 2002, meaning that former tenants listed 18 years ago would still be ineligible for housing if they applied in February 2020.

Legal Aid NSW considers that negative classifications should be time limited and after the expiry of a certain time period, the former tenant should be able to apply for social housing again. In our view this should be in line with the 3 year time period that applies to private rentals. To address other concerns regarding management of public assets, DCJ could review the former tenant's history and take steps to address any ongoing concerns at the time of offering housing.

## DCJ's response to the COVID-19 pandemic

Broadly, we are concerned about the impact of fines for not complying with COVID-19 public health orders on people experiencing homelessness. For example, we are aware of a recent instance where a homeless person who was sleeping on a train was fined for not wearing a mask.

We would welcome further analysis from the NSW Bureau of Crime Statistics and Research on the impact of COVID-19 related breaches of the *Public Health Act 2010* on people experiencing homelessness.

### *Timeframes for hearings in NCAT*

Legal Aid NSW is concerned that changes to the process of hearing matters before NCAT due to the COVID-19 pandemic are negatively impacting social housing tenants.<sup>18</sup>

In response to COVID-19, NCAT has been conducting all hearings by phone. The effect of this decision is that Tenants Advice and Advocacy Services are no longer able to provide duty services for tenants with matters before the Tribunal. These duty services are a vital service to unrepresented tenants as they advise tenants about the law, Tribunal processes and how to prepare for hearing. They also provide assistance with conciliation which, when hearings were face to face, regularly took place at the first directions hearing.

## Conclusion

Legal Aid NSW submits that future government homelessness strategies and relevant implementation plans need to reflect the integral role of legal services to assist people to obtain and maintain secure housing and ultimately reduce homelessness. This includes specialist housing law assistance, as well as wider legal services to address legal issues known to contribute to homelessness such as consumer debt, fines, social security disputes and employment problems.

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<sup>18</sup> NCAT President's Message, 16 December 2020, <Coronavirus (COVID-19) (nsw.gov.au)>

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As identified above, the systemic issues we have identified through our casework, which create barriers for many of our clients to maintain stable and secure accommodation, can be addressed by:

- reforming the negative classification system for former tenants, including introducing a 3-year time limit in line with the private rental system
- increasing the availability of tenancy support programs to assist tenants to address issues undermining their tenancy
- ensuring consistent tenancy policies across social housing landlords, and requiring community housing providers to adhere to minimum standards or adopt the Department of Communities and Justice policies
- increasing support and services to assist people exiting government services to secure stable housing, including people leaving out of home care, health and rehabilitation facilities and prison
- streamlining and improving administrative processes for applying for social housing, particularly in relation to identification documents.

Finally, Legal Aid NSW reiterates our recommendation that any further NSW Government priorities to address homelessness must incorporate a commitment to address the lack of social and affordable housing in NSW.