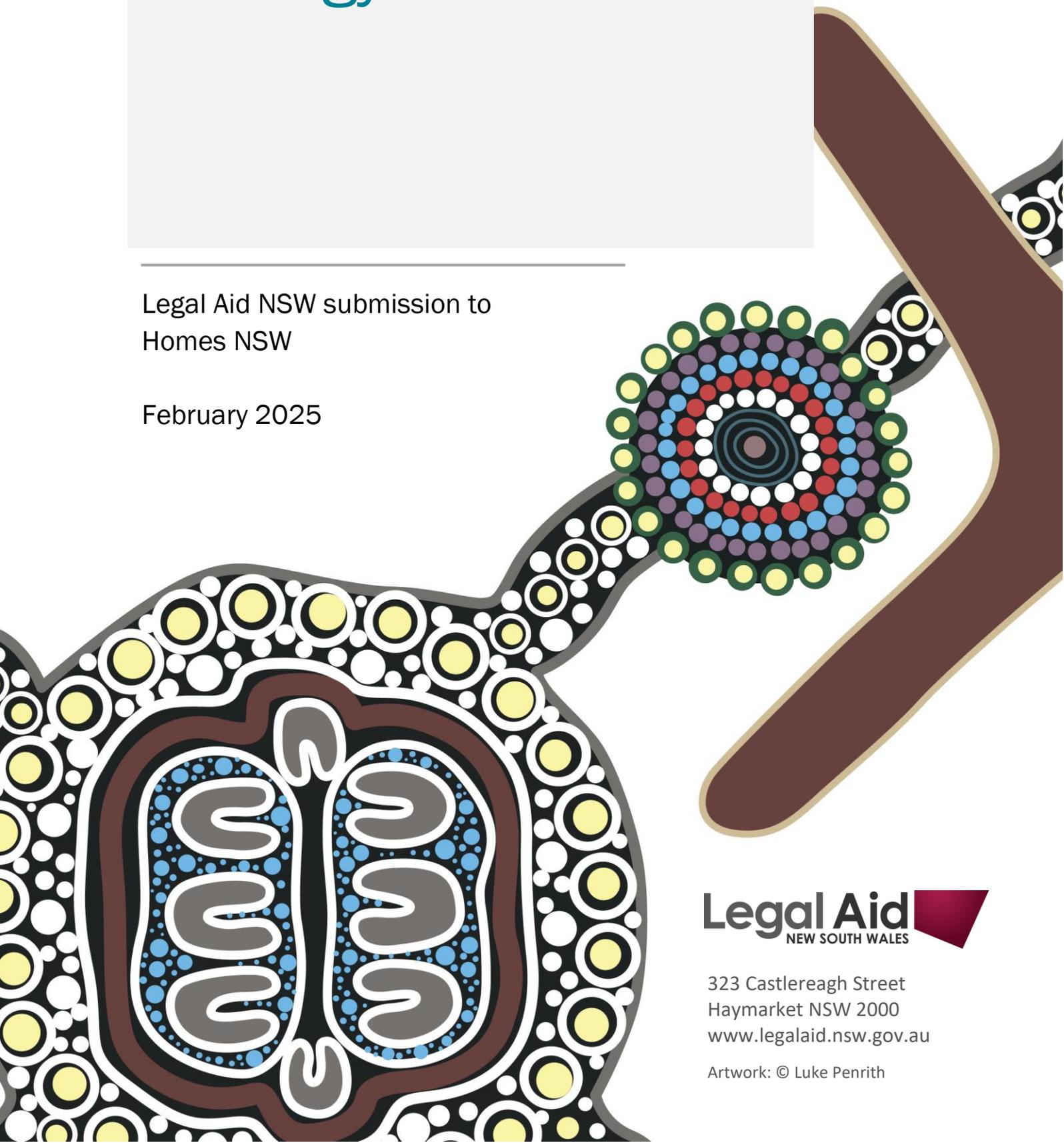


NSW Homelessness Strategy 2025-35

Legal Aid NSW submission to
Homes NSW

February 2025



Legal Aid
NEW SOUTH WALES

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Acknowledgement

We acknowledge the traditional owners of the land we live and work on within New South Wales. We recognise continuing connection to land, water and community. We pay our respects to Elders both past and present and extend that respect to all Aboriginal and Torres Strait Islander people.

Legal Aid NSW is committed to working in partnership with community and providing culturally competent services to Aboriginal and Torres Strait Islander people.

1. 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. 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 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, services to Aboriginal families and the early triaging of clients with legal problems.

Legal Aid NSW provides duty services at all Family and Federal Circuit Court registries and circuit locations through the Family Advocacy and Support Services, all six specialist Children's Courts, and in some Local Courts

alongside the Apprehended Domestic Violence Order lists. Legal Aid NSW also provides specialist representation for children in both the family law and care and protection jurisdiction.

The Civil Law Division provides advice, minor assistance, duty and casework services from the Central Sydney office and most regional offices. The purpose of the Civil Law Division is to improve the lives of people experiencing deep and persistent disadvantage or dislocation by using civil law to meet their fundamental needs. Our civil lawyers focus 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 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.

2. Executive summary

Legal Aid NSW welcomes the opportunity to provide a submission to Homes NSW on the NSW Homelessness Strategy 2025-35 (**Strategy**). We acknowledge and support the ambitious and transformative vision of making homelessness “rare, brief and not repeated”.¹

Legal Aid NSW provides legal services across NSW in civil, criminal and family law, with an emphasis on assisting socially and economically marginalised people. Access to stable and affordable housing is a consistent theme across all areas of our casework, with the overwhelming majority of our clients renting privately, in social housing or experiencing homelessness.² Legal services to assist people to obtain and maintain secure housing are integral to reducing homelessness and housing stress.

Through our extensive casework experience, Legal Aid NSW has observed that some aspects of our social housing system are not operating as intended and are leading to unfair outcomes for social housing tenants. Some practices can compound and further entrench social housing tenants’ existing disadvantage and result in homelessness.

This submission outlines several issues that we believe should be prioritised when implementing the Strategy, to immediately reduce the barriers for our clients to obtain and maintain stable and secure accommodation. These include:

- expanding the availability of specialist homelessness legal services
- taking steps to improve fairness, transparency and accountability across the social housing system, and ensure social housing tenants have the same rights and protections regardless of who their social housing landlord is, and
- prioritising access to housing for cohorts identified as particularly vulnerable to homelessness, including people experiencing domestic and family violence (DFV) (including women on temporary visas experiencing DFV), Aboriginal and Torres Strait Islander people, people in or exiting custody, and children and young people.

De-identified case studies are featured throughout this submission to demonstrate how homelessness, or the threat of homelessness, is experienced first-hand by our clients.

Recommendations

Recommendation 1

The Department of Communities and Justice (DCJ) should consider allocating additional resources to expand the Legal Aid NSW Homelessness Program to more locations to ensure people throughout NSW can access specialist homelessness legal assistance.

Recommendation 2

The NSW Government should work to increase the availability of housing stock and

¹ NSW Government, *NSW Homelessness Strategy 2025-2035* (Report).

² Due to our grant eligibility policies, very few people Legal Aid NSW provides a grant to are homeowners.

crisis accommodation for people at risk of long-term homelessness.

Recommendation 3

The NSW Government should take all steps to ensure that laws, policies and procedures, relating to social housing apply equally to all social housing tenants regardless of their social housing provider.

Recommendation 4

The NSW Government should:

- (a) amend the *Housing Act 2001* (NSW) to provide a legislative basis for the Housing Appeals Committee (**HAC**) to ensure decisions are binding for both Homes NSW and community housing providers, and subject to judicial review
- (b) amend the *Housing Act 2001* (NSW) to require landlords involved in appeals before the HAC to provide tenants with all documents relevant to the decision under appeal, and
- (c) amend the HAC Charter to empower the HAC to make recommendations to housing providers about the content of their policies.

Recommendation 5

The NSW Government should take steps, including through amendment to the *Fines Act 1996* (NSW) and associated Revenue NSW and Homes NSW policies and procedures, to allow social housing debts to be eligible for the Work Development Order (**WDO**) Scheme.

Recommendation 6

Homes NSW should ensure all social housing providers are required to adhere to Staying Home Leaving Violence principles and provide evidence that termination of tenancy is the last resort where they have been notified of DFV.

Recommendation 7

The NSW Government should encourage social housing and NSW Civil and Administrative Tribunal (**NCAT**) administrators to undertake DFV awareness training to better understand the signs and consequences of DFV.

Recommendation 8

DCJ should work towards expanding access to housing assistance for women on temporary visas experiencing DFV and their children.

Recommendation 9

DCJ should remove barriers to accessing housing support for young people leaving care, and increase the age of eligibility for housing support programs.

Recommendation 10

An escalation pathway should be created between Homes NSW and Legal Aid NSW to address the lack of safe and secure accommodation for young people leaving custody or out-of-home care.

3. Legal Aid NSW specialist housing and homelessness services

Legal services that 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.

Legal Aid NSW has over 10 years' experience in providing specialist legal services to people who are homeless or at risk of homelessness. We provide advocacy to tenants in social housing and private tenants, as well as owners and tenants in caravan parks in matters such as rent arrears, repairs and damage, alleged anti-social behaviour and eviction notices. We have a number of specialist services that work with people experiencing homelessness, including the Homelessness Program (further information below), the statewide Disaster Response Legal Service which assists tenants impacted by disasters, and our Housing Unit which, amongst other services, assists tenants with NCAT appeals and eviction matters.

A lack of housing affordability and stability is an issue that regularly intersects with other legal issues that our clients need advice about, including consumer debt, fines, social security disputes and employment problems. In some instances, housing stress exacerbates other legal problems.

The proportion of all our civil law services to homeless clients has increased significantly, from 4% in 2022-23 to 8% in 2023-24, and there has been a 19% increase in the number of people seeking help for housing related problems. In 2023-24, our lawyers provided free legal assistance to more than 6,000 people dealing with housing disputes, with half of those relating to eviction orders.

3.1 Legal Aid NSW's Homelessness Program

Legal Aid NSW has developed an effective service model under our Homelessness Program co-funded by DCJ, which aligns with many of the recommendations and findings from the Productivity Commission's 2022 report entitled *In need of repair: The National Housing and Homelessness Agreement – Study Report*.³ Under the Homelessness Program, legal services are targeted to people who are more vulnerable to homelessness, including Aboriginal and Torres Strait Islander people, people exiting prison, and people experiencing DFV. The strength of the Program comes through its links with other key service providers, as it develops referral pathways with local stakeholders who identify clients at risk, and then works in partnership with the lawyers to support them with their legal and non-legal needs.

The Homelessness Program is outcomes focused and takes a Housing First approach, with an emphasis on services to sustain tenancies (preventing homelessness) or remove barriers to re-entry into housing (minimising the experience of homelessness). This service model has been effective both in identifying the most vulnerable clients and providing the help they need to resolve their housing issues, so that experiences of

³ Productivity Commission, *In Need of Repair: The National Housing and Homelessness Agreement – Study Report* (Report, August 2022).

homelessness are rare, brief and not repeated. Lawyers help clients address housing and other civil law problems that are known to contribute to putting people at risk of homelessness.

In 2022-23, 30% of the program's clients were Aboriginal and Torres Strait Islander, 14% were clients experiencing DFV, and 13% were people exiting prison. Services relating to housing matters increased by 47% over the reporting period from the previous year.⁴

The framework of the Homelessness Program allows for a place-based approach to service planning and delivery, ensuring the work meets the needs of clients and works effectively with partner organisations in each location. The current funding provided by DCJ is location specific. There are four solicitor positions in the co-funded Homelessness Program in Lismore, Newcastle, Wagga Wagga and Nowra. Legal Aid NSW has a statewide footprint, however additional funding is required to increase the number of locations to deliver targeted services and support required for an expanded program.

Legal Aid NSW is in a unique position to provide these services under an expanded program. We have widespread access through our statewide services to clients with problems across the areas of criminal, family (including care and protection and domestic violence services) and civil law (including Prisoners Civil Law Service, Children's Civil Law Service, Civil Law Service for Aboriginal Communities, Disaster Response Legal Service and Mental Health Advocacy Service). There are existing referral pathways between and within our legal divisions to ensure that our clients' multiple legal needs are met. Working with Legal Aid NSW provides DCJ the opportunity to collaborate with an organisation whose client base experience disproportionate rates of homelessness (e.g. prisoners, women escaping DFV, children leaving care, people with disabilities and mental illness) and at key intervention points.

Recommendation 1

DCJ should consider allocating additional resources to expand the Legal Aid NSW Homelessness Program to more locations to ensure people throughout NSW can access specialist homelessness legal assistance.

⁴ Legal Aid NSW, *Homelessness Program - Internal Reporting Data (2022-2023)*.

4. Issues

In this section, we set out critical principles that we believe will help minimise homelessness as well as detail areas where there are immediate opportunities to improve policy and practice.

4.1 'Housing First' approach

Legal Aid NSW supports the aspirational principles of the Homelessness Strategy, including that “housing is a human right” and that “Housing First principles are embedded in policy and practice”.⁵

The importance of housing is reflected in Australia’s international human rights law obligations, which provide for “the right of everyone to an adequate standard of living for himself and his family, including adequate... housing”.² Housing is also identified by the World Health Organisation as a key social determinant of a person’s health.³ Experts have highlighted that “stable housing is a critical component in addressing financial and social stresses that can lead to poverty or prevent exit from poverty”.⁴ There is a relationship between housing stability and educational attainment, job security, food security and childhood development.⁵

The vulnerabilities and disadvantage faced by many of our clients are difficult to address unless they have stable accommodation. A safe and stable home is often the first step in addressing the social, financial and legal challenges that correlate with deep and persistent disadvantage. Stable accommodation can lift a person out of crisis and allow them to access wrap around supports to address their underlying needs.

Delivering a Housing First approach in practice means immediate investment in an adequate volume of crisis accommodation (social not private), and transitional housing and longer-term social housing. Housing should be set aside for high-risk groups such as those exiting prison, those with lived experience of disability and mental illness, women and children experiencing DFV, Aboriginal and Torres Strait Islander people, and other high priority groups.

We need new homes that meet the needs of people who use social housing now and into the future. That means well-maintained, quality homes that are environmentally sustainable and built to be accessible. This includes providing safe and accessible homes for those who need them, and ensuring high-quality and timely decision-making around disability modifications and repair and maintenance requests.

Recommendation 2

The NSW Government should work to increase the availability of social housing stock and crisis accommodation for people at risk of long-term homelessness.

⁵ NSW Government, *NSW Homelessness Strategy 2025-2035* (Report) 9-10.

4.2 The role of not-for-profit community housing providers

Legal Aid NSW acknowledges the NSW Government's commitment to a multi-provider social housing system. Community housing providers (CHPs) play a crucial role in the provision of social housing,⁹ and are now responsible for managing approximately 30% of all social housing properties.¹⁰ In some parts of NSW, CHPs are the only social housing providers.¹¹ In promoting the transfer of tenancy management to CHPs, the NSW Government promised that tenants would not be disadvantaged.¹²

Despite this, we have a number of concerns about the transfer of public housing to CHPs, which has led to some unintended negative consequences for tenants. We outline these issues below, and the steps that must be taken to safeguard a fair system for every social housing tenant in NSW, no matter their provider.

4.2.1 Lack of access to justice

Many decisions made by Homes NSW and CHPs are not governed by the *Residential Tenancies Act 2010* (NSW). Instead, tenants who wish to challenge decisions of Homes NSW and CHPs can only seek internal review and, if still dissatisfied, a further review from the Housing Appeals Committee (HAC). This body has no legislative basis and conducts merits reviews to assess whether the original decision was made fairly, in accordance with policy and whether all the information was taken into account.

Although HAC makes recommendations to the provider, these recommendations are not enforceable and housing providers may simply ignore them.⁶ If a CHP does not follow a recommendation of HAC, there is no further avenue of appeal for tenants of a CHP. Conversely, tenants of Homes NSW may make an application for judicial review, making the social housing system inequitable for tenants of CHPs.

Steven's story below demonstrates the lack of access to justice afforded to tenants of CHPs.

Steven's story⁷

Steven signed a tenancy agreement with a CHP who had taken over management of a number of properties owned by an Aboriginal Housing Organisation.

When Steven went into custody, the CHP refused to apply DCJ's \$5 minimum rent policy for tenants in prison. As a result, his rent arrears grew and his CHP initiated NCAT termination proceedings.

Steven sought a first-tier review of the CHP's decision to refuse to apply \$5 rent while he was incarcerated. The CHP refused to conduct a first-tier review so Steven lodged a second level appeal with the HAC. HAC informed Steven that they could not conduct

⁶ HAC has limited powers to bind a social housing provider in relation only to reviews of strike notices against tenants: see the *Residential Tenancies Act 2010* (NSW) s 145C(7).

⁷ All case studies in this submission have been de-identified.

a second level appeal without a first-tier outcome. HAC asked the CHP to conduct a first-tier review, which they did.

After Steven's first-tier review outcome was unsuccessful, he asked HAC for a second level appeal. It was at this stage that the CHP refused to provide HAC with any documents, stating that they were not in fact the landlord.

The CHP later failed to attend the NCAT hearing and their termination application was dismissed.

While the social housing tenant avoided termination at NCAT, nothing could be done about the refusal to apply \$5 rent and the rent arrears. Steven continues to pay the arrears.

4.2.2 Lack of procedural fairness

As currently designed, HAC processes lack procedural fairness for CHP tenants. Tenants often face difficulties obtaining their personal information from CHPs,⁸ as well as information relevant to a review of a CHP's decision.⁹ Yet this information and documents are regularly taken into consideration to form the basis of CHP and HAC decisions. Without access to this information, tenants are not able to properly respond to any allegations made against them, or to challenge the basis of a decision.

CHPs are also not subject to the *Government Information (Public Access) Act 2009* (NSW) (GIPA), which means CHP tenants cannot make a GIPA application to access important information that can assist them in their appeal, but their Homes NSW counterparts can.

Wendy's story below demonstrates how the lack of transparency from CHPs can impact on our clients' ability to challenge decisions.

Wendy's story

Legal Aid NSW represented Wendy, a disability support pensioner living with her adult son in social housing managed by a CHP. Wendy has numerous physical and mental health conditions.

Wendy was receiving less Commonwealth Rent Assistance (CRA) than she was entitled to, but her CHP calculated her rent subsidy as if she were getting the full amount. When Wendy raised the issue with the CHP, they referred her to Centrelink, while Centrelink pointed to the CHP's reporting process as the problem.

At this point Wendy sought assistance from Legal Aid NSW, who arranged a meeting with the CHP. At this meeting the CHP refused to investigate further, insisting CRA updates were the tenant's responsibility, despite the CHP using a reporting system inaccessible to Wendy. With no clear escalation path, Legal Aid NSW filed a Freedom of Information request with Centrelink, confirming the issue was caused by the CHP's

⁸ Unlike Homes NSW, CHPs are not subject to the *Government Information (Public Access) Act 2009* (NSW). Requests for personal information from CHPs can be made under the *Privacy Act 1988* (Cth) if the CHP has an annual turnover of \$3 million or more.

⁹ For example, tenants are unable to access internal documents that set out how a decision was made. This information is important as it can be used to challenge an unfair decision or decision made outside policy.

reporting error.

Six months after Wendy first raised the issue, when provided with the information obtained from Centrelink, the CHP agreed to a review. It took another three months for them to complete it, ultimately acknowledging their mistake and recalculating Wendy's rent, significantly reducing her arrears.

This nine-month ordeal caused Wendy significant distress, highlighting the lack of an effective complaint process for tenants dealing with CHPs.

4.2.3 Inconsistent policies

Unlike the Homes NSW policies which are both detailed and publicly available, CHP policies are not always publicly available and at times lack detail. This affords CHP providers wide discretion in how the policy is applied and creates uncertainty for tenants. It can also lead to adverse decisions being made by CHPs against vulnerable tenants that would not have been made by Homes NSW.

Given that the criteria for social housing eligibility is the same across public and community housing, as is the profile and vulnerability of its tenants, and that social housing tenants do not have a choice of housing provider, we consider these differences unfair and undesirable. We support consistent tenancy policies across social housing landlords and the adoption of minimum standards with respect to issues including domestic violence, rental arrears, tenants at risk of homelessness and behavioural concerns.

4.2.4 Inflexible decision making

Legal Aid NSW has observed an increase in technical administrative decisions that can lead directly and unnecessarily to homelessness. Complex administrative procedures and policies that are inflexibly applied are inherently unsuitable for ensuring clear communication and equitable outcomes for social housing clients.

As a result, much of our work with people experiencing homelessness relates directly to CHPs' lack of flexibility and consideration of the circumstances of clients whose vulnerabilities directly contribute to them becoming community housing clients. This is demonstrated in Hayden's story below.

Hayden's story

Hayden was a social housing tenant and experienced a significant decline in his mental health, including delusions and paranoia about criminals using his social housing property. He admitted himself as a voluntary patient in a mental health facility to receive treatment for schizoaffective disorder. He told us that while in hospital his social housing provider had contacted him and advised that he could relinquish the tenancy on his current property to then be rehoused in a different property.

A few days later, Hayden was released from hospital and returned to the property to pack up his belongings and vacate the premises. He then relinquished his tenancy and applied for high priority reinstatement transfer (HPTR). However, Hayden did not understand that he was required to relinquish the tenancy while in hospital to meet

strict eligibility criteria for a HPTR. As a result, his application was declined. He was not able to return to his former property and became homeless.

When he applied for temporary accommodation, his application was declined. He was advised this was because he had contributed to his own homelessness. Significant efforts were undertaken by local specialist homelessness services and Legal Aid NSW to rehouse Hayden, however it took significant resources and a number of months before he was able to be rehoused.

To achieve the Homelessness Strategy's aim of keeping people in safe and affordable homes, it is critical that the NSW Government prioritise a social housing system that is fair, equitable and accountable. Eviction must be an action of last resort especially when a tenant has had repeated or lengthy periods of homelessness.

We therefore recommend prioritising the amendment of the *Housing Act 2001* (NSW) to provide a legislative basis for the HAC to ensure decisions are binding for both Homes NSW and CHPs, and that the actions of both parties are subject to judicial review.

The Act should also be amended to ensure CHPs are required to provide tenants with all documents relevant to the decision under appeal.¹⁰ Alternatively, HAC should publish a practice note that governs proceedings, and ensures procedural fairness is afforded to all parties, by requiring social housing providers to hand over to the tenant copies of all documents relevant to their decision, in a timely manner once an appeal is underway.

Non-government social housing providers should have internal policies and review procedures in place that provide for the same rights and protections as tenants in government operated social housing, and ensure these policies are applied flexibly to avoid unjust outcomes.

Recommendation 3

The NSW Government should take all steps to ensure that laws, policies and procedures, relating to social housing apply equally to all social housing tenants regardless of their social housing provider.

Recommendation 4

The NSW Government should:

- (a) amend the *Housing Act 2001* (NSW) to provide a legislative basis for the HAC to ensure decisions are binding for both Homes NSW and CHPs, and subject to judicial review

¹⁰ Similar to the *Administrative Appeals Tribunal Act 1975* (Cth) s 37 and the *Administrative Decisions Review Act 1997* (NSW) s 58.

- (b) amend the *Housing Act 2001* (NSW) to require landlords involved in appeals before the HAC to provide tenants with all documents relevant to the decision under appeal, and
- (c) amend the HAC Charter to empower the HAC to make recommendations to housing providers about the content of their policies.

4.3 Increasing access to supports for social housing tenants

Legal Aid NSW advocates for increasing the availability of tenancy support programs to assist tenants to address issues undermining their tenancy. We continue to see tenants evicted for rent arrears and/or behavioural issues without the opportunity to participate in support programs or reduce debts through means other than money payments.

We suggest including social housing debts in the WDO Scheme (which is currently restricted to fines debt) to ensure that eviction is an action of last resort for social housing providers. This would both assist in paying down social housing debts and encourage participants to access support services, including medical or mental health care treatment, financial or other counselling, drug and alcohol treatment and voluntary work that could contribute to their overall wellbeing.¹¹

Recommendation 5

The NSW Government should take steps, including through amendment to the *Fines Act 1996* (NSW) and associated Revenue NSW and Homes NSW policies and procedures, to allow social housing debts to be eligible for the Work Development Order (WDO) Scheme.

4.4 Importance of collaboration between government agencies

Collaboration between stakeholders in projects that proactively address and minimise barriers to safe and stable housing is critical to ensuring homelessness is rare, brief and not repeated. Legal Aid NSW is currently participating in the following project that we believe should be highlighted as an example of effective collaboration that can interrupt the path to homelessness.

Homeward Sisters project for Aboriginal women in custody

DCJ, Corrective Services NSW and Legal Aid NSW have created the Homeward Sisters project to undertake immediate resolution of housing barriers for all Aboriginal women currently in custody, and address systemic issues to remove barriers to safe and stable accommodation.

Overseen by a multi-agency taskforce, the project will pilot a bulk approach to resolving housing issues for Aboriginal women in custody who are mutual clients of

¹¹ NSW Government, *Apply for a Work and Development Order (WDO)* (Web page) <<https://www.nsw.gov.au/money-and-taxes/fines-and-fees/fines/difficulty-paying-your-fine/work-and-development-order>>.

Legal Aid NSW, DCJ Housing and Corrective Services NSW. The partners will work together to assess each client's situation on a case-by-case basis, with the aim of resolving housing issues. For example, the project will help clients to remove black listings (bad records) from previous tenancies, waive certain conditions imposed before housing will be offered, reactivate housing applications that were closed, and waive debts due to DFV.

5. Targeted services to groups experiencing or at risk of homelessness

Legal Aid NSW agrees with the Productivity Commission, that:

[n]ew social housing investment decisions should prioritise meeting the housing needs of people experiencing, or at risk of, long-term homelessness and people who are unable to access or sustain housing in the private rental market...¹².

We have identified people experiencing DFV (including women on temporary visas experiencing DFV), Aboriginal and Torres Strait Islander people, people exiting custody, and children and young people as groups that are particularly vulnerable to housing stress and homelessness. To be most effective, the NSW Government must target these groups for early intervention and wraparound supports and make housing and homelessness services easily accessible to them.

The particular challenges faced by these groups, and opportunities to assist in the targeted delivery of services for them, are detailed below.

5.1 People experiencing DFV

In Legal Aid NSW's experience, there are multiple barriers to safe, secure and stable housing for victims of DFV. For example, women with children are especially vulnerable, with spaces in refuges limited. Additionally, older male children are often not permitted in refuges, so women must either make the choice to leave that child behind with the perpetrator, or stay, or be homeless with the children. Victims of DFV may also have complex health care needs and children may have challenging behaviours as a result of the DFV, making it even more challenging to find appropriate housing.

Despite Staying Home Leaving Violence¹³ principles, our social housing clients who are victims of DFV are often expected to leave their home and/or required to provide reasons, and evidence, why they should not be held responsible for the domestic violence perpetrated against them. For example, Legal Aid NSW clients have been forced to leave their social housing accommodation due to the damage and disruption caused by the DFV perpetrator. Other forms of DFV include a partner refusing to pay rent or maintain their joint property knowing that their partner may be evicted due to debts they are unable to pay on their own.

Sumithra's and Taryn's stories below illustrate how DFV can impact on our clients' ability to retain housing.

Sumithra's story

Sumithra is a social housing tenant. She lives in the property with her two children, aged two and seven years old. She has chronic disabilities, including mild to moderate

¹² Productivity Commission, *In Need of Repair: The National Housing and Homelessness Agreement* (Report, August 2022) 44.

¹³ Communities and Justice, *Staying Home Leaving Violence* (Web Page, 2025) <<https://dcj.nsw.gov.au/service-providers/supporting-family-domestic-sexual-violence-services/dfv-programs-funding/staying-home-leaving-violence.html>>.

intellectual disabilities. She has a National Disability Insurance Scheme package to assist her and is engaged with local support services.

Sumithra and her children experienced DFV by a family member who moved into the property without her consent and refused to leave. The police charged the perpetrator and an AVO was put in place to protect our client. The perpetrator was also responsible for property care issues.

As a result of property care concerns, the social housing landlord issued a notice of termination for breach.

Legal Aid NSW represented Sumithra in NCAT proceedings and was able to have the matter resolved with consent orders to work with services to address property care.

Taryn's story

Taryn is a 29-year-old social housing tenant who has been in her home for six years. Her sole source of income is the Disability Support Pension due to extensive and debilitating mental health conditions. She experienced severe DFV at the hands of her former partner for which he was jailed.

The social housing provider sought a termination of tenancy against Taryn for noise and nuisance complaints that were caused during the incidents of DFV.

On the day of the hearing, Taryn brought typed and handwritten character references from some of her neighbours, which supported her evidence that her former partner was the cause of noise and nuisance, and that it had ceased since his arrest. She also relied on evidence from the Office of the Director of Public Prosecutions that showed she did not consent to the perpetrator of violence being at the premises, the disturbances were caused by the former partner, and that it was not safe or possible for her to stop or restrain the actions said to amount to breaches of her tenancy agreement.

On the day of the NCAT hearing, Taryn was not permitted to rely on this evidence because, in the NCAT Member's view, social housing tenants form cliques and collaborate on evidence to render the evidence she brought to the hearing of no probative value. Despite this ruling about the tenant's evidence, the Member allowed the social housing landlord to rely on evidence of an entirely identical nature. At the end of the hearing, NCAT terminated her tenancy, without considering any of her evidence.

Legal Aid NSW represented Taryn and appealed on the grounds of procedural fairness and that NCAT failed to provide adequate reasons. The appeal was successful and the original application was remitted to NCAT. While the settlement is being negotiated, Taryn has been able to retain her housing.

Early intervention and advocacy are key for victims of DFV with housing issues. Early intervention opens referral pathways to, for example, Safer Pathways and for legal and non-legal advocacy with Housing NSW.

Despite the housing assistance detailed in the *Domestic and Family Violence NSW Department of Communities and Justice (DCJ) Housing Policy Statement* (June 2020), it is Legal Aid NSW's experience that because the waitlist for another property or temporary accommodation is so long, many victims are faced with the reality of staying in a violent home or facing homelessness. Further, housing supports such as Rent Choice Start Safely are inaccessible to clients unlikely to be able to meet private rental demands due to poor rental references, blacklisting or cost.

To make homelessness rare, there is both the opportunity and necessity to improve the response of social housing administrators to the barriers that victims of violence face when seeking to find or retain their home. Improving the awareness and responsiveness of social housing administrators and review bodies such as NCAT to matters of DFV is a critical step to protecting victims from homelessness.

Social housing providers should also be required to demonstrate that where DFV has been reported, eviction is an action of last resort and they have proactively worked with the victim to address the concerns and keep them in their home.

Recommendation 6

Homes NSW should ensure all social housing providers are required to adhere to Staying Home Leaving Violence principles and provide evidence that termination of tenancy is the last resort where they have been notified of DFV.

Recommendation 7

The NSW Government should encourage social housing and NCAT administrators to undertake DFV awareness training to better understand the signs and consequences of DFV.

5.1.1 Women on temporary visas experiencing DFV

Women on temporary visas are more likely to be subject to DFV than permanent visa holders or Australian citizens.¹⁴ They can be reluctant to reach out for help or report violence against them because of threats of violence to them or their families, threats of deportation, threats of being separated from their children, or fears of police. They face major barriers to accessing essential legal and non-legal supports including accommodation. In 2023-24, the Legal Aid NSW Temporary Visa Project, created to provide an integrated legal and DFV support service to this cohort, provided 442 advices and supported 36 women through its casework service.

In NSW, women on temporary visas experiencing DFV are only eligible for "a few days of temporary accommodation" as per the DCJ *Social Housing Eligibility and Allocation Policy*

¹⁴ Marie Segrave, Rebecca Wickes and Chloe Keel, *Migrant and Refugee Women in Australia: The Safety and Security Study* (Report, 2021).

Supplement (July 2024). As a result, it is not uncommon for women in this situation to have to choose between homelessness or returning to their abuser, as demonstrated in Maria's story below.

Maria's story

Maria was a temporary visa holder on a pathway to permanent residency, living in a rural community in NSW. When she experienced DFV in her relationship, she was forced to flee the home she shared with her partner and visa sponsor.

Because she was on a temporary visa, she was not eligible for mainstream social housing. No refuges in the area would accept her because she was not receiving Centrelink payments and unable to cover the baseline costs of staying in the refuge.

Tragically, Maria felt she had no choice but to return to the violent relationship as the only other option available to her was homelessness and destitution.

To make homelessness rare for women on temporary visas experiencing DFV and their children, eligibility for housing assistance in NSW should be extended to this group.

Recommendation 8

DCJ should work towards expanding access to housing assistance for women on temporary visas experiencing DFV and their children.

5.2 Aboriginal and Torres Strait Islander people

Aboriginal and Torres Strait Islander people are significantly overrepresented in homelessness statistics. In 2023-24, 18% of advice given by Legal Aid NSW's Civil Law Service for Aboriginal Communities was housing and homelessness related.

The 2016 Australian Housing and Urban Research Institute study highlighted significant challenges in housing access for Aboriginal and Torres Strait Islander communities in NSW. It found that homelessness among Aboriginal and Torres Strait Islander participants was often linked to extended waiting periods for social housing and forced evictions, often resulting from rental arrears.¹⁵ These challenges were compounded by systemic issues, including a shortage of affordable housing options, discrimination in the rental market, and culturally unsuitable housing arrangements.¹⁶ The study also highlighted that cultural expectations, such as hosting extended family members, often conflicted with tenancy rules, leading to overcrowding and jeopardising tenancies.

Aboriginal and Torres Strait Islander people in custody are at risk of losing their tenancy due to prolonged absence from dwelling, leading to termination or relinquishment. Barriers to future housing can then form as a result of previous housing debt from rental arrears. These challenges underscore the urgent need for integrated, culturally responsive

¹⁵ Australian Housing and Urban Research Institute, *What Works to Sustain Indigenous Tenancies in Australia* (Report, 2016).

¹⁶ *Ibid.*

approaches to address both housing stability and justice system involvement, breaking cycles of disadvantage for Aboriginal and Torres Strait Islander people.

We submit that, in implementing services and system reform under the Homelessness Strategy, the NSW Government should take into account implementation of the National Agreement on Closing the Gap priority reforms, which will have the biggest impact for Aboriginal and Torres Strait Islander people and communities across the NSW housing and homelessness system. In particular, the expansion of Aboriginal community-controlled housing providers (**ACHPs**), the employment of Aboriginal and Torres Strait Islander staff at Homes NSW and CHPs, as well as cultural awareness and cultural safety training for all social housing staff are all ways to develop a system that is culturally competent and promotes self-determination for Aboriginal and Torres Strait Islander people.

However, we note that eviction for rent arrears, without appropriate intervention and support, is still common for tenants of ACHPs. Further, as with CHP tenants, due to inconsistent policies, tenants of ACHPs are often worse off than if they were tenants of Homes NSW.

We consider that many of the recommendations outlined above, particularly a WDO-style scheme for rent arrears, and consistent policies between housing providers that ensure Aboriginal and Torres Strait Islander people are not worse off under ACHP/CHP policies than if they were Homes NSW tenants, would improve outcomes for Aboriginal and Torres Strait Islander people and facilitate their self-determination within the NSW social housing system.

5.3 People in or exiting custody

Homeless people are overrepresented in the Australian prison population, and ex-prisoners are also overrepresented in the homeless population.¹⁷ People exiting custody are at increased risk of homelessness and less likely to exit homelessness.¹⁸ The Productivity Commission found that 54% of people leaving custody expect to stay in short term or emergency accommodation.¹⁹

The lack of stable accommodation and support to assist offenders to address social and economic vulnerabilities can contribute to recidivism. Throughcare and reintegration efforts have been recognised as an important (and cost effective) way to reduce reoffending rates.²⁰ Access to stable housing, in particular, has been recognised as an important factor in whether an individual reoffends after being released.²¹

¹⁷ See Australian Institute of Health and Welfare, *Specialist Homelessness Services Annual Report 2017–18* (February 2019); Justice Health and Forensic Mental Health Network, *2015 Network Patient Health Survey Report* (May 2017); Bugmy Bar Book, *Homelessness – Executive Summary* (Web page) <<https://bugmybarbook.org.au/chapters/homelessness/#fn9>>

¹⁸ Australian Institute of Health and Welfare, *Specialist Homelessness Services Annual Report 2017–18* (February 2019).
¹⁹ Australian Government Productivity Commission, *Australia's Prison Dilemma* (Research Paper, October 2021) 47.

²⁰ The Productivity Commission examined an ACT throughcare pilot program which it said “demonstrated that providing prisoners with housing support, mental health counselling, physical health supports and drug and alcohol rehabilitation for 12 months after release significantly reduced their likelihood of reoffending. The costs of providing these supports were relatively small compared to the cost savings from reduced imprisonment due to reoffending”:
Ibid.

²¹ Ibid.

Legal Aid NSW's Prisoner's Civil Law Service provides legal advice and assistance to people in prison with civil law issues, including housing and homelessness concerns. The service works to keep prisoners who are current community housing tenants in their homes, where possible, and seek to resolve issues preventing non-tenants from being housed. For those eligible, they also advocate for priority transfer tenancy reinstatement upon release.

Legal Aid NSW practitioners assisting people in custody report spending much of their time challenging the decisions of social housing administrators that do not accord with their own policies.

Jane's story below illustrates how inflexibly applied CHP policies can lead to our clients exiting custody into unstable accommodation or homelessness.

Jane's story

Jane was a client in her 30s and had been sentenced to approximately 12 months in custody. While she was in custody, she was engaged in an intensive drug rehabilitation program. She had been living in a community housing property.

While in custody, Jane relinquished her property on the understanding that she would be eligible for high priority tenancy reinstatement when she was released. After relinquishing her property, she was notified that her property had been damaged by squatters and she was responsible for the cost of repairs and maintenance amounting to approximately \$2,000. On release, she was prevented from accessing the high priority list due to this debt.

Legal Aid NSW appealed the decision to impose the debt to the CHP, arguing that Jane was not liable for the damage caused while she was in custody. The provider insisted that without a police report, Jane could not prove she did not cause the damage prior to her incarceration.

Despite the concerns of her Justice Health support workers about her wellbeing, Jane was released into temporary accommodation with no long-term housing options open to her.

To make homelessness rare for people leaving custody, there are several opportunities for reform. Primarily, there needs to be an increase in appropriate temporary and long-term housing options for people leaving custody.

Additionally, where people are prevented from accessing housing because of CHP debts or blacklisting, Legal Aid NSW suggests including social housing debts in the fines eligible for a WDO (see discussion in section 4.3 above).

5.3.1 Aboriginal and Torres Strait Islander women leaving custody

Stable housing is critical to helping Aboriginal and Torres Strait Islander women released from custody reintegrate into society, and is an important factor in preventing recidivism.

The Aboriginal Women Leaving Custody (AWLC) Service is part of the Civil Law Service for Aboriginal Communities and the Family Law Service for Aboriginal Communities within Legal Aid NSW. This program addresses the civil and family law needs of Aboriginal women while they are in custody to reduce barriers to housing on the transition back to the community, as well as other factors that may contribute to ongoing disadvantage. Housing assistance is an important part of this service. When this service was established in 2013, only 12% of women in custody believed they had access to stable housing on release from prison.²²

With collaboration between Legal Aid NSW's civil, criminal and family law divisions, this service assists women to secure and maintain social housing tenancies while in custody, collaborates around accommodation when clients are seeking bail, challenges negative tenant classifications, and assists women applying for priority housing. Practitioners have been able to reactivate social housing applications that had otherwise been closed, negotiate with housing providers to maintain tenancies after notices of termination, reduce client debts, and appeal negative classifications. Additionally, for women with children, secure accommodation is vital to being granted custody of their children following their release.

This service makes a real difference in the lives of women, like Lauren below, who would have otherwise left custody to housing insecurity or homelessness.

Lauren's story

Lauren is a Homes NSW tenant who was sentenced to six months and seven days imprisonment.

Homes NSW asked her to relinquish her tenancy and issued her with a notice of termination based on the absence of dwelling policy.

Around the three-month mark, Legal Aid NSW lodged an appeal based on the discretion to extend the period of absence. We argued that the discretion should be exercised because Lauren suffered from chronic schizo-affective disorder. We supplied letters of support from her psychiatrist and stated that the loss of Lauren's housing would negatively affect her mental health.

Homes NSW informed us that they were concerned that the lawns were not being mown while Lauren was in custody. We suggested that they arrange a contractor to mow the lawns, with Lauren repaying the cost of this service once released.

Homes NSW allowed Lauren to return to her home on release.

5.4 Children and young people

5.4.1 Children and young people in contact with the criminal justice system

There are a number of challenges securing sustainable housing for children and young people in contact with the criminal justice system who cannot live with their families.

²² Legal Aid NSW, *Aboriginal Women Leaving Custody: Report into Barriers to Housing* (Report, 2015) 14.

Legal Aid NSW lawyers regularly observe children charged with criminal offences being remanded in custody because of a lack of suitable accommodation. Section 28 of the *Bail Act 2013* (NSW) allows a court, in granting bail, to impose a requirement that arrangements be made for the accommodation of the accused person before they are released on bail (an accommodation requirement). Such a requirement can only be made in certain circumstances, including where the accused person is a child. The court responsible for hearing bail proceedings must ensure that, if an accommodation requirement is imposed in respect of a child, the matter is re-listed every two days until the accommodation requirement is complied with. Finding appropriate accommodation is generally the responsibility of either Youth Justice NSW or DCJ Child Protection.

Whilst the rationale behind this policy was well-intentioned – namely, to address the recurring difficulty faced by the Children’s Court when dealing with children who the Court wants to release on bail but who do not have suitable accommodation available – in practice, it does not impose an obligation on Youth Justice NSW to secure the accommodation needed for the child to be actually released on bail. This can result in children, like Callum below, spending extended periods in custody.

Callum’s story

Legal Aid NSW acts for Callum, a 13-year-old boy charged with minor property damage and breaching an apprehended domestic violence order. The charges related to his mother who he ordinarily resided with. NSW Police arrested Callum.

After Callum’s arrest, his mother relinquished care and refused to have him return home. NSW Police refused Callum bail as he effectively became homeless.

The day after his arrest, Callum was granted bail by the court. However, under section 28 of the *Bail Act 2013* (NSW), Callum was unable to be released on bail until suitable accommodation was found. Callum’s matter was relisted every two days over a two-week period. The court and Legal Aid NSW regularly made enquiries about what steps DCJ was taking to secure accommodation for Callum. Legal Aid NSW regularly stressed to DCJ that it should be urgently seeking housing for Callum.

Callum had no criminal history, and the charges were very minor and would not result in a custodial penalty if Callum was convicted. Despite this, DCJ was reluctant to place Callum in an urgent placement, and confirmed its preference was for Callum to remain in custody until an appropriate long-term placement could be found.

Additionally, Legal Aid NSW has observed some children and young people remain in custody beyond their non-parole period due to the lack of suitable accommodation available upon release. Families may be reluctant to have their child return home or may be prevented from returning by legal orders. In addition, Legal Aid NSW has observed that when a young person has turned 18 during their period of detention, there is an internal lack of clarity around which NSW government agency has the responsibility to assist this cohort.

The importance of stable housing upon release from custody is discussed above at section 5.3.

5.4.2 Children and young people leaving out-of-home care (OOHC)

Legal Aid NSW's specialist Children's Civil Law Service (CCLS) regularly works with young people who face barriers accessing housing at the time they leave OOHC or in the early years after leaving care. Many care leavers are poorly equipped to manage the challenges of living independently and many experience periods of homelessness or couch surfing, which expose the young person to potential harm or exploitation and prevent them from engaging in education and employment. They may also lack supportive family and community networks who can be a safety net if they lose or are otherwise forced to leave their accommodation. Care leavers whose housing breaks down often have to try and navigate homelessness services on their own, with minimal assistance from aftercare services.

Our practitioners have observed young care leaver clients unable to access housing because of inflexible policies and eligibility criteria for leaving care accommodation programs such as Supported Independent Living and Therapeutic Supported Independent Living. In these programs, a young person must enter the program *before* they turn 18, which can discourage them from exploring their preferred accommodation options or attempting to reconnect and live with family. If they do try those independent options but that accommodation later breaks down after they turn 18 (which is very common), they are then ineligible to access those programs at all.

Our clients also speak of the difficulty engaging with funded service providers responsible for assisting the young person accessing housing when they leave care or custody, which is not helped by delays by local Housing NSW offices in processing applications for priority housing.

Legal Aid NSW believes there are a number of opportunities to prevent homelessness for young people leaving OOHC:

- Ensure that all care leavers exit care with an approved leaving care plan, which has been created with input from the young person and tailored to their needs or circumstances.
- Remove barriers to accessing housing support and ensure eligibility criteria for specialist housing programs for care leavers are more flexible.
- Extend leaving care accommodation programs to care leavers up to the age of 25, as per the DCJ *Guidelines for the Provision of Assistance After Leaving Long Term Statutory Out-of-home Care* (August 2023).
- Create an "escalation pathway" between Homes NSW and Legal Aid NSW, which could be utilised for individual care leavers trying to access secure and safe accommodation if other avenues have failed (see section 5.4.3 below).

Recommendation 9

DCJ should remove barriers to accessing housing support for young people leaving care, and increase the age of eligibility for housing support programs.

5.4.3 Escalation pathway between Homes NSW and Legal Aid NSW

Legal Aid NSW proposes the creation of an “escalation pathway” between Homes NSW and Legal Aid NSW to actively address the lack of safe and secure accommodation for young people leaving custody or OOHC. This pathway would be for Legal Aid NSW clients who have been under the care of the Minister and are leaving OOHC or custody, or who have left the care of the Minister in the past three years and are under 21 years, who are experiencing, or are at high risk of homelessness, and where accommodation needs have been unable to be addressed after exhausting other options and advocacy channels. The pathway could assist in identifying appropriate housing options for clients, and engaging with case managers or local Housing NSW teams where there has been a breakdown in processes.

Legal Aid NSW would be pleased to discuss this proposal further.

Recommendation 10

An escalation pathway should be created between Homes NSW and Legal Aid NSW to address the lack of safe and secure accommodation for young people leaving custody or OOHC.



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