



24 July 2020

## **Kingsford Legal Centre**

### **Submission to the NSW Housing Strategy Discussion Paper**

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We welcome the opportunity to make a submission to the NSW Housing Strategy Discussion Paper (**Discussion Paper**). Our submission focuses on the discussion question, 'What outcomes should a NSW Housing Strategy focus on?', and related matters. It draws on our submission to the review of the NSW Government's Housing and Mental Health Agreement on 17 May 2019 (**enclosed**).

### **Summary of recommendations**

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We recommend that the NSW Government:

1. Extend the consultation time for the Discussion Paper and ensure that the consultation process is accessible to diverse groups of people who are affected by housing policy, including people who live in social housing;
2. Take a human rights approach to housing, which recognises housing as a human right, and identify respect for human rights as a key outcome of a NSW Housing Strategy;
3. Increase specialist homelessness services that can holistically address the needs of people experiencing homelessness to assist people to exit homelessness;
4. Amend punitive housing policies, such as the Inner City Local Allocation Strategy, to focus on support, not punishment, of people at risk of homelessness;
5. Require social housing providers to work collaboratively with NSW Health on harm minimisation strategies for drug use;
6. Allow social housing applicants to be considered for multiple allocation zones;
7. Urgently increase temporary accommodation for people experiencing homelessness with a focus on transitioning people from temporary accommodation to long term housing options;
8. Increase investment in social housing in NSW to increase the number of dwellings available to match current and future demand;

9. Increase investment in social housing to ensure that all social housing tenants have a home that is safe, comfortable and appropriate for their needs and that tenants are able to have timely repairs to their homes;
10. Require that social housing providers:
  - Do not evict tenants except as a last resort;
  - Try all available interventions before moving to evict;
  - Transfer tenants to another social housing property, rather than evicting tenants from social housing; and
  - Ensure that former tenants have appropriate accommodation – do not evict tenants into homelessness; and
11. Implement the Joint Proposal for Economic Stimulus' (**Joint Proposal**) recommendation to conduct an energy audit of all social housing properties to determine which properties are appropriate for an energy productivity upgrade and which should be rebuilt.<sup>1</sup>

## About Kingsford Legal Centre

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Kingsford Legal Centre (**KLC**) provides free legal advice, casework and community legal education to our local community in south-east Sydney. In the 2019–20 financial year, we gave 232 housing advices and did a further 50 housing legal tasks.

We provide legal help to people who live in all types of housing. More than 15% of our clients in 2019–20 lived in social housing. We have significant experience in providing legal help to people who are homeless, including people in insecure and inappropriate housing.

KLC also has a state-wide Discrimination Law Clinic and a specialist Employment Law Clinic. We are a provider of the Migrant Employment Legal Service (**MELS**), addressing the exploitation of migrant workers in NSW.<sup>2</sup>

KLC is part of the UNSW Sydney Law Faculty and provides clinical legal education to over 500 of its students each year. KLC has been part of the south-east Sydney community since July 1981.

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<sup>1</sup> 'Joint Proposal for Economic Stimulus – Healthy and Affordable Homes: National and Low-Income Energy Productivity Program' (June 2020) 2 <<https://files.tenants.org.au/policy/2020-Economic-Stimulus-Healthy-Affordable-Homes-NLEPP-June-2020-Final-18062020.pdf>> (**Joint Proposal**).

<sup>2</sup> MELS is a joint initiative of the Inner City Legal Centre, Kingsford Legal Centre, Marrickville Legal Centre and Redfern Legal Centre.

## Community feedback

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We received feedback from social housing tenants in our local community that the consultation process around the Discussion Paper was inaccessible and did not properly engage with many issues of great concern to social housing tenants in our community.<sup>3</sup>

Issues included:

- The short consultation time, which did not account for the disruption to people's lives with COVID-19;
- The length and complexity of the Discussion Paper;
- Inadequate community engagement, with some local Housing staff not knowing that a consultation was taking place;
- Inadequate engagement with people from culturally and linguistically diverse backgrounds and people who have low literacy levels;
- Limited focus on mental health, complex needs and safety in social housing;
- The use of the term 'social housing', which did not make clear to all Housing NSW tenants that the Discussion Paper applied to them; and
- Inconsistent ranking scales in the consultation survey, with lower numbers sometimes indicating that something was more important and sometimes indicating that something was less important.

We consider that a proper consultation on the Discussion Paper must be accessible to diverse groups of people who are affected by housing policy, including people who live in social housing.

**Recommendation 1: Extend the consultation time for the Discussion Paper and ensure that the consultation process is accessible to diverse groups of people who are affected by housing policy, including people who live in social housing.**

## What outcomes should a NSW Housing Strategy focus on?

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A key outcome of a NSW Housing Strategy should be respect for human rights – most importantly, that everyone has the right to adequate housing.<sup>4</sup> This is not limited to 'merely having a roof over one's head', but rather should be interpreted as 'the right to live somewhere in security, peace and dignity'.<sup>5</sup> A human rights approach would ensure that

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<sup>3</sup> Thank you to our partners in the community for providing us with this feedback.

<sup>4</sup> *International Covenant on Economic, Social and Cultural Rights* art 11 (**ICESCR**).

<sup>5</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 4: The Right to Adequate Housing*, 6<sup>th</sup> sess (1991) [7].

people have access to safe and secure housing in NSW. Recognising this as a human right would have significant benefits to the state as people are generally much more able to stay in education and employment, and participate in their communities, if they have safe, secure and affordable housing.

#### **Ella's story**

Ella is a single mum with two children in primary school. She works in the school office so she can pick up and drop off her children. They live in community housing. Ella likes to cook and is growing vegetables in her back yard. She shares her cooking with her elderly neighbours. On Saturdays, she and the children go to a community group and help with care packs for women and children who are homeless.

Ella says she does this because two years ago, the same community group helped her. She and the children were living in her car after she was evicted from her home and the owner wouldn't return her bond. The children had stopped going to school as she couldn't keep their uniforms clean. Ella had a lot of parking fines and couldn't pay them. A parent at the school saw her one day and helped her speak to a community worker. They found her temporary accommodation. The children went back to school. She was able to get a Work and Development Order (**WDO**) to pay off the fines. Ella was able to go to a course and learnt computer skills. She volunteered at the school and they gave her a job. Ella says having place to call home is the most important thing of all. When she lost hers, her life fell apart and she was scared for her children. Now she is safe and has secure housing.

A NSW Housing Strategy should demonstrate respect for all human rights, including the rights to non-discrimination and equality,<sup>6</sup> the right to health,<sup>7</sup> the right to an adequate standard of living<sup>8</sup> and the right to education.<sup>9</sup> The current shortage and standard of social housing, homelessness, discrimination in the housing market (especially for people on low incomes or social security) and 'no grounds' evictions are human rights issues, that have significant impacts on the ability of people and families to participate in their local communities and maintain health and education. We are of the opinion that securing the right to housing would have significant flow on effects for the attainment of human rights more generally, such as the right to health and the right to education.

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<sup>6</sup> *International Covenant on Civil and Political Rights* arts 2 and 26; *ICESCR* art 2.

<sup>7</sup> *ICESCR* art 12.

<sup>8</sup> *ICESCR* art 11.

<sup>9</sup> *ICESCR* art 13.

In the era of the COVID-19 pandemic, it is even more critical for people to have secure and safe accommodation. The pandemic has highlighted the direct impact of housing on health for individuals and the community.

#### **Fadi's story**

Fadi, an elderly man with a vision impairment, was referred to KLC by a social worker from a local hospital. The social worker was worried that Fadi would be discharged from the hospital into homelessness. This is because Fadi had been living with his ex-partner, a public housing tenant, for over a decade as an authorised occupant but was not on the lease. When their relationship ended his ex-partner told him to leave the house even though he had nowhere else to go. Fadi had been sleeping in local parks and on friends' couches for months before going to hospital. The local Housing office was saying that Fadi would need to go through the application process from scratch before he could be considered for housing assistance. Fadi was overwhelmed by what was required, could not tackle the forms while homeless and, without an interpreter, was finding it impossible to look after his health while homeless and was not dealing with his increasing debt through public transport fines and ambulance fees.

KLC assisted Fadi by getting assistance for him to fill out his housing application forms and advocating for him to receive temporary accommodation while his application was determined. We collected letters of support and kept in frequent contact with the local Housing office to make sure Fadi was allocated suitable accommodation as soon as possible. Once he was given stable accommodation, we were then able to assist Fadi to link in with community health support to manage his health better and to deal with his fines and other debts.

**Recommendation 2: Take a human rights approach to housing, which recognises housing as a human right, and identify respect for human rights as a key outcome of a NSW Housing Strategy.**

#### **Homelessness**

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The Discussion Paper notes that there was a 37% increase in the number of people experiencing homelessness from 2011 to 2016.<sup>10</sup> An estimated 37,720 people in NSW

<sup>10</sup> NSW Department of Planning, Industry and Environment, 'A Housing Strategy for NSW' (Discussion Paper, May 2020) 63 <<https://www.planning.nsw.gov.au/-/media/Files/DPE/Discussion-papers/Policy-and-legislation/Housing/A-Housing-Strategy-for-NSW--Discussion-Paper-2020-05-29.pdf>> (**Discussion Paper**).

were homeless in 2018, giving NSW the second-highest rate of homelessness in Australia after the Northern Territory.<sup>11</sup>

People who are homeless often have complex needs, worsened by the experience of homelessness. These may include physical health, mental health, social, cultural, financial and legal needs. People who are homeless are best supported to find and keep a home when their needs are addressed holistically, rather than by siloed services.

#### **Philippa's story**

Philippa was homeless and had been living in her car for around 2 years when she first came to KLC. Her mental illnesses made it impossible for her to access shared accommodation such as shelters or boarding houses. Philippa did not have any casework or other social supports. Philippa came to KLC for help with a number of unfair fines she had been issued as a result of her homelessness, including a fine for failing to advise a government body of a change of address and fines relating to parking the car she was living out of.

KLC was concerned that Philippa's long-term homelessness was causing her mental and physical health to worsen. We supported Philippa to apply for housing through a social housing provider. After 2–3 months of advocacy work, Philippa was able to move into social housing. Philippa told us she was doing much better since moving into her new home.

**Recommendation 3: Increase specialist homelessness services that can holistically address the needs of people experiencing homelessness to assist people to exit homelessness.**

Punitive policies fail to address the needs of people experiencing homelessness and place unnecessary barriers in their way. For example, the Department of Communities and Justice (**DCJ**) has published an Inner City Local Allocation Strategy, saying that people who have certain drug convictions will not generally be offered a property in certain Inner City locations.<sup>12</sup> It is likely that this policy impacts disproportionately on people who use drugs, failing to offer them appropriate support, while restricting their access to social housing. The policy further fails to recognise the benefits from a holistic perspective in

<sup>11</sup> Law and Justice Foundation of New South Wales, 'Homelessness in Australia: Key Facts' (Factsheet, November 2018) <[http://www.lawfoundation.net.au/ljf/site/templates/resources/\\$file/Homelessness\\_AUS.pdf](http://www.lawfoundation.net.au/ljf/site/templates/resources/$file/Homelessness_AUS.pdf)>.

<sup>12</sup> Department of Communities and Justice, NSW Government, 'Inner City Local Allocation Strategy' (27 April 2018) <<https://www.facs.nsw.gov.au/housing/factsheets/inner-city-local-allocation-strategy>>.

providing housing to a person in their local community and does not recognise the high social cost of homelessness. There would be better outcomes for both people who use drugs and other social housing tenants if social housing providers worked collaboratively with NSW Health on harm minimisation strategies.

**Recommendation 4: Amend punitive housing policies, such as the Inner City Local Allocation Strategy, to focus on support, not punishment, of people at risk of homelessness.**

**Recommendation 5: Require social housing providers to work collaboratively with NSW Health on harm minimisation strategies for drug use.**

DCJ only allows social housing applicants to apply for one allocation zone at a time.<sup>13</sup> We work with many people experiencing homelessness who would be happy to accept housing in multiple zones, which would increase their chances of being allocated housing earlier. There is currently no way for a person experiencing homelessness to be considered for social housing in multiple zones, forcing people who could have housing to remain homeless for no reason.

**Recommendation 6: Allow social housing applicants to be considered for multiple allocation zones.**

Any effective response to homelessness requires the government to provide enough places for people to stay. This is linked to the need to build more social housing, which we address in more detail below.

**Recommendation 7: Urgently increase temporary accommodation for people experiencing homelessness with a focus on transitioning people from temporary accommodation to long term housing options.**

## **Social housing**

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We welcome the NSW Government's aim to increase the quality and supply of social housing.<sup>14</sup> As the Discussion Paper recognises:

<sup>13</sup> See Department of Communities and Justice, 'Choose Where You Live' (24 September 2019) <<https://www.facs.nsw.gov.au/housing/help/applying-assistance/choose-where>>.

<sup>14</sup> Ibid iii.

- Supply of social housing in NSW has not kept pace with demand, with little increase in the number of social housing dwellings since the late 1990s, despite approximately a 27% increase in the State's population;
- There are long waitlists for social housing, with more than 50,000 households on the waitlist for government-owned social housing, including more than 4,000 priority applicants; and
- About 1 in 5 social housing properties is more than 50 years old.<sup>15</sup>

This data broadly matches our experience of the south-east Sydney community. The expected wait time for social housing in Sydney's eastern suburbs is 10+ years.<sup>16</sup> The reality of these waitlists is that people are waiting in homelessness for long periods of time – in insecure, substandard accommodation or rough sleeping, car sleeping or couch surfing. As a result of these long wait lists, many people are unable to stay in study or hold down jobs – the reality of maintaining their tenuous housing and managing homelessness is a day to day challenge.

**Recommendation 8: Increase investment in social housing in NSW to increase the number of dwellings available to match current and future demand.**

### **Disrepair in social housing**

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Sadly, the investment required in social housing has now been lacking for generations and our aging housing estates are in states of disrepair and neglect. This is the housing that many of our most marginalised community members live in – often with underlying and complex health issues. Disrepair in social housing is the norm and this leads to its own health impacts. A reoccurring issue in our local area is sewerage eruptions into tenants' homes with all the damage to property that this brings. This can be extremely dangerous as well as distressing to tenants, especially tenants with underlying medical issues.

KLC has worked with many clients and their treating doctors, occupational therapists and psychologists in situations where it is clear that their housing is having a deleterious effect on their health. For example, some tenants with respiratory illnesses are living with persistent mould in their home. Our clients in this situation tell us that they have repeatedly reported the mould to Housing NSW and provided medical certificates showing that their

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<sup>15</sup> Ibid 62.

<sup>16</sup> NSW Department of Communities and Justice, 'Expected Waiting Times' (30 June 2019) <<https://www.facs.nsw.gov.au/housing/help/applying-assistance/expected-waiting-times>>.



illness has deteriorated due to the mould. In our experience, little action is taken by Housing NSW unless complaints are made either to the NSW Civil and Administrative Tribunal (**NCAT**) or a discrimination law complaints body. The lack of action by Housing NSW in these situations both reduces health outcomes for vulnerable tenants, and increases their need to access health care, creating greater cost to the Government than simply providing the required repairs.

The lack of investment in social housing is nowhere more evident than the ongoing list of matters at NCAT where the social housing landlord has failed to undertake repairs, or when repairs are ordered by the Tribunal to carry out those repairs. A failure to repair is so commonplace in NSW social housing that a Tribunal order is often ineffective to compel repair.

#### **Tiffany's story**

Tiffany was a young Aboriginal woman who had just had a baby. She was extremely worried about the condition of her Housing NSW home. It was riddled with repair issues including lots of mould and a toilet that didn't work properly.

She was worried about the impact of the mould on her baby and did not want to stay in the premises because of this. She was extremely distressed. She was considering giving up the tenancy and living with friends and family because her attempts to get repairs had not worked. She didn't feel she would be able to get her home safe for her baby. With advocacy from KLC and an application to the NSW Civil and Administrative Tribunal, Tiffany got her home repaired. It took months. Without this help, it is highly likely Tiffany would have decided being homeless was better for her and her baby.

**Recommendation 9: Increase investment in social housing to ensure that all social housing tenants have a home that is safe, comfortable and appropriate for their needs and that tenants are able to have timely repairs to their homes.**

#### **Inappropriate evictions**

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We often see social housing providers move to evict tenants in inappropriate circumstances. The DCJ's Antisocial Behaviour Management Policy (**ABMP**) contributes

to inappropriate evictions by applying a punitive ‘three strikes’ approach to evicting tenants from public housing.<sup>17</sup>

Under the ABMP, DCJ will ask the tenant to refer themselves to a relevant support service, give the tenant a referral form and, ‘if needed’, help the tenant make first contact with the service. This falls significantly short of addressing the varied and potentially complex needs of social housing tenants, putting tenants on a path to eviction while offering minimal support. It fails to recognise the seriousness of eviction for social housing tenants, for whom an eviction from social housing is often an eviction into homelessness. We believe there should be more emphasis on early intervention for tenants who are at risk of not maintaining a social housing tenancy as these tenants are the most at risk for long term homelessness.

Social housing providers should be model landlords in aspiration and action, and a better policy would require that social housing providers:

- Do not evict tenants except as a last resort;
- Try all available interventions before moving to evict;
- Transfer tenants to another social housing property, rather than evicting tenants from social housing; and
- Ensure that former tenants have appropriate accommodation – do not evict tenants into homelessness.

Effective intervention will require much better collaboration between social housing providers and other support services. The following case study highlights how a lack of collaboration between Housing NSW and health services contributes to inappropriate moves to evict tenants.

#### **Wei’s story**

Wei was a long-term social housing resident with significant psychiatric illness. He lived alone with help from community-based mental health services. During his tenancy, he was hospitalised for a period of almost 6 months to receive medical treatment for a severely impacting psychiatric illness. Housing NSW sent Wei an eviction notice for not occupying his premises in breach of their ‘allowable absences’ policy.

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<sup>17</sup> Department of Communities and Justice, NSW Government, ‘Antisocial Behaviour Management Policy’ (3 January 2020) <<https://www.facs.nsw.gov.au/housing/policies/antisocial-behaviour-management-policy>>.

It was vital that Wei be allowed to spend time in his flat before discharge from hospital as part of his rehabilitation. Day visits were taking place, to be increased to overnight stays. Housing NSW sent the eviction notice without consulting the hospital social workers or ensuring that Wei would not be evicted to homelessness. The proposed eviction greatly distressed Wei and worsened his condition.

KLC was contacted by Wei's hospital social worker. We assisted Wei to make a discrimination complaint, arguing that Housing NSW's policies were discriminatory in that people with significant disabilities sometimes need to be away from home for longer periods of time to receive medical treatment. It was only at this point that the eviction notice was withdrawn.

**Recommendation 10: Require that social housing providers:**

- **Do not evict tenants except as a last resort;**
- **Try all available interventions before moving to evict;**
- **Transfer tenants to another social housing property, rather than evicting tenants from social housing; and**
- **Ensure that former tenants have appropriate accommodation – do not evict tenants into homelessness.**

## **Energy efficiency**

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The Discussion Paper notes that many existing houses are not energy efficient.<sup>18</sup> This contributes to higher energy bills, which disproportionately affects people on lower incomes.<sup>19</sup> It also contributes to greenhouse gas emissions, accelerating climate change.<sup>20</sup> The Discussion Paper notes that the housing sector in NSW 'produces about 26 per cent of NSW's total greenhouse gas emissions (including electricity and car use), the largest contributor overall'.<sup>21</sup> We welcome the Discussion Paper's recognition that the NSW Housing Strategy needs to consider these issues and that government needs to 'plan for a changing climate and increasing natural hazards'.<sup>22</sup> We are gravely concerned by the impacts of climate change on marginalised people in our community, including people on lower incomes, people who are homeless and people who live in social housing.

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<sup>18</sup> Discussion Paper, above n 10, 71.

<sup>19</sup> Ibid 72.

<sup>20</sup> Climate Council, 'What Is Climate Change and What Can We Do About It?' (16 October 2019) <<https://www.climatecouncil.org.au/resources/what-is-climate-change-what-can-we-do/>>.

<sup>21</sup> Discussion Paper, above n 10, 71.

<sup>22</sup> Ibid 72.

A community coalition of more than 50 organisations has put forward a Joint Proposal, underpinned by the aim to 'build back stronger and more resilient' from the COVID-19 pandemic.<sup>23</sup> A key recommendation of the Joint Proposal is that 'an energy audit be undertaken for all social housing properties to determine the appropriateness of the dwelling for an energy productivity upgrade or, alternatively, advise whether a new rebuild is required'.<sup>24</sup>

The Joint Proposal notes that 'social housing properties could install energy productivity measures that would include (but not be limited to) reverse cycle air conditioners for heating and cooling, more efficient hot water (heat pumps), draught sealing, ceiling fans, efficient thermal building envelope, lighting and solar PV'.<sup>25</sup> All energy savings would be passed on to the tenant.<sup>26</sup>

We support the Joint Proposal's recommendation, as it has significant potential to improve energy efficiency in public housing, reduce energy costs for public housing tenants and reduce NSW's contribution to climate change.

**Recommendation 11: Implement the Joint Proposal's recommendation to conduct an energy audit of all social housing properties to determine which properties are appropriate for an energy productivity upgrade and which should be rebuilt.**

## Conclusion

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A human rights approach to housing is underpinned by the principle that everyone has the right to adequate housing. Everyone must have a home that is safe, comfortable and appropriate for their needs.

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<sup>23</sup> Joint Proposal, above n 1, 1.

<sup>24</sup> Ibid 2.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid 3.

If you have any questions about this submission, please contact Emma Golledge at

[REDACTED]

Yours Faithfully

KINGSFORD LEGAL CENTRE

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17 May 2019

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**By email:** [catherine@leeroadconsulting.com.au](mailto:catherine@leeroadconsulting.com.au)

Dear Catherine,

#### **REVIEW OF HOUSING AND MENTAL HEALTH AGREEMENT**

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Thank you for the invitation to participate in the review of the NSW government's Housing and Mental Health Agreement (**HMHA**). Kingsford Legal Centre (**KLC**) welcomes the opportunity to make this written submission to the review.

#### **About Kingsford Legal Centre**

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KLC is a community legal centre that has been providing legal advice and advocacy to people in the Randwick and Botany Local Government areas since 1981. KLC provides general advice on a wide range of legal issues, and undertakes casework for clients, many of whom live in public housing, are homeless or are at risk of becoming homeless. There are around 14,000 people in the Botany and Randwick Local Government areas living in public or community housing.

KLC also has a specialist employment law service, a specialist discrimination law service (NSW wide) and an Aboriginal Access Program. In addition to this work, KLC undertakes law reform and policy work in areas where the operation and effectiveness of the law can be improved.

#### **Our clients**

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Of the clients that KLC advised in 2017, 25% of clients reported that they had a disability, 6.4% of our clients identified as being either Aboriginal or Torres Strait Islander and 57% stated they had no income or were low income earners. 27% of clients advised that the main language spoken at home was not English, with many speaking little or no English.

The case studies in this submission are based on clients we have advised, de-identified to maintain confidentiality.

## Summary of recommendations

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1. Significant investment is required to:
  - a. Increase the availability and standard of social housing, including supported housing for people who experience mental illness;
  - b. Increase the provision of specialist homelessness and mental health services, including social workers, financial counsellors, mental health nurses, Aboriginal and Torres Strait Islander support workers, drug and alcohol workers and disability workers.
2. The proposed revised Housing and Mental Health Agreement should:
  - a. Ensure that all social housing providers are obliged to engage with NGO service providers at local levels;
  - b. Establish specialist staff member(s) in each Housing NSW office who are a contact point for NGO and health services, and are responsible for ensuring the local implementation of the HMHA;
  - c. Provide one-on-one support via caseworkers and/or mental health workers to people living in social housing who are experiencing mental health difficulties;
  - d. Require Family and Community Services (**FACS**) to ensure all tenancy policies comply with their commitments under the HMHA before they are published and implemented;
  - e. Require social housing providers to only use eviction as a last resort for people who are experiencing mental health difficulties; and
  - f. Ensure that community housing providers that are operating public housing services on behalf of the NSW Government have the same obligations and standards as Housing NSW.
3. Legislative and/or regulatory changes should be made to require the NSW Civil and Administrative Tribunal to consider a social housing provider's compliance with the Housing and Mental Health Agreement (and any other relevant FACS policies regarding people experiencing mental ill-health) before issuing a notice of termination to evict a tenant.
4. Positive obligations should be placed on Housing NSW and community housing providers to:
  - a. Ensure their tenancy policies meet the objectives of and comply with the HMHA; and
  - b. Transfer rather than evict tenants accused of 'anti-social' behaviour, particularly when they experience mental ill-health or a disability. Housing NSW and community housing providers should administer their role as landlord to evict only as a last resort and where all available interventions have been tried.
5. The NSW Government including FACS and Health should develop human rights based approaches to responding to homelessness which recognises the right to adequate housing and the interconnection between this and other economic, social and cultural rights. This should include reviewing and updating the language and approach of the HMHA in consultation with people with lived experience of mental health problems.

## Housing and Mental Health Agreement 2011

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In KLC's experience the current Housing and Mental Health Agreement (**HMHA**) has little to no impact on the day to day reality for people living in or applying for social housing in our area. This is the case despite there being extensive research and reporting available to government about the changes necessary to ensure stable housing and reduce homelessness for people living with mental ill health.<sup>1</sup>

In recent years, FACS has introduced policies for social housing which are fundamentally incompatible with the aims and objectives stated in the HMHA. For example, the Inner City Local Allocation Strategy introduced in 2018 prevents people from applying for housing in their communities if they have certain drug convictions. This policy is likely to disproportionately impact people living with mental health difficulties and co-existing or past substance abuse issues. The Antisocial Behaviour Management Policy (updated in 2018) applies a "three strikes" approach to evicting tenants which also has a disproportionate impact on people living with mental health difficulties.

Another issue is a lack of coordination between social housing providers and health services and a lack of engagement with local NGO partners such as KLC has led to homelessness and/or significant distress for people living in social housing with mental illness, as shown in the case studies below.

### Case study – Sebastian

*Sebastian is over 80 years old and lives with a vision impairment and significant mental illness. His English is limited. He lived in a Housing NSW flat with his partner, who was also his primary carer. The lease for the flat was in his partner's name. While in hospital for treatment his partner took out an interim AVO against him which meant that he could not return to the flat. He did not have any family he could stay with.*

*The Hospital social worker became aware of the housing situation but could not extend Sebastian's stay at the Hospital. The social worker and KLC assisted Sebastian to apply for social housing in his own right, but Housing NSW advised that it could be over a year before he was found a place to live.*

*Sebastian was offered limited emergency housing in motels, but this eventually ran out. He began to sleep in parks or on friends' couches. KLC advocated on Sebastian's behalf with Housing NSW, and co-ordinated support letters from medical professionals and social workers. Because of his age, disability and basic English he was unable to do this himself. After daily contact from KLC for over three weeks Housing NSW eventually offered him the lease to a unit.*

*In the meantime, Sebastian experienced more than a month of homelessness sleeping in parks, friends' couches or hospital, a truly appalling situation for an elderly blind man.*

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<sup>1</sup> Key research is set out in the HMHA Review Background Paper.



### Case study - Wei

*Wei was a long-term social housing resident with significant psychiatric illness. He lived alone with assistance from community-based mental health services. During his tenancy he was hospitalised for a period of almost 6 months to receive medical treatment for a severely impacting psychiatric illness. Housing NSW sent Wei an eviction notice for not occupying his premises in breach of their “allowable absences” policy.*

*It was vital that Wei be allowed to spend time in his flat before discharge from hospital as part of his rehabilitation. Day visits were taking place, to be increased to overnight stays. Housing NSW sent the eviction notice without consulting the hospital social workers or ensuring that Wei would not be evicted to homelessness. The proposed eviction greatly distressed Wei and exacerbated his condition.*

*KLC was contacted by Wei’s hospital social worker. The eviction notice was not withdrawn until KLC assisted Wei to make a discrimination complaint. We argued that Housing NSW’s policies were discriminatory in that people with significant disabilities sometimes need to be away from home for longer periods of time to receive medical treatment. This example shows a complete lack of collaboration between Housing NSW and health services and a disregard for the significance of stable accommodation for recovery and rehabilitation.*

The housing outcomes and well-being of people in our community will be best achieved if there are clear and enforceable obligations for housing providers and NSW Health with respect to people who are experiencing mental health difficulties.

**We recommend that the revised HMHA require FACS (Housing NSW), community housing providers and NSW Health (as appropriate) to commit to:**

- **Engage with NGO partners in their local areas in a real and effective way, for example by monthly user groups set up in each local area where individual cases can be discussed and progressed;**
- **Establishing specialist staff member(s) in each Housing NSW office who are a contact point for NGO partners and health services, and are responsible for ensure the local implementation of the HMHA;**
- **Provide one-on-one support via caseworkers and/or mental health workers to people living in social housing who are experiencing mental health difficulties;**
- **Require FACS to ensure all tenancy policies comply with their commitments under the HMHA before they are published and implemented; and**
- **Use eviction as a last resort for people who are experiencing mental health difficulties.**

**The HMHA must also ensure that community housing providers that are operating public housing services on behalf of the NSW Government have the same obligations and standards as Housing NSW.**

The obligations outlined above are most likely to be effective if they are also implemented in our laws, regulations and policies outside of the HMHA. The obligations in the HMHA should be considered in decision making about the social housing applications and tenancies of people living with mental health difficulties.

**We recommend that:**

- 1. Legislative and/or regulatory changes should be made to require the NSW Civil and Administrative Tribunal to consider a social housing provider's compliance with the Housing and Mental Health Agreement (and any other relevant FACS policies regarding people experiencing mental ill-health) before issuing a notice of termination to evict a tenant.**
  
- 2. Positive obligations should be placed on Housing NSW and community housing providers to:**
  - a. Ensure their tenancy policies meet the objectives of and comply with the HMHA;**
  - b. Transfer rather than tenants accused of 'anti-social' behaviour, particularly when they experience mental ill-health or a disability. Housing NSW and community housing providers should administer their role as landlord to evict only as a last resort and where all available interventions have been tried.**

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**Need for investment in housing and support services**

*Availability of social housing*

There is a well-established link between mental ill health and homelessness.<sup>2</sup> Despite this, there is still a significant lack of social housing available for those who are experiencing homelessness. Nationally there were approximately 200,000 people on the waitlist for social housing in 2016, resulting in wait times of two years or more. There is a general shortage of social housing as well as a particular shortage of specific supported housing for people experiencing mental ill health.<sup>3</sup> This is an unacceptable position when we know the harm that homelessness causes to health, and the benefits that can flow from housing stability.

**Case study - Philippa**

*Philippa was homeless and had been living in her car for around 2 years when she first came to KLC. Her mental health illnesses made it impossible for her to access shared accommodation such as shelters or boarding houses. Philippa did not have any casework or other social supports. Philippa came to KLC for assistance with a number of unfair fines that she had been issued as a result of her homelessness, including a fine for failing to advise a government body of a change of address and fines relating to parking the car she was living out of.*

*KLC was concerned that Philippa's long-term homelessness was causing her mental and physical health to deteriorate. We supported Philippa to apply for housing through a social housing provider. After 2-3 months of advocacy work, Philippa was able to move into affordable social housing. Philippa told us that she was doing much better since moving into her new home.*

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<sup>2</sup> Australian Housing and Urban Research Institute, *Housing, homelessness and mental health: towards systems change* (2018) 11.

<sup>3</sup> *Ibid*, 17.

### *Standard of social housing*

We see large numbers of social housing tenants who are living or are unable to live in their premises due to the poor state of repair. The failure to maintain premises causes and exacerbates mental health issues. This leads to some people surrendering their housing or ceasing to pay rent, leading to eviction.

#### **Case study – Tiffany**

*Tiffany was a young Aboriginal woman who had just had a baby. She was extremely worried about the condition of her Housing NSW home. It was riddled with repair issues including lots of mould and a toilet that didn't work properly.*

*She was worried about the impact of her mould on her baby and did not want to stay in the premises because of this. She was extremely distressed. She was considering surrendering the tenancy and living with friends and family because her attempts to get repairs had not worked. She didn't feel she would be able to get her home safe for her baby. With advocacy from KLC and an application to NCAT Tiffany got her premises repaired. It took months. Without this help it is highly likely she would have decided being homeless was better for her and her baby.*

### *Support services to establish and maintain tenancies*

KLC works with a number of different support services in our area. Many of these services have been serving the community in South Eastern Sydney for many years. They were created pre-NDIS to provide support to people with a range of mental health illnesses including psychosocial disability. Services provide support such as assisting with access to other services, advocacy, social participation and recovery and rehabilitation.

Mental health support services are reducing their services due to mental health funding being transferred to the NDIS, creating a funding shortfall.<sup>4</sup> The NDIS eligibility criteria requires applicants to prove their disability is permanent,<sup>5</sup> while people with mental health problems are generally treated with the goal of recovery.<sup>6</sup>

For this and other reasons, there is a lack of access to community service professionals including social workers, financial counsellors, mental health nurses, Aboriginal support workers, drug and alcohol workers and disability workers that are critical to preventing people from becoming homeless and helping them to sustain housing. It is uncommon for our clients to have the support of a specialist worker which is often why their housing is at risk, necessitating the need for legal assistance. Investment in adequate community support as an early intervention will be a cheaper investment than dealing with the cost of homelessness, as acknowledged in the current HMHA.

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<sup>4</sup> Liz Hobday, 'Patients Lives at Risk after NDIS Funding Redirected, Mental Health Victoria Says' ABC News (online, 7 May 2018) <<http://www.abc.net.au/news/2018-05-07/ndis-mental-health-funding-changes-puttinglives-at-risk/9732596>>.

<sup>5</sup> National Disability Insurance Scheme Act 2013 (Cth) s 24(b).

<sup>6</sup> Christopher Knaus, 'NDIS: People with Severe Mental health Problems being Denied Access on a Daily Basis' ABC News (online, 18 September 2017) <https://www.theguardian.com/australia-news/2017/sep/18/ndis-people-with-severe-mental-health-problems-being-denied-access-on-a-daily-basis>

### Case study – Jo

*Jo lived with her mother in public housing for decades. Her mother passed away, leaving Jo devastated and alone in the flat. She got by with support from neighbours who had known her for her whole life.*

*A significant time after her mother passed away, Jo was shocked to receive a letter advising her that the tenancy of the flat was being terminated. Until that point, Housing NSW had not realised that Jo's mother had died. Jo had not realised that her name was not on the lease for the flat. Without engaging with Jo, Housing NSW issued an eviction notice.*

*Since the eviction notice was issued, Jo's depression has worsened severely, and she has become suicidal. If tenancy management practices were more holistic and involved regular check-ins with tenants, Housing NSW would have found out about Jo's need to be on the lease and her mother dying before matters escalated. With proper support and better policies around eviction of tenants experiencing mental illness, this situation could have been avoided.*

### Case Study – Sen

*When Sen came to KLC he was 30 years old. His mother was an alcoholic and was murdered when he was 18 years old. He suffered from anxiety, panic attacks and other psychiatric disorders and had associated difficulties with drug and alcohol use. Neighbours assaulted him in his public housing complex. People began staying in his public housing unit without his permission. Fearful of them he left his unit for a period of time. When he returned his unit was trashed. Housing NSW evicted him from his property and he is now homeless and ineligible for public housing because he breached his residential tenancy agreement.*

**We recommend that the NSW government make significant investments to:**

- 1. Increase the availability and standard of social housing, including supported housing for people who experience mental illness;**
- 2. Increase the provision of specialist homelessness and mental health services, including social workers, financial counsellors, mental health nurses, Aboriginal and Torres Strait Islander support workers, drug and alcohol workers and disability workers.**

### **Housing as a human right**

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There are many overlapping kinds of disadvantage that can affect mental health, including socioeconomic circumstances, employment, housing, incarceration and presence or absence of social networks.<sup>7</sup> In KLC's view any assessment of mental health interventions and systems must incorporate a human rights based approach.

Australia has many legal obligations to people experiencing mental ill health under international treaty law. A non-exhaustive selection includes:

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<sup>7</sup> Ibid.

1. ***The right to non-discrimination and equality*** – Articles 2 and 26 of the International Covenant on Civil and Political Rights (ICCPR) and article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provide the right to non-discrimination and equality.
2. ***The right to health*** – Article 12 of ICESCR establishes the right of individuals to the highest attainable standard of physical and mental health.
3. ***Rights of people with disability*** – Under the Convention on the Rights of Persons with Disabilities (CRPD), Australia has obligations to ensure and promote the full realization of all human rights for all people with disability without discrimination.<sup>8</sup>
4. ***Rights to protection from other forms of discrimination*** – Rights to be free from all forms of discrimination are also enshrined in other international instruments such as the International Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Elimination of all Forms of Discrimination against Women, the Convention on the Rights of the Child and the Convention relating to the Status of Refugees.

Many people experiencing mental ill health may also face discrimination and marginalisation due to the intersection of disability discrimination with other forms of discrimination on the basis of gender, race, or sexual orientation and gender identity. A human rights based approach recognises the intersecting barriers facing people experiencing mental ill health and emphasises their autonomy and agency. Such an approach would also ensure that laws and policies are created with the principles of non-discrimination and equality firmly in mind, and that the process is inclusive of those who are most vulnerable.

KLC's understanding is that a human rights based and person-centred approach to mental health practice and policy would be better served by language that does not refer to 'disorders'.<sup>9</sup> The HMHA should also reflect that people often face multiple and intersecting forms of disadvantage and discrimination, and there is a need for all government services and support services to be provided in ways that are trauma-informed, gender-appropriate and culturally safe.

**We recommend that:**

1. **NSW government departments including FACS and NSW Health adopt a human rights based approach when making mental health law and policy decisions, including to the review and replacement of the Housing and Mental Health Agreement; and**
2. **The language and approach of the HMHA be reviewed and updated in consultation with people with lived experience of mental health problems.**

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<sup>8</sup> CRPD, art 4.

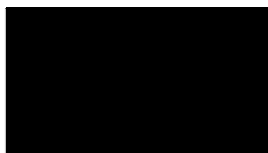
<sup>9</sup> See, for e.g., Mental Health Coordinating Council, 'Recovery-Oriented Language Guide' (2018), available at: [www.mhcc.org.au](http://www.mhcc.org.au).

## Conclusion

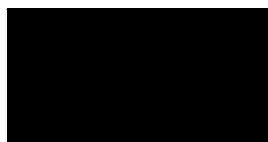
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Thank you for your consideration of our submission. If you wish to discuss anything further, please contact us at [legal@unsw.edu.au](mailto:legal@unsw.edu.au) or on (02) 9385 9566.

Yours faithfully,  
KINGSFORD LEGAL CENTRE



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