



27 February 2014

The Director  
Select Committee on Social, Public and Affordable Housing  
Parliament House  
Macquarie St  
Sydney NSW 2000

KINGSFORD  
LEGAL CENTRE

**By email:** [socialhousing@parliament.nsw.gov.au](mailto:socialhousing@parliament.nsw.gov.au)

Dear Director,

**Re: Social, public and affordable housing inquiry**

Kingsford Legal Centre (**KLC**) thanks you for the opportunity to provide a submission on inquiry into social, public and affordable housing (**the Inquiry**). All case studies used have been de-identified to protect our clients' confidentiality.

**Kingsford Legal Centre**

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

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 also undertakes law reform and policy work in areas where the operation and effectiveness of the law could be improved.

There are almost 2,000 public housing tenants living in the Randwick and Botany Local Government areas. In 2013 KLC provided 199 advices in relation to tenancy law, which was almost 11% of all advice provided (1804 advices). Of the advice provided in 2013, almost 39% of people advised rented in the private market, 18% lived in public housing, 3% boarded and 11 people identified as homeless.

**Housing as a human right**

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The right to safe, secure and affordable housing is a human right. In KLC's experience housing affordability is the key to people being able to deal with the issues they face in their lives.

Article 25(1) of the *Universal Declaration of Human Rights* states that:

'Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.'

In 1991, the Committee that has the responsibility of monitoring and implementing the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* elaborated on what defines a right to housing with the passing of *General Comment No. 4*.



The right to adequate housing, which is derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights.<sup>1</sup> Adequacy has a number of components:

'Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at a reasonable cost.'<sup>2</sup>

Affordability is viewed as a fundamental component of adequacy:

'Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs.'<sup>3</sup>

Drawing on *General Comment 15* of the Committee on Economic, Social and Cultural Rights it has been argued that if a State is unwilling to use the maximum of its available resources for the realisation of the right, they are in violation of their obligations.<sup>4</sup>

Despite international obligations to ensure adequate and affordable housing for all people, Australia governments continue to privilege home owners and investors in housing, at the expensive of those who rent their properties through the private rental market or through public and community housing providers.

### **Unaffordable housing crisis**

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While 'housing affordability' dominates national headlines around the difficulties faced by first home owners to buy their own home, in reality housing affordability for a growing number of Australians is the narrow and marginal manner in which they must try to maintain some form of secure housing through renting in the private market or public or community housing.

Tax concessions available to home owners and investors are causing an overinvestment in housing. Demand for housing stock is exceeding supply of housing stock causing the cost of housing to increase at a rate that has exceeded the growth of household incomes.

In the 1960 to 2006 period, average household real income increased by 1.9% annually, whereas house prices increased by an average of 2.6% annually.<sup>5</sup> The gap between household income and housing costs increased markedly at the turn of the millennium, between 2001 and 2006, gross income grew by 31.2%, whereas housing costs grew by 62%.<sup>6</sup> The growing gap between household income and housing costs has increased the demand for affordable housing.

Competition for property is intense and anyone on a Centrelink income, such as older people, young unemployed people, single parents, people exiting prisons and people with

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<sup>1</sup> United Nations (1991) *The Right to Adequate Housing, Article 11 (1): CESCR General Comment 4*. Geneva: United Nations, Office of the High Commissioner for Human Rights.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> McRae, R. and Nicholson, D. (2004) 'No Place like Home: Homelessness in Australia and the Right to Adequate Housing', *Australian Journal of Human Rights*, Vol. 10, No. 2, p 36-37.

<sup>5</sup> Yates, J. and Milligan, V. with Berry, M., Gabriel, M., Phibbs, P. Pinnegar, S. and Randolph, B. (2007) *Housing Affordability: A 21st Century Problem: National Research Venture 3: Housing Affordability for Lower Income Australians*, Melbourne: Australian Housing and Urban Research Institute.

<sup>6</sup> Ngu, Q., Harding, A., Tanton, R., Nepal, B. and Yogi, V. (2008) *Advance Australia Fair? Canberra: National Centre for Social and Economic Modelling (NATSEM) and AMP.*



disabilities, face extreme difficulty obtaining private rental accommodation. In KLC's catchment area, there is also fierce competition with many well-resourced domestic and international students who are seeking accommodation near UNSW.

The housing affordability crisis in NSW is also felt acutely by a wide range of other groups, including less well-resourced students, community workers, low paid and casual workers and people with a less than perfect renting record. In our experience there is a hidden group of people who are moving constantly from insecure accommodation, to insecure accommodation and in some cases into hospitals or prison and back into insecure accommodation.

Housing unaffordability, while being a source of great stress for individuals, also has huge impacts on our local community because relationships are severed when people are forced to vacate their homes and relocate. This causes major disruptions to families, and is particularly disruptive to the schooling of children.

Despite this growing and well documented need for affordable housing, there has been decreasing investment in building new public housing stock. The current public housing stock is decaying and being inadequately maintained. At the same time, the criterion to be eligible for public housing has become much more stringent.<sup>7</sup>

In our experience public housing is now only available to people with severe, and multiple disabilities. This has made public housing more than ever, the housing of last resort and remains unavailable to most people, even people who have chronic health problems, are experiencing extreme poverty and have no real prospect of being able to find safe and affordable housing in the private sector.

We are particularly concerned about:

- shrinking public housing eligibility contributing to an increase in the amount of people experiencing housing stress, living in unstable housing and homelessness;
- poor administration of public housing and the detrimental impact it is having on vulnerable people living in public housing; and
- inadequate accountability mechanisms available to people seeking to have decisions made by Housing NSW reviewed.

We support the recommendations made by the NSW Council of Social Service (**NCOSS**) in their pre-budget submission, which proposes to expand the supply of affordable housing and reduce the level of homelessness.<sup>8</sup>

We also make recommendation to improve the administration of public housing in NSW.

### **Shrinking eligibility for public housing**

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As a large proportion of KLC's clients are socially and financially disadvantaged, housing issues are at the core of the multitude of legal problems that they face. Shrinking public housing eligibility is making it extremely difficult for some of our vulnerable and disadvantaged clients to secure and maintain adequate housing.

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<sup>7</sup> Morris, Alan (2010) 'The lack of a right to housing and its implication in Australia' *Journal of Australian Political Economy* No 65.

<sup>8</sup> NSW Council of Social Service, 'NCOSS Pre-Budget Submission Social and economic priorities for a fair and sustainable community: 2014-2015 State Budget' (October 2013) <http://ncoss.org.au/resources/pbs/pbs2014-15.pdf> viewed 27 February 2014, p 20-24.



**Most clients who are reliant on social security** are finding it incredibly difficult to secure private and/or public housing.

April

*April is 65 years old and currently lives with her son. Her son is getting married and wants her to move out. Her sole source of income is the aged pension. She has a number of credit card debts.*

*She applied and was approved for public housing but not for priority housing because Housing NSW calculated her rental affordability to be \$320 per week and advised her that she could find suitable private rental accommodation in the Eastern Suburbs while she waited on the public housing list.*

*Housing NSW's most recent rent and sales reports identify that the median price for a one bedroom house in the eastern suburbs is \$490, while a two bedroom house is \$625.*

*The current rate of the disability support pension and the aged pension is \$751.70 per fortnight. Rent assistance is \$124 per fortnight. The current rate of the Newstart allowance is \$501 per fortnight.*

*Housing NSW also does not take into account April's personal debts when determining whether she can afford to rent in the private market.*

Peta

*Peta is 67 years old and was living with Sarah in public housing. Sarah was the tenant and Peta was an authorised occupant, providing Sarah with full time care. Sarah passed away and Peta had to move out of the property.*

*Peta's sole source of income is the aged pension. Housing NSW deemed she was eligible for housing, but not priority housing because they believed that she could afford to pay private rent of \$240/week, that being 60% of her income.*

The manner in which public housing has been administered in recent years has been to significantly decrease eligibility for public housing. This has primarily occurred through the application of housing policy around criteria such as whether an applicant has demonstrated "need" for public housing and whether they are able to resolve this need in the private rental market.

The application of this policy has become narrower and narrower, and now determines that an applicant is able to resolve their need in the private rental market if there are private rental properties that would cost 50% of their income in rent. This is despite all recognised housing affordability measures placing housing affordability at the allocation of 30% of income to rent.

The policy also fails to consider the real financial circumstances of the applicant by excluding factors such as debt, and often takes an approach that suggests that applicants should simply move to wherever there is cheaper private rental accommodation. In Sydney this is a difficult proposition as more and more suburbs become unaffordable.

The application of this policy also fails to consider whether an applicant is actually able to secure a private property, which for many people on low income is extremely difficult. This is especially the case for people with specific housing needs, including people with disabilities and people who require housing in a particular locality (for proximity to medical services or schools) or for people with poor private rental histories

**Women escaping domestic violence** also face significant barriers trying to obtain affordable housing.



### Meena

*Meena arrived in Australia from China in 2012 on an 'Other Family (Class BO) Carer (Subclass 116)' visa. This visa gives Meena permanent residency.*

*Meena was providing full-time care for her husband, who suffers from schizophrenia, until he starting becoming violent. As a result of this domestic violence, Meena had to move out of the home she was sharing with her husband and now lives in crisis accommodation for single women escaping domestic violence, which is provided by a charity organisation.*

*Her son currently lives overseas with family, who are no longer able to care for him due to illness. Meena's current housing provider does not provide accommodation for children, so she will not be able to continue to live in her current accommodation once her son arrives.*

*Meena applied for public housing but was rejected because Housing NSW policy states that people on carer's visas' are not eligible for public housing until they have lived in Australia for 10 years.*

*Meena currently receives a Special Benefit Payment from Centrelink and, due to her limited English language skills, is unlikely to be able to find work to support herself and her son in the private rental market. Meena and her son face the very real prospect of homelessness once he arrives in Australia.*

The rationale for denying people on subclass 116 visas access to public housing is that they are not eligible for social security and could not sustain a tenancy. However, Meena's case demonstrates that that rationale is flawed. This policy is also inconsistent with Commonwealth immigration law that recognises the rights of migrants who experience domestic violence.

In our experience, women who escape domestic violence, even with children and on Centrelink income, are unlikely to be eligible for public housing unless they or their children have multiple disabilities.

It is also often difficult for victims of violence to satisfy Housing NSW that they need priority housing due to domestic violence. Housing NSW often requires excessive documentary evidence of domestic violence, such as evidence that the perpetrator has been charged with a domestic violence offence, before they will approve priority housing, even though their policy, which sets out the evidence requirements for priority housing, does not require evidence of charges or convictions.

These expectations are inconsistent with the common understanding that victims of domestic violence are often reluctant to report violence to the Police because they fear the violence will escalate.

Tightening the eligibility for housing is not helping to reduce the number of people on the waiting list for housing. It is rather increasing the number of people experiencing housing stress in the private market and is forcing people to live in unstable housing arrangements and is making more and more people homeless.

### **Poor administration of public housing**

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The demand for public housing, in conjunction with the under resourcing of Housing NSW, has fundamentally affected the manner in which public housing is administered.

A key feature of the recent administration of public housing in NSW is penalising people who are extremely vulnerable and disadvantaged, by evicting them or increasing their rent to



unaffordable levels. This strategy appears to be used as a tool to reduce public housing waiting lists; however it is failing to do so and arguably will continue to fail to do so.<sup>9</sup>

KLC often works with extremely vulnerable clients who have no support from any services and who are facing the real threat of eviction as well as clients who are already homeless. In our experience, people with significant disabilities, who live in public housing, often struggle to maintain their tenancies and are not provided with any additional support from Housing NSW or referral to appropriate services.

Sen

*Sen is 30 years old. His mother was an alcoholic and was murdered when he was 18 years old. He suffers from anxiety, panic attacks and other psychiatric disorders. He engages in sex work to fund his drug and alcohol addiction.*

*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.*

The Housing NSW policy, which determines that former Housing NSW tenants are ineligible for public housing, does not adequately take into account the tenant's circumstances. In our experience, it serves to entrench discrimination and disadvantage against people with extremely complex needs who should not be excluded from public housing.

In our experience, public housing is not administered in collaboration with other government services, and public housing tenants, by and large do not receive the necessary social, medical and mental health support they require to maintain successful tenancies and necessary to create positive communities. It has been well documented that while public housing is now only available to people with more complex needs, there has been no associated service strategy to assist in the provision of housing to this group. Likewise, Housing NSW does not administer and service this group with any real expertise in dealing with the complex issues faced by their tenants, and instead often takes a punitive rather than a health approach to issues such as mental illness.

Community services have often become the services of last resort for public housing tenants who are facing significant difficulties in their lives, and are often inadequately resourced to deal with the complexity of the issues these clients face.

**People who work in insecure and variable employment**, such as casual employment, also struggle to maintain their public housing tenancies.

Fabio

*Fabio had been living by himself in public housing for 10 years. He works on and off as a casual forklift driver. He asks his sister to look after the property while he was away from his home for periods of time due to work commitments.*

*Housing NSW found out that his sister was looking after the property occasionally and that he was working casually and revoked his rent subsidy requiring him to pay market of \$450/week instead of his usual \$60/week. Housing NSW also backdated his rent subsidy revocation, which means that he now owes Housing NSW \$23,000.*

<sup>9</sup> Audit Office of New South Wales, New South Wales Auditor-General's Report Performance Audit Making the best use of public housing: Housing NSW Land and Housing Corporation (July 2013) Figure 4, p 45.



The Housing NSW “Charging Rent Policy” which enables Housing NSW to backdate changes in rent subsidies punishes people who to seek paid employment and acts as a disincentive to save money to exit the public housing system.

We are also concerned about the punitive nature of the ‘vacant bedroom charge’. **Public housing tenants** who are deemed to be under-occupying a property are being put in the position of either having to relocate from a property they may have been living in for decades to a new area they are not familiar with and give up meaningful relationships with people and services or pay a more rent out of their already small income.

Public housing tenants are being punished for the lack of public housing stock necessary to house people on the waiting list.

We are also concerned about Housing NSW’s failure to maintain the quality and quantity of their housing stock. **Tenants with disabilities and health problems** suffer extreme hardship living in decaying, dangerous and inappropriate public housing.

David

*David is 67 years old and has lived in public housing for the past 8 years. His home is covered in mould. Housing NSW painted his property four times in the last year to try to cover the mould but nothing has worked. He won’t have friends and family over because the mould is unsightly and smells.*

*Social workers from the hospital are concerned about his health and have been trying to help him to get Housing NSW to transfer him to another property. He is on the transfer list but has been advised it may take some time to find him a property to move in to.*

Kiah

*Kiah has been living in public housing for the past 8 years. She currently lives in a two-storey duplex. She recently started to need to use a wheelchair. She has requested and been approved for a transfer to a single storey property because she cannot access her upstairs bedroom. She sleeps downstairs on the lounge while she waits to be transferred to a more appropriate property.*

Housing NSW is regularly not complying with their obligation under the *Residential Tenancies Act 2010* (NSW) to maintain their housing stock in a reasonable state of cleanliness and fit for habitation.<sup>10</sup> The shortage of public housing stock has also meant that many people live in unsafe and inappropriate housing because they have nowhere else to go.

The failure of Housing NSW to be a ‘best practice’ landlord is especially problematic when the vulnerable and disadvantaged nature of the tenant group is considered. Taking action to enforce their tenancy rights is particularly challenging for public housing tenants. Even when they do so, it is our experience that there is routine non-compliance with ordered repairs, often due to more significant and problematic structural issues than cannot be resolved easily.

The value of public housing stock depreciates the longer it remains in disrepair, getting to a point when it more beneficial to sell the property than repair it. The underinvestment in public housing has meant that when housing stock is sold, it is rarely replaced with the same amount of housing stock, which again puts more pressure on the public housing system and people needed access to public housing and people living in public housing.

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<sup>10</sup> Section 52(1).



**Victims of domestic violence** also have difficulty sustaining their public housing tenancies due Housing NSW policies that do not allow them to apply to be recognised as a tenant.

*Phillippa*

*Phillippa is 66 years old and has been living in public housing for the past 25 years with her abusive husband. Her husband the tenant and she was an authorised occupant.*

*After Phillippa's husband left her, she found out that he was running several businesses. Phillippa doesn't have any access to profits from the businesses. Her sole source of income is the aged pension.*

*Phillippa applied to remain living in the property, however her request was denied because Housing NSW recognition as a tenant policy does not apply in circumstances of family breakdowns.*

*Phillippa was not eligible to be housed elsewhere either because her husband ran a business, even though she did not have access to any of the profits of the business and could not afford to rent in the private market.*

Housing NSW "Changing a Tenancy Policy" does not allow vulnerable victims of domestic violence who are not tenants to apply to remain living in the property. This policy is at odds with the NSW Government policy that recognises the right of victims of domestic violence to either stay or leave their home. It is also inconsistent with the rights that people living in private rental accommodation have to apply to be recognised as a tenant.

### **Inadequate accountability mechanisms**

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We are concerned that people applying for public housing and living in public housing do not have adequate means to seek to review decisions made by Housing NSW.

Currently, people applying for public housing and living in public housing have rights to apply for an internal review of some Housing NSW decisions. If they are not satisfied with the outcome of the internal review, they may be able to appeal to the Housing Appeals Committee (**HAC**).

HAC can review some Housing NSW decision but does not have the power to make binding orders, it only has recommendatory powers. Housing NSW is not obliged to implement their recommendations.

As appropriate and stable housing is an essential part of life, people should have the opportunity to have decisions made by Housing NSW about their housing reviewed by a low cost, user-friendly independent body that has the power to make binding decisions.

### **Recommendations**

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We support the following proposals developed by NCOSS set out in their 2014-2015 pre-budget submission.<sup>11</sup> NCOSS recommends that NSW Department of Family and Community Services (**FACS**) and the NSW Department of Planning (as appropriate):

- develop a formal plan, with numerical targets, to increase the supply of social and affordable housing over the next four years. The plan should be developed on a cross-portfolio basis within the NSW Government, and in partnership with the Federal Government;

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<sup>11</sup> NSW Council of Social Service, 'NCOSS Pre-Budget Submission Social and economic priorities for a fair and sustainable community: 2014-2015 State Budget' (October 2013) <http://ncoss.org.au/resources/pbs/pbs2014-15.pdf> viewed 27 February 2014, p 20-24.



- progressively fund 200 Housing and Mental Health Support Packages for existing public and community housing tenants with an identified serious mental health condition over three years, commencing with an initial 60 support packages for 2014-15;
- provide capital funding for a Community Housing Social Investment Fund to develop additional social and affordable housing in agreed high need areas;
- provide additional funding to ensure that flexible brokerage assistance for the purchase of goods and services can be accessed through a sufficient number of Specialist Homelessness Services in each Local FACS District; and
- continue funding for the *Going Home Staying Home* Industry Development Partnership beyond 2013-14.

We also make the following recommendations:

- the international human right to adequate housing should be enshrined in domestic legislation;
- establish a low cost, user-friendly independent body that has the power to review decisions made by Housing NSW and community housing providers and make binding decisions;
- the NSW Government and/or the Commonwealth Government should fund the repair of public housing stock to ensure compliance with their obligation under the *Residential Tenancies Act 2010* (NSW) to maintain properties in a reasonable state of cleanliness and fit for habitation;
- the Housing NSW "*Social Housing Eligibility and Allocations Policy Supplement: Eligibility for priority housing – unable to resolve need in private rental market*" should be amended to state that housing providers should consider rent is "affordable" if it does not exceed 30% of the household's total net income, taking into account personal debts and the particular needs of the person;
- the Housing NSW "*Social Housing Eligibility and Allocations Policy Supplement: Exceptions to the permanent residency rule*" should be amended allowing sponsored migrants who are permanent residents and are able to sustain a tenancy to be eligible for public housing;
- Housing NSW and community housing staff should attend training about domestic and family violence, including training about the evidentiary requirements necessary to apply for priority housing;
- Housing NSW and community housing staff should attend regular training on discrimination law and in particular, the duty not to discriminate in their decision making in relation to people with a disability;
- remove '*Ending a tenancy – Categorising a tenancy*' from the Housing NSW '*Tenancy Policy Supplement*' or alternatively amend '*Ending a tenancy – Categorising a tenancy*' to require Housing NSW and community housing providers to consider the person's circumstances before categorising them;



- the Housing NSW *'Charging Rent Policy'* should be amended to remove the option to backdate a reduction in rent subsidies and to apply a 'vacant bedroom charge'; and
- the Housing NSW *'Changing a Tenancy Policy: Recognition as a tenant policy'* should be broadened to give occupants who have experienced family or domestic violence the right to apply to be recognised as a tenant.

Please do not hesitate to call us on (02) 9385 9566 if you would like to discuss the content of our submission further.

Yours faithfully,

**KINGSFORD LEGAL CENTRE**



Kellie McDonald  
Solicitor



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