



THE LAW SOCIETY
OF NEW SOUTH WALES

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31 January 2019

Manager, Housing Policy
Aboriginal Housing Office
PO Box W5 Westfield
Parramatta NSW 2150

By email: AboriginalHousingStrategy@facs.nsw.gov.au

Dear Sir/Madam,

Draft Strategic Framework for Aboriginal Social Housing in NSW

Thank you for the opportunity to provide submissions on the draft Strategic Framework for Aboriginal Social Housing in NSW ("Framework"). The Law Society's comments are informed by its Indigenous Issues Committee.

We appreciate that the provision of social housing is complex, and that there are many structural and legacy issues that affect the adequacy of housing available. We also note the fundamental right of individuals to adequate housing¹, upon which many other rights are contingent (such as the right to family life and privacy, the right to freedom of movement, the right to assembly and association, the right to health and the right to development). We note the view of the Australian Human Rights Commission² that an assessment of whether housing is adequate depends on a range of factors including:

- legal security of tenure
- availability of services, materials, facilities and infrastructure
- affordability
- accessibility
- habitability
- location
- cultural adequacy.

In our view these factors should underpin consideration of housing service delivery and from this perspective we set out in this submission some general observations and concerns for the Aboriginal Housing Office's (AHO's) consideration.

¹ International Covenant on Economic, Social and Cultural Rights, Art 11

² Australian Human Rights Commission, *Housing, homelessness and human rights*, online:

<https://www.humanrights.gov.au/our-work/rights-and-freedoms/projects/housing-homelessness-and-human-rights>

1. Asset audit and management, and outstanding repairs and maintenance

Pillar 1 of the Framework is to deliver housing solutions for Aboriginal people in an evidence-based way. We note that in support of Pillar 1, the AHO envisages that a strategic review of the AHO's asset portfolio will be undertaken.

In our view, priority should be given to undertaking an urgent and systematic audit of the Aboriginal housing portfolio to determine what repairs and maintenance need to be carried out, as well as determining which tenants require priority repairs and maintenance.

The Law Society considers that carrying out repairs and maintenance is a fundamental issue and should take priority over the review of the asset portfolio generally. Outstanding repairs and maintenance create dependency and interferes with (and in some cases, denies) tenants' right to quiet enjoyment and use of their premises. The work to address this issue, which in many cases is urgent, must be site specific, with genuine community involvement. While there are many legacy issues to address in relation to assessing and repairing existing stock, in our view the only true solution for this is a systematic review, and a commitment of resources to carry out the requisite fixes on an ongoing and reliable basis. Some of our members observe that in some cases, the lack of repairs in some Aboriginal housing tenanted by people with disabilities is putting those tenants in danger, but also risks breaching discrimination laws. Further, the focus should not be on suing and evicting tenants for rental arrears – rather, any strategic Framework should address underlying asset maintenance issues as a priority.

2. Consolidation of housing providers

Pillar 3 of the Framework is to strengthen and grow Aboriginal Community Housing Providers through capacity building, regulation and transfer of housing and asset management. The *Your Story Starts at Home* document suggests that the AHO will “[w]ork with the sector to deliver programs and tools that support good governance, business sustainability and strong tenancy management... [including] supporting the Aboriginal community housing sector during the transition to the new AHO Registration Policy.” (page 8).

We understand that the AHO anticipates that the new AHO Registration Policy will lead to a consolidation of housing providers.

The Law Society has some concerns about the potential centralisation of housing providers. We note many Aboriginal tenants live in remote areas, and that meaningful relationships and positive engagement with their housing provider is compromised by distance. We have heard that some tenants are expected to log their requests for repairs and maintenance online as the housing provider is many hours travel away. However, some smaller towns and villages have poor or no internet access, and many tenants do not have access to computers or may not have literacy skills. Centralisation to larger regional towns may further exacerbate these access issues.

Furthermore, smaller Local Aboriginal Land Councils' (LALCs') housing stock, if those organisations are not on a trajectory to be registered, will likely be affected.

Given that the land in question may be Aboriginal-owned land, these outcomes may cause significant conflict within families and communities. Further, our members noted that housing stock might move, as a result to community housing providers, (or to NGOs). This may in fact result in fewer protections than if housing is provided by Aboriginal housing providers because of the loss of regulatory oversight, and the loss of community connection and community oversight. We consider that there is significant tension between this aim and the goal of supporting local Aboriginal communities.

Equally, in the experience of our members, the provision of housing services by small, inexperienced and often local housing providers is often the primary cause of tenants' inability to have their homes repaired and maintained. We suggest that, in determining community housing providers, the AHO should take into account the following principles:

- 1) housing stock must be held and managed by Aboriginal community-controlled housing providers;
- 2) priority must be given to local providers where a local organisation can provide housing that complies with the relevant standards; and
- 3) standards should be set and monitored on the accessibility and responsiveness of the housing provider for its tenants.

3. Access to legal assistance for tenants

Tenants must have meaningful avenues for enforcing their rights, particularly in relation to repairs and maintenance, and for redress in respect of termination decisions. In the experience of many of our members, Aboriginal tenants have few or no avenues for enforcing residential tenancy agreements against social housing providers. This must include access to culturally appropriate legal assistance in order to properly access the NSW Civil and Administrative Tribunal (NCAT).

Further consideration should be given to the interaction between the Department of Family and Community Services' (FACS') antisocial behaviour management policy and security of tenure for Aboriginal people. In 2015, the Law Society expressed serious concerns about the *Residential Tenancies and Housing Legislation Amendment (Public Housing – Antisocial Behaviour) Act 2015* (NSW). In particular, we were, and remain, concerned, about the operation of strike notices on Aboriginal tenants, as well as the fettering of NCAT's discretion to review termination decisions in those circumstances.

Notwithstanding concerns in relation to the antisocial behaviour policy, in our view, it would greatly assist Aboriginal people to enforce their rights as tenants if NCAT established an Indigenous list, dealt with by specialist tribunal members, to deal with Aboriginal social housing matters.

As it is likely that the foreshadowed changes will impact on tenants' rights, we also suggest that additional funding should be provided to Aboriginal tenancy support services to facilitate individual and community advocacy for Aboriginal tenants. The current Aboriginal tenancy support services are thinly spread across the state, and the geography they are expected to cover is unsustainable. For example, the Western Aboriginal Tenants Advice and Advocacy Service covers the huge expanse of Central, Western and North Western NSW. Low funding (which limits staff, time and travel) constrains their capacity to do face to face advocacy and support at NCAT hearings, which become a crisis point where terminations are imminent. We understand anecdotally that many tenants do not in fact attend NCAT hearings. Having the support of an Aboriginal tenancy worker would mean that tenants' issues could be ventilated before NCAT and their rights are better protected.

4. Other issues

- 1) The Framework should make explicit that safe, stable and adequate housing should be available where families are at risk of child removal, or are seeking child restoration. The Framework should also make explicit that safe, stable and appropriate housing should also be prioritised for Stolen Generations survivors, consistent with the recommendation 18 of the *Unfinished Business* report (which has been accepted by Government). Given the difficulty people with mental illness have in finding and maintaining safe, stable and

appropriate housing and the high incidence of mental illness among Aboriginal and Torres Strait Islander people,³ we suggest that people with mental illness should also be prioritised.

- 2) Noting that FACS and the AHO are developing a strategy for consumer engagement work, we suggest consideration of PIAC's Streetcare model for engagement, and aligning this work with that approach.⁴
- 3) Noting that better coordination between government agencies and services is intended to form part of this strategy, we raise for the AHO's attention the experience of our members in relation to the link between Centrelink payments and security of tenure; and the relationship more generally between the Commonwealth social security system and the fact that state social housing is provided in that context.

There must be genuine service collaboration between all levels of government, where one person/portal is the responsible entity. The relationship between Commonwealth social security and access to adequate housing is only one example. Another critical issue includes the relationship between adequate and appropriate housing for Stolen Generations survivors and the Commonwealth Department of Health – Ageing and Aged Care.

- 4) Genuine customer service is a significant issue for Aboriginal tenants, who, in the view of our members, must be able to connect to an individual on the phone as many communities have no access to the internet.
- 5) We understand that many, but not all, Aboriginal people in community housing aspire to home ownership. Given the differing views on this issue, we suggest Aboriginal tenants be consulted about their desire for and the priority to be given to home ownership.

We would welcome the opportunity to comment on the findings of the AHO's consultation and listening process. Any questions may be directed at first instance to Vicky Kuek, Principal Policy Lawyer, at victoria.kuek@lawsociety.com.au or 9926 0354.

Yours sincerely,



Elizabeth Espinosa
President

³ Australian Bureau of Statistics, "Aboriginal and Torres Strait Islander People with a Mental Health Condition," *National Aboriginal and Torres Strait Islander Social Survey 2014-15*, 28 April 2016, online: [http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4714.0~2014-15~Feature%20Article~Aboriginal%20and%20Torres%20Strait%20Islander%20people%20with%20a%20mental%20health%20condition%20\(Feature%20Article\)~10](http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4714.0~2014-15~Feature%20Article~Aboriginal%20and%20Torres%20Strait%20Islander%20people%20with%20a%20mental%20health%20condition%20(Feature%20Article)~10)

⁴ See Streetcare at: <https://www.piac.asn.au/project-highlight/streetcare/>