



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: IIC/FIC/GUak:1204951

8 November 2016

Homelessness Strategy Team
Strategic Reform & Policy
Department of Family and Community Services
Locked Bag 10
STRAWBERRY HILLS NSW 2012

By email: Homelessness.Strategy@facs.nsw.gov.au

Dear Homelessness Strategy Team,

Discussion Paper: Foundations for Change – Homelessness in NSW

Thank you for the opportunity to provide comments on the Department of Family and Community Services' ("FACS") Discussion Paper: *Foundations for Change – Homelessness in NSW* ("discussion paper").

The Law Society of NSW submission focuses on homelessness as it affects victims of domestic and family violence and in particular, Indigenous people.

Homelessness in Indigenous communities cannot be understood without reference to the legacy of colonisation and dispossession, particularly given that a history of physical and cultural displacement leaves many Indigenous people at increased risk of homelessness.¹ Concepts of country are fundamental to the culture and identity of Indigenous Australians, as they have a spiritual connection to the land they live on irrespective of the type of shelter they live in. For Indigenous people, homelessness may also include 'spiritual homelessness', which is described as the state of being disconnected from one's homeland, separation from family or kinship networks, or not being familiar with one's heritage.²

The discussion paper acknowledges that Indigenous people are more likely to experience homelessness due to systemic and generational disadvantage, noting that homelessness is closely linked to Indigenous disadvantage and further affects the social and economic challenges faced by Indigenous people. In particular, the discussion paper acknowledges that Indigenous people are disproportionately represented in the risk factors for homelessness, including their over-representation in the criminal justice system and the over-representation of Indigenous children in the out-of-home-care system.

The Australian Institute of Health and Welfare Report: *Housing and homelessness services – access for Aboriginal and Torres Strait Island people* (2011), notes that in 2006, Indigenous Australians represented around 2.5 per cent of the Australian population but

¹ Homelessness NSW, *Indigenous People and Homelessness*, accessed 18 October 2016, <http://www.homelessnessnsw.org.au/mobile/resources/about-homelessness/102-indigenous-people-and-homelessness>.

² *Ibid*, 7.

accounted for around 9 per cent of the homeless population.³ The Report noted that Indigenous Australians were also over-represented as clients of specialist homelessness agencies funded through the Supported Accommodation Assistance Program (SAAP).

Importantly, the Report submitted that domestic and family violence was the most frequently recorded main reason for seeking supported accommodation assistance for both Indigenous and non-Indigenous persons in 2008–09.

However, the Report also noted that there were a number of differences between Indigenous and non-Indigenous SAAP clients, including that:⁴

- Indigenous SAAP clients tended to be younger than non-Indigenous clients,
- non-Indigenous homelessness was more likely to occur in major cities, whereas Indigenous homelessness occurred in major cities and elsewhere, and
- overcrowding issues were more frequently recorded as the main reason for seeking assistance from a SAAP agency for Indigenous clients than for non-Indigenous clients.

We provide the following specific comments in relation to current NSW Government legislation and policies.

Family Violence and Homelessness

The Law Society notes that the link between domestic and family violence and homelessness is well documented, including in the Commonwealth Government White Paper, *The Road Home: A National Approach to Reducing Homelessness*.⁵

The *National Plan to Reduce Violence Against Women and their Children 2010-2022*⁶ acknowledges that escaping violence is the most common reason provided by people who seek help from specialist homelessness services. Further, many victims of domestic violence will also remain in a violent home because they have nowhere else to go.

The Law Society considers that a range of policy, practice, funding and legislative measures are required to address homelessness for victims of domestic and family violence. The following measures are supported:

- (1) An increase in the capacity of emergency, temporary and long-term housing options.
- (2) Strengthening existing protections under the *Residential Tenancies Act 2010* (NSW) to allow a victim of violence to end their tenancy without penalty. The Law Society supports the NSW Government's announcement to introduce new laws in early 2017 to provide victims with greater protections under residential tenancy laws.⁷

³ Australian Institute of Health and Welfare, *Housing and homelessness services – access for Aboriginal and Torres Strait Island people*, (May 2011),

<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=10737419004&libID=10737419003>, viii.

⁴ Ibid.

⁵ *The Road Home: A National Approach to Reducing Homelessness*, Department of Families, Housing, Community Services and Indigenous Affairs, Commonwealth of Australia, 2008,

<http://www.homelesshub.ca/resource/road-home-national-approach-reducing-homelessness-australia>.

⁶ *National Plan to Reduce Violence against Women and their Children 2010-2022*,

<https://www.dss.gov.au/our-responsibilities/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children-2010-2022>.

⁷ New Residential Tenancy Laws to Protect Victims of Domestic Violence, Victor Dominello MP, Minister for Innovation and Better Regulation, Media Release, 5 July 2016, <https://www.finance.nsw.gov.au/about-us/media-releases/new-residential-tenancy-laws-protect-victims-domestic-violence>; See *Residential Tenancies Act 2010 – Statutory Review*, Recommendation 20, NSW Fair Trading NSW Department, Finance, Services and Innovation, 17 June 2016,

- (3) Amend NSW Family and Community Services Housing policies to ensure that victims of domestic violence are not evicted from housing, and deemed ineligible for social housing, because of the actions of perpetrators or because of their own actions that were necessary to keep themselves and their children safe.

Lack of government funding for domestic violence services – refuges

The Law Society has made a number of submissions to the NSW Government regarding the lack of government funding available to assist victims of domestic violence. In its most recent submission to the 2014 Senate Finance and Public Administration References Committee Inquiry into domestic violence in Australia, the Law Society expressed its concern about the risks to victims of domestic violence where services for victims are inadequate and exacerbate the serious and harmful impact on children who are exposed to domestic violence.

The submission noted that the NSW Government has recently implemented the “Going Home Staying Home” reform designed to reduce homelessness. Under the “Going Home Staying Home” reforms, 336 individual services were consolidated into 149 new service packages that will be led by 69 non-government organisations, supported by their partner agencies. The Law Society submitted that, at the time, it appeared that the tender criteria had favoured larger or consolidated generalist services, and as a consequence this reform had resulted in the loss of up to 80 homelessness services with expertise in domestic violence, mental illness, drug and alcohol dependence, youth, Indigenous peoples and immigrants.

Some services decided to close their doors after decades; others continue to operate under the management of new generalist providers such as St Vincent de Paul, Mission Australia, the Salvation Army and Wesley Mission. The Law Society noted its concern about the effect these reforms will have on the capacity of women and children to escape domestic violence. The Law Society notes that refuges provide an immediate response to critical situations of violence that are a circuit breaker to safety.

The Law Society is particularly concerned about the provision of refuge and other services to Indigenous women and children in Western NSW. These geographical areas of NSW have very high rates of domestic violence against women and children compared with other locations in NSW. For example, the rate of domestic violence related assault is 10 times the State average in Bourke, Wilcannia, Walgett and Brewarrina. Further, the number of incidents of domestic violence related assault has increased by 62 per cent in Brewarrina for the period from March 2012 to March 2014.

Generalist faith-based service providers have recently won tenders to provide services to areas including Walgett, Bourke, Wilcannia and Brewarrina. Services to be provided by these organisations do not appear to focus on Indigenous women and children escaping domestic violence and now include families, men and young people as target groups. The Law Society remains concerned that an increase in the types of groups serviced and targeted by these organisations, and the move away from specialised services for Indigenous women and children, impact on the safety women and children feel in generalist refuges, and whether they will seek to escape domestic violence.

The Law Society also notes that the funding packages offered to refuge service providers require service providers to work with Indigenous clients as a percentage of the overall client base. This approach represents a superficial understanding of how to successfully engage

http://www.fairtrading.nsw.gov.au/biz_res/ftweb/pdfs/About_us/Have_your_say/Residential_tenancies_act_2010_review_report.pdf.

with Indigenous communities. Successful engagement requires careful planning and engagement based on sustained and consultative relationships with the Indigenous community. Faith-based generalist services who seek to engage with the Indigenous community will need to build partnerships with Indigenous community controlled organisations and may need to employ Indigenous staff and management.

The Law Society is particularly concerned as to whether the NSW Government's policy will amount to a violation of Article 1 of CEDAW on the grounds that Australia will not be taking 'appropriate and effective measures' in NSW to eliminate gender based violence as required by para. 24(a) of General Recommendation 19. Paragraph 24(k) of General Recommendation 19 recommends the establishment of refuges for the victims of such violence.⁸ Refuges for women who are victims of domestic violence offer specialised services and safe shelter for women and children. Generalist shelters for homeless people may not offer the specialised assistance required to leave violent relationships.

Reforms to social housing

The Law Society made a number of submissions to the Minister for Family and Community Services on the Residential Tenancies and Housing Legislation Amendment (Public Housing - Antisocial Behaviour) Bill 2015.⁹ The Law Society continues to hold serious reservations about the reforms from a rule of law and human rights perspective. While the Law Society understands that the NSW Government is concerned about addressing crime and antisocial behaviour in public housing, and about the safety of social housing tenants, we consider that the Government has demonstrated neither the necessity for the reforms, nor its proportionality to the objectives of the legislation.

Aboriginal Housing

The Law Society also notes the link between housing maintenance, repairs, rent arrears, terminations and homelessness, in particular, in remote areas. Some of our members note the poor and unsafe state of repair of some Aboriginal housing and sometimes poor relationships with social housing providers who are managing housing through the Aboriginal Housing Office. While this is not an issue across the State, our members have noted that some of the housing managers are quick to use the NSW Civil and Administrative Tribunal to seek termination of tenancies, rather than working towards a negotiated outcome in relation to repairs, maintenance and arrears – leading to homelessness. Our members have seen many instances of termination of leases for Indigenous families where Indigenous tenants are not aware of their right to safe housing, leading to homelessness, couch surfing, and community conflict.

We suggest that FACS, together with its agents and housing managers across the housing sector, should develop better relationships with local and peak organisations including Local Aboriginal Land Councils, Aboriginal Community Working Parties, Aboriginal Tenancy Advice and Advocacy Services (ATAAS) and the NSW Aboriginal Land Council, to ensure the fundamental right to safe and sustainable housing is prioritised.

We also note that the few ATAASs are expected to provide tenancy support across vast areas of NSW, and should be better funded to assist vulnerable tenants to enforce their rights, maintain their tenancies and avoid homelessness.

⁸ UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 19: Violence against women, 1992, available at: <http://www.refworld.org/docid/52d920c54.html> [accessed 31 October 2016].

⁹ Now the *Residential Tenancies and Housing Legislation Amendment (Public Housing - Antisocial Behaviour) Act 2015*.

Transport for released prisoners

In a recent submission to the NSW Legislative Assembly Inquiry into access to transport for seniors and disadvantaged people in rural and regional NSW, the Law Society noted that the NSW Legal Assistance Forum (“NLAF”) has recently undertaken initial unpublished research on pathways for inmates leaving prison.¹⁰ This research notes that many of the State’s correctional centres are in remote NSW. Prisoners may be released from detention with limited funds and provided only with a train ticket to the closest regional town. With limited public transport available to the remote communities where they live, the research found that in particular, Indigenous people are at risk of becoming homeless and as a result, be at a greater risk of re-offending and consequently re-entering the criminal justice system.

The Law Society would be happy to facilitate consultations directly with Indigenous community members, if this would be of benefit to the Department’s review.

Thank you for considering this submission. I would be grateful if questions could be directed at first instance to Anastasia Krivenkova, Principal Policy Lawyer, on 9926 0354 or anastasia.krivenkova@lawsociety.com.au.

Yours sincerely,



Gary Ulman
President

¹⁰ Law Society of NSW, *Submission: Inquiry into access to transport for seniors and disadvantaged people in rural and regional NSW*, (August 2016), 3.