

**Submission
No 215**

**INQUIRY INTO SOCIAL, PUBLIC AND AFFORDABLE
HOUSING**

Organisation: Women's Legal Services NSW

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7 March 2014

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

By email: socialhousing@parliament.nsw.gov.au

Dear Director,

NSW Inquiry into social, public and affordable housing

About Women's Legal Services NSW

1. Women's Legal Services NSW (WLS NSW) thanks the Select Committee on Social, Public and Affordable Housing for the opportunity to make a submission to the Inquiry into social, public and affordable housing.
2. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims compensation, care and protection, human rights and access to justice.
3. This submission draws on the experiences of our clients who are victims/survivors of domestic and/or family violence seeking housing in NSW. We submit that the current housing options for such women and their children are inadequate and appropriate housing strategies must be developed as a matter of urgency.

Summary of Recommendations

4. In summary we recommend:
 - 4.1 The response to social, public and affordable housing must be grounded in a human rights framework;
 - 4.2 Review and improvement of housing options for women and children experiencing domestic and family violence must be a priority;



- 4.3 A substantial increase in public housing stock available for victims/survivors of domestic and/or family violence;
- 4.4 The rental subsidy program, Start Safety, continue with discretion for applicants to receive the subsidy beyond 24 months;
- 4.5 Where permanent public housing property is the most suitable option for a victim/survivor of domestic and/or family violence, rent should be subsidised for the period it takes for a public housing property to become available;
- 4.6 Expansion of current public housing products to support clients accessing the private rental market such as the Private Rental Brokerage Service and Tenancy Guarantee;
- 4.7 Increase funding for women's refuges and emergency accommodation;
- 4.8 Housing NSW Domestic and Family Violence Policy should have a greater focus on prioritising housing for women and children where there is domestic and/or family violence;
- 4.9 'Housing NSW ensure that staff in Housing Offices are applying social housing policies accurately and consistently in relation to victims/survivors and children seeking housing as a result of domestic and/or family violence' as recommended in the *Domestic violence trends and issues in NSW Report*;
- 4.10 'The NSW Government fund an expansion of the Staying Home Leaving Violence program across the State, including an expansion of the current funding available to each site' as recommended in the *Domestic violence trends and issues in NSW Report*;
- 4.11 Introducing additional mechanisms to end a Residential Tenancy Agreement (RTA) by way of notice and without penalty in circumstances of domestic and/or family violence other than just a final apprehended violence order (AVO) with an exclusion order;
- 4.12 The *Residential Tenancies Act 2010 (NSW)* should be amended so that perpetrators of domestic and/or family violence who cause damage to property are held liable for the damage;
- 4.13 The introduction of a specific defence to blacklisting on a tenant database where there is evidence of domestic and/or family violence;
- 4.14 Amend the *Residential Tenancies Act 2010* to clearly state that you can pre-emptively prevent a blacklisting on tenant databases in circumstances of domestic and/or family violence through an application at the time of any NSW Civil and Administrative Tribunal (NCAT) proceedings around termination or debts;
- 4.15 Domestic and family violence be included as a protected attribute in the *Anti-Discrimination Act 1977 (NSW)*.

Domestic Violence and Homelessness

5. Violence against women is one of the most widespread human rights abuses in Australia. Domestic and family violence puts more women aged 15-44 years at risk of ill health and premature death than any other risk factor.¹ Violence against women also comes at an enormous economic cost. Research released by the Government shows that each year violence against

¹ VicHealth and Department of Human Services, *The Health Costs of Violence. Measuring the Burden of Disease Caused by Intimate Partner Violence – A Summary of Findings*, 2004 at 10.

women costs the nation \$13.6 billion.² This figure is expected to rise to \$15.6 billion by 2021.

6. It is well documented that domestic and family violence is the biggest single cause of homelessness among women and children.³ The Government has acknowledged the link between domestic violence and homelessness in *The Road Home: A national approach to Reducing Homelessness*, Commonwealth of Australia.⁴ The *National Plan to Reduce Violence against Women and their Children 2010 – 2022* recognises that escaping violence is the most common reason provided by people who seek help from specialist homeless services.⁵
7. It is also our experience that many women who are victims/survivors of domestic and/or family violence remain in a violent home and/or relationship as they simply have no where else to go. We note that this is a common experience reported by domestic violence services and refer to the report by the Legislative Council Standing Committee on Social Issues, *Domestic violence trends in NSW* wherein it is stated that:

*A number of participants including Homelessness Australia, Mt Druitt Family Violence Response and Support Strategy Leadership Group, the Women's Refuge Movement, Ms Betty Green, Manager of Liverpool Women's Health Centre and Convenor of NSW Domestic Violence Coalition, and the Immigrant Women's Speakout Association all argued that without safe, affordable housing, victims risk becoming homeless, or may stay in or return to situations of violence.*⁶

8. We are deeply concerned that the inadequate housing options for women means that they are exposed to unacceptable risks to their safety and in some circumstances unable to escape domestic and/or family violence.
9. We submit this is a violation of human rights as outlined below.
10. Given the above, we seek to highlight that women and children experiencing domestic and/or family violence are one of the most vulnerable groups when looking at the housing needs of the community. Review and improvement of housing options for women and children experiencing violence should be made a priority.

Australian Human Rights Obligations

Right to adequate housing

11. The right to adequate housing is found in Articles 11 and 2 of the *International Covenant on Economic, Social and Cultural Rights*, ratified by Australia on 10 December 1975.
12. Pursuant to Article 11(1) of the *International Covenant on Economic, Social and Cultural Rights*, State parties 'recognize the right of everyone to an adequate standard of living for himself/herself and his/her family, including adequate food, clothing and housing and to the continuous

² KPMG, *The Cost of Violence against Women and their Children. Safety Taskforce*, Department of Families, Housing, Community Services and Indigenous Affairs, Australian Government, 2009.

³ *Women, Domestic and Family Violence and Homelessness: A synthesis report*, Commonwealth of Australia accessed on 25 February 2014 at <http://www.fahcsia.gov.au/our-responsibilities/women/publications-articles/reducing-violence/women-domestic-and-family-violence-and-homelessness-a-synthesis-repor?HTML#sum>

⁴ *The Road Home: A national approach to Reducing Homelessness*, Commonwealth of Australia, 2008 at 7.

⁵ *National Plan to Reduce Violence against Women and their Children 2010 – 2022*, Commonwealth of Australia, 2012 at 8.

⁶ Legislative Council Standing Committee on Social Issues report 46, *Domestic violence trends and issues in NSW*, August 2012 at 136.

improvement of living conditions.’⁷

13. The core elements of this right are outlined in *General Comment No.4* of the United Nations Committee on Economic, Social and Cultural Rights and include: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.⁸
14. We submit that the right to adequate housing is more than a right to shelter and specifically includes a right to be secure, safe and free from violence in your home. *General Comment No.4* states:

*In the Committee’s view, the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity. Rather, it should be seen as the right to live somewhere in security, peace and dignity.*⁹

15. We also note, as outlined in *General Comment No.4*:

*While the most appropriate means of achieving the full realization of the right to adequate housing will inevitably vary significantly from one State party to another, the Covenant clearly requires that a State party take whatever steps are necessary for that purpose.*¹⁰

16. And further, the obligation is ‘to demonstrate that, in aggregate, the measures being taken are sufficient to realize the right for every individual in the shortest possible time in accordance with the maximum available resources.’¹¹

Obligation to eliminate violence against women

17. Australia’s human rights obligations to eliminate violence against women are outlined in the *Convention on the Elimination of All Forms of Discrimination Against Women 1979* (CEDAW) ratified by Australia on 28 July 1983 and *CEDAW Committee General Recommendation No 12 (General Comment No 12)* and *CEDAW Committee General Recommendation No 19 (General Comment No 19)*.

18. *General Comment No 19* makes clear that gender-based violence is a form of discrimination within Article 1 of *CEDAW*¹² and Article 2 of *CEDAW* obliges state parties to legislate to prohibit all discrimination against women. Such violence is a violation of the rights to life, to equality, to liberty and security of person, to the highest standard attainable of physical and mental health, to just and favourable conditions of work and not to be subjected to torture and other cruel, inhuman, or degrading treatment or punishment.¹³

19. Under international human rights, States are required to act with due diligence to protect,

⁷ Article 11(1) *International Covenant on Economic, Social and Cultural Rights* (ICESCR), ratified by Australia on 10 December 1975.

⁸ CESCR Committee *General Comment No. 4: The right to adequate housing*, UN Doc E/1992/23 (1991) at para 8.

⁹ CESCR Committee *General Comment No. 4* at para 7.

¹⁰ CESCR Committee *General Comment No. 4* at para 12.

¹¹ CESCR Committee *General Comment No 4* at para 14.

¹² CEDAW Committee, *General Recommendation No. 19: Violence against Women*, UN Doc A/47/38 (1992), para 7.

¹³ *CEDAW Committee General Comment No 19*, para 7. See also: *International Covenant on Civil and Political Rights* (ICCPR) ratified by Australia on 13 August 1980, Articles 2, 3, 7 and 26; ICESCR Articles 3 and 10.

promote and fulfil their human rights obligations.¹⁴

20. Additionally, *CEDAW Concluding Observations* on Australia in 2010 recommended that Australia develop strategies to prevent homelessness resulting from domestic/family violence.¹⁵

Recommendations:

The response to social, public and affordable housing must be grounded in a human rights framework.

Review and improvement of housing options for women and children experiencing domestic or family violence must be a priority.

Housing difficulties faced by women experiencing domestic & family violence

21. We submit that the inadequacy of housing options for victims/survivors of domestic and/or family violence stems from systemic failures across emergency, temporary and long-term housing options across public, social and private housing systems.

Public housing waiting lists and rental subsidies

22. The most significant problem encountered by our clients trying to access public housing is the lack of available properties which result in unacceptable waiting times to access long-term stable accommodation. Despite meeting the criteria for either urgent housing or urgent transfers and despite indicating that they are at risk of harm if they remain living where they are, our clients often are simply not able to access public housing due to lack of available housing stock. We submit that this is unacceptable and places victims/survivors of domestic and/or family violence and their children at risk of further harm.
23. We are supportive of rental subsidy programs, such as *Start Safely*, which are designed to provide some initial assistance to victims/survivors of domestic and/or family violence in the private rental market as they regain their financial independence. *Start Safely* has allowed some of our clients to access the private rental market while they are re-establishing themselves in circumstances where they would otherwise have been unable to enter the private rental market. For these clients this provides a quick and efficient solution to their housing needs which enables them to quickly escape domestic and/or family violence while at the same time providing them with the ability to choose where they live.
24. However, we also submit that the *Start Safely* rental subsidy may not be an appropriate solution for all our clients escaping domestic and/or family violence. Under the program, clients are only supported for a period of up to 24 months, after which they are required to support themselves in the private rental market. While we support programs that assist clients to become financially independent, this is not always appropriate. It is common for our clients to experience long-term psychological, social and economic difficulties as a result of experiencing domestic and/or family violence. This can significantly limit their capacity to work. In such cases permanent public

¹⁴ Human Rights Committee, *General Comment No. 31*, CCPR/C/74/CRP.4/Rev.6, para. 8; Committee on the Rights of the Child, *General Comment No. 5*, CRC/GC/2003/5, 27 November 2003, para. 1; Committee on Economic, Social and Cultural Rights, *General Comment No. 14*, E/C.12/2000/4 (2000), para. 33.

¹⁵ Committee on the Elimination of Discrimination Against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women – Australia*, 30 July 2010, CEDAW/C/AUL/CO/7 at paragraph 29 accessed on 20 February 2014 at: <http://www2.ohchr.org/english/bodies/cedaw/cedaws46.htm>

housing accommodation is a much more appropriate housing solution.

25. Given the obligation on State Parties under ICESCR to take the necessary steps to realise the right to adequate housing for every individual in the shortest possible time in accordance with the maximum available resources, we submit that these obligations require priority to be given to increasing the number of public housing properties available.
26. We recognise that improvements in the public housing waiting lists and availability of public housing stock may take a significant amount of time and resources. However, providing safe housing for women and children is consistent with the State's due diligence obligations discussed above. It is also important that appropriate strategies are put in place to assist women who are experiencing domestic and/or family violence while the system is being improved.
27. We submit that victims/survivors escaping domestic and/or family violence need access to long-term stable accommodation. While there remains a shortage of public housing properties and significant wait times for entry into public housing or for transfers, one option would be to subsidise clients rent in the private rental market for the period of time it takes for appropriate public housing to become available. We propose that clients should pay the same amount in rent that they would if the property was public housing. We note that there already exist similar rental subsidy programs under the Housing Pathways Private Rental Assistance Policy, such as the Private Rental Subsidy – Special; and Private Rental Subsidy – Disability, for clients with HIV/AIDS or disability.¹⁶
28. We note, however, that in addition to the cost of private rental market there are multiple additional barriers that our clients encounter when trying to access the private rental market that make victims/survivors of domestic and/or family violence particularly vulnerable. We submit that these would need to be taken into account when developing any program which channels clients who would otherwise be housed in public housing, into the private rental market. For example, our clients who have previously been living with a violent partner or other family member often have substantial rental debts due to property damage caused by violent family members as well as rental arrears. They also often report that neighbours have made complaints about noise and nuisance and some clients have reported that their partners have harassed real estate agents. These debts, as well as noise and harassment complaints can make it hard to obtain rental references which can make it difficult to obtain private rental properties.
29. In addition to rental subsidies, other public housing products to support victims/survivors of domestic and/or family violence accessing the private rental market are required, such as the Private Rental Brokerage Service and Tenancy Guarantee.¹⁷
30. However we believe that there will still be a significant number of clients for whom the private rental market will not be suitable, even with the above supports, and as such there is clearly still a need to substantially increase the public housing properties available for women fleeing domestic and/or family violence.

¹⁶ Housing Pathways, Private Rental Assistance Policy, accessed on 24 February 2014 at <http://www.housingpathways.nsw.gov.au/Ways=we+can+Help/Private+Rental+Assistance/Private+Rental+Assistance+Policy.htm>

¹⁷ Housing Pathways, Private Rental Assistance Policy, accessed on 24 February 2014 at <http://www.housingpathways.nsw.gov.au/Ways=we+can+Help/Private+Rental+Assistance/Private+Rental+Assistance+Policy.htm>

Recommendations:

A substantial increase in public housing stock available for victims/survivors of domestic and/or family violence.

The rental subsidy program, *Start Safety*, continue with discretion for applicants to receive the subsidy beyond 24 months.

Where permanent public housing property is the most suitable option for a victim/survivor of domestic and/or family violence, rent should be subsidised for the period it takes for a public housing property to become available.

Expansion of current public housing products to support clients accessing the private rental market, such as the Private Rental Brokerage Service and Tenancy Guarantee.

Emergency Accommodation and Refuges

31. We believe that wherever possible victims/survivors of domestic and/or family violence should be assisted in finding long-term permanent housing options as quickly as possible. Given that victims/survivors of domestic and/or family violence may need to leave their home at very short notice there will, however, always be a need for emergency accommodation and women's refuges.
32. Given the gendered nature of domestic and family violence it is imperative that specialist services for women, such as women's refuges, are not replaced by gender-neutral services.
33. Specialist services for women understand the nature and dynamics of domestic and family violence and why such violence is primarily perpetrated against women and children. Such services are important for empowering and supporting women victims/survivors of violence. They provide a safe space for women and children and strongly support holding perpetrators to account. We acknowledge that men can also be victims/survivors of violence and should have access to services. However, this should not be at the expense of women only services.
34. We note that our clients report that it is often difficult to access emergency accommodation or refuges especially where they are living in rural and remote communities. Our clients also report on the significant challenges they face when they are forced to flee to a refuge a significant distance away from their current employment, children's schools and support networks. We endorse Recommendation 31 of the *Domestic violence trends and issues in NSW* report regarding examining the need for additional safe houses in remote communities.
35. WLS NSW sees that there is an increasing demand for women's refuges and emergency accommodation. We recommend that the Going Home Staying Home reforms include a strong commitment to the provision of women specific services that also include children.

Recommendation:

Increase funding for women's refuges and emergency accommodation.

Housing NSW Polices

36. In addition to the inadequacy of available housing stock we have noted some concerns regarding Housing NSW's policies and the implementation of these policies around domestic and family violence.
37. While we acknowledge that the Domestic and Family Violence Housing NSW Policy Statement¹⁸ addresses the issue of domestic and family violence to some extent, this is not sufficient protection for victims/survivors of domestic and/or family violence. We submit that Housing NSW policy should have a greater focus on prioritising housing for women and children where there is domestic and/or family violence. Our clients often have complex needs and the way in which their housing matter is handled can have a significant impact on their safety and the safety of their children.

Case study one

Melinda is living in a Housing NSW property. Her partner, Nigel* becomes extremely violent and threatens to kill her and her children.*

Melinda contacts the police and Nigel is arrested for a domestic violence offence. An ADVO is granted for her protection.

Melinda believes that Nigel is serious about his threats to kill her and makes an application to Housing NSW for a transfer. While she has the ADVO, she feels that she needs even greater protection and doesn't want Nigel to know where she lives.

Melinda is told however that there are no properties available and her only option is to move to a refuge as she is not eligible for the Start Safety subsidy as she could not demonstrate that she would be able to support herself in the private rental market within 24 months.

Melinda has two children and does not want to have to move them into a refuge.

It takes over a year for her transfer to be approved.

** Not their real names.*

38. It is our experience that the policies are also often inconsistently applied. For example, some of our clients have reported that they have been told that they should not put in an application for housing or a transfer as there are no properties available or that without an apprehended violence order (AVO) there is not enough evidence that they are a victim/survivor of domestic and/or family violence.
39. We believe that it is essential that the matters are dealt with appropriately and consistently across housing branches.
40. We endorse Recommendation 33 made by the Legislative Council Standing Committee on Social

¹⁸ Domestic and Family Violence Housing NSW Policy Statement, June 2013, accessed on 20 February 2014 at <http://www.housing.nsw.gov.au/NR/rdonlyres/209D9254-0D27-41E8-BF95-56E94275BD68/0/DomesticViolencePolicyStatement.pdf>

Issues report 46, *Domestic violence trends in NSW*:

*That Housing NSW ensure that staff in Housing Offices are applying social housing polices accurately and consistently in relation to victims and children seeking housing as a result of domestic and family violence. Consideration should be given to the need for staff training in relation to domestic violence.*¹⁹

Recommendations:

Housing NSW Domestic and Family Violence Policy should have a greater focus on prioritising housing for women and children where there is domestic and/or family violence.

'Housing NSW ensure that staff in Housing Offices are applying social housing polices accurately and consistently in relation to victims and children seeking housing as a result of domestic and family violence. Consideration should be given to the need for staff training in relation to domestic violence' as recommended in the *Domestic violence trends and issues in NSW report*.

Staying Home Leaving Violence

41. While we strongly advocate for significant increases in housing options that allow victims/survivors of domestic and/or family violence to leave their home, we also strongly support programs which increase the safety of victims/survivors who choose to remain in their home. We recognise that for many women there are substantial benefits in remaining in their home, including allowing them to retain jobs, keep their children in schools with which they are familiar and remain near family and support services. We receive positive feedback about the Staying Home Leaving Violence program which provides assistance in upgrades in security of premises. Our clients often report that while Apprehended Violence Orders can exclude a perpetrator of violence from the home and orders can be made that make it an offence to enter the property, improvements to security make them feel much safer in their home.

Case study two

Mina was renting a private property with her husband Peter* before they separated in 2011. Peter was violent during their relationship and when they separated Mina applied for an Apprehended Domestic Violence Order. After separation Peter moved out of the property and out of Sydney so Mina did not ask the Police to apply for an exclusion order. Mina remained living where she was as she has a good job with supportive workmates and friends. When Mina applied to the Family Court for parenting orders in relation to their children, Peter became angry. He used the key that he had to the property and while Mina was sleeping, he took their children with him. This caused Mina a great amount of distress and she was extremely concerned for the children's safety.*

With assistance from our service and the Staying Home Leaving Violence program, Mina was able to apply for a recovery order to have the children returned and was able to have all the locks changed in her house so that it could not happen again. Mina would not have been able to afford to pay for the locks to be changed herself. Mina later reported feeling much safer in her home and relieved that she did not have to move and change jobs and the children's school.

* Not their real names.

¹⁹ Legislative Council Standing Committee on Social Issues report 46, *Domestic violence trends and issues in NSW*, August 2012 at 144.

42. This case study highlights the benefits of the Staying Home Leaving Violence program. We are concerned, however, that currently the program is only available to clients in a small geographical area. Given the significant benefits of the program we would support the expansion of the program so that all victims/survivors of domestic and family violence who meet the eligibility requirements are able to access the program.

43. We endorse Recommendation 34 in the *Domestic violence trends and issues in NSW report*:

That the NSW Government fund an expansion of the Staying Home Leaving Violence Program across the State, including an expansion of the current funding available to each site.²⁰

44. While we welcome the Government's recent announcement that the 'number of Staying Home Leaving Violence sites will expand from 23 to 27 over five years',²¹ it is important that such a service is offered across the state and that current funding available to each site is also expanded.

Recommendation:

'The NSW Government fund an expansion of the Staying Home Leaving Violence program across the State, including an expansion of the current funding available to each site' as recommended in the *Domestic violence trends and issues in NSW report*.

Residential Tenancies Act 2010

45. The public and private rental markets are regulated by the *Residential Tenancies Act 2010*. The legislation deals very poorly with the issue of tenants experiencing domestic and/or family violence. Inadequate protections may expose victims/survivors to significant risk of further harm and means that they are at risk of incurring significant debts which can greatly diminish their capacity to remain either in public or private rental accommodation. In effect, the tenancy legislation is in many instances an obstacle to ensuring the protection of international human rights outlined above such as the right to safe and secure housing and to live free from violence.

46. This section will primarily focus on the difficulties faced by victims/survivors of domestic and/or family violence who are co-tenants on their Residential Tenancy Agreement (RTA) with a violent partner as it is these clients who report the most difficulties under the legislation. The problems faced by victims/survivors of such violence when navigating the *Residential Tenancies Act 2010 (NSW)* are complex and numerous. We have chosen to discuss three of the main problem areas to highlight some of the challenges faced by victims/survivors of domestic and/or family violence who are renting. There are multiple additional problem areas, for example in relation to changing locks and recovering bond money, that are outside the scope of this submission.

²⁰ Legislative Council Standing Committee on Social Issues report 46, *Domestic violence trends and issues in NSW*, August 2012 at 146.

²¹ NSW Government, *It Stops Here: Standing together to end domestic and family violence in NSW. The NSW Government's Domestic and Family Violence Framework for Reform*, February 2014 at 25.

Ending a Residential Tenancy Agreement (RTA) early

47. Where a victim/survivor is on a fixed term RTA it is often very difficult for them to end their agreement early. This is particularly an issue of concern where there is a co-tenant who is the perpetrator of domestic and/or family violence. This is problematic when a victim/survivor of domestic and/or family violence needs to leave their home urgently due to safety concerns.
48. If a victim/survivor who is a co-tenant simply abandons the property this will not end the liability of the victim/survivor under the RTA. They can still be held liable for all of the rent while their violent partner remains living in the property.

Case study three

Corrine and her partner Martin* were co-tenants on a fixed term lease agreement for six months. One month into the agreement Corrine fled to another state with her children due to concerns for her safety after a violent incident at home. Martin remained living in the property and Corrine believed that he would continue to pay the rent.*

Two months later Corrine received a phone call from the Real Estate Agent informing her that the rent had not been paid and she owed them \$2000.

Corrine didn't have the money to pay the debt as she needed all of her money to support herself and her children.

**Not their real names.*

49. While there are some options to terminate sole or co-tenancies early under the *Residential Tenancies Act 2010*, these options are only useful in very limited and narrow circumstances.
50. For example, if the victim/survivor of a co-tenancy has a final Apprehended Violence Order (AVO) that includes an exclusion order, then the person with this protection order can end his/her tenancy by providing 14 days notice to the landlord and any other co-tenant without risk of penalty.²²
51. However it is our experience that this is an unnecessarily high threshold requirement for a number of reasons.
52. Firstly, in some circumstances victims/survivors of domestic and/or family violence report they would feel safer if they could leave the property. In such circumstances it is very difficult to obtain an AVO that includes an exclusion order as the court is unlikely to make the order if the victim/survivor is no longer wanting to or living in the property.²³
53. Secondly, if a victim/survivor of domestic and/or family violence is wanting to remain in the property an exclusion order will not be made without considering the accommodation options for the alleged perpetrator.
54. Thirdly, it often takes a long time for an AVO to be finalised, especially where there are charges against the perpetrator of violence. By the time the AVO has been finalised it is likely that the victim will have already incurred significant liabilities under the RTA.

²² Section 100(1)(d) *Residential Tenancies Act 2010 NSW*

²³ Section 17(2) *Crimes (Domestic and Personal Violence) Act 2007 NSW*

55. While exclusion orders have an important role to play, in practice they are only useful when the victim/survivor chooses to remain in the property.
56. For example, in the case study outlined above, “Corrine” would have been unlikely to have been successful in an application for an order excluding “Martin” from the premises because she no longer needed to live in the property and was living in another state.
57. Significant debts make it financially very difficult for victims/survivors to re-establish themselves in a new home and can lead to a blacklisting on a tenant database. It also makes it difficult to obtain positive renting references. These can be substantial obstacles to finding alternative housing and a cause of homelessness amongst domestic and/or family violence victims/survivors.
58. We submit that additional mechanisms to end a lease by way of notice and without penalty other than just a final AVO with an exclusion order are required where there is domestic and/or family violence. It should be easier for victims to end their liability without the need for an application to the NSW Civil and Administrative Tribunal (NCAT).
59. While a victim/survivor of such violence can make an application to the NCAT for an order terminating their RTA they face a risk of a compensation order for early termination being made against them. We are concerned that this punishes the victim/survivor by enforcing what is, in effect, a monetary penalty and is a considerable disincentive to leave.

Recommendations:

Introduce additional mechanisms to end a Residential Tenancy Agreement (RTA) by way of notice and without penalty, in circumstances of domestic and family violence, other than just a final AVO with an exclusion order.

Liability for damage to property

60. It is very common for our clients to report that violent family members have caused damage to their home. Damage might include holes in walls and broken doors and windows. If a victim/survivor of domestic and/or family violence is a co-tenant on a RTA with a violent partner, they can be held liable for all of the damage done to the property despite the fact that they had no control over that person’s actions.
61. Again, significant debts can make it very difficult for victims/survivors to re-establish themselves in a new home and can lead to a blacklisting on a tenant database. It also makes it difficult to obtain positive renting references. These can be substantial obstacles to finding alternative housing and a cause of homelessness amongst domestic and family violence victims/survivors.
62. We submit that perpetrators of domestic and/or family violence who cause damage to property should be held liable for the damage.

Case study four

Donna and Max* had been in a relationship for 5 years and were renting together. Max had been violent towards Donna on many occasions. He would throw things at Donna and had punched multiple holes in the walls. On one occasion he threw a chair through their front window. Donna reported the violence to the police and Max was charged with a number of offences including property damage. The courts also granted an AVO for her protection. Max moved out of the property and Donna was hopeful that she could remain safely living in the property.*

At the next property inspection the real estate agent informed Donna that they would be terminating her tenancy due to the significant damage caused to the property. The real estate agent also said that they would be asking her to pay for all the damage to the property, which was extensive and far exceeded the amount they had paid for the bond.

Despite the fact that the damage was not her fault, Donna was liable to compensate the landlord and could not prevent the termination of her tenancy.

** Not their real names.*

Recommendation:

The Residential Tenancies Act 2010 (NSW) should be amended so that perpetrators of domestic and/or family violence who cause damage to property are held liable for the damage.

Blacklisting on tenant databases

63. As outlined above, there are a number of circumstances wherein victims/survivors of violence might be blacklisted on a tenant database as a consequence of domestic and/or family violence, whether it be due to early termination, rental arrears or damage to property.
64. WLS NSW welcomes the changes that were introduced in 2010 to the *Residential Tenancies Act (NSW)* that now provide for an application to be made to NCAT for a person's name to be removed from a database where it is 'unjust in the circumstances.'²⁴ We believe however that these provisions need to be strengthened to provide greater protection for victims/survivors of domestic and/or family violence. For example, it would be beneficial for the Act to provide a specific defence against a blacklisting where there is evidence of domestic and/or family violence. Currently victims have to wait until after they have been listed before they take any action.
65. Furthermore, it would also be beneficial if there were steps that victims/survivors of domestic and/or family violence could take to pre-emptively prevent a listing, for example, by making it clearer in the *Residential Tenancies Act 2010* that you can make such an application at the time of any NCAT proceedings around termination or debts.

²⁴ 217(2)(b) *Residential Tenancies Act 2010 NSW*

Recommendations:

The introduction of a specific defence to blacklisting on a tenant database where there is evidence of domestic and/or family violence.

Amend the *Residential Tenancies Act 2010* to clearly state that you can pre-emptively prevent a blacklisting on tenant databases in circumstances of domestic and/or family violence through an application at the time of any NCAT proceedings around termination or debts.

Safety protections at the Tribunal for victims/survivors of domestic and family violence

66. Given that the NSW Civil and Administrative Tribunal (NCAT) has to deal with matters where domestic and family violence is an issue, we submit that it is essential that there are steps taken to ensure the safety of victims/survivors when participating in the process and to ensure that the domestic and family violence issues are dealt with appropriately.
67. It is important to recognise that victims/survivors of domestic and/or family violence may have particular vulnerabilities when navigating proceedings at the Tribunal. Apart from concerns regarding their physical safety when participating in the process and the need for safe rooms, victims/survivors may face challenges when participating in conciliations, giving evidence and being cross-examined by violent partners.
68. So that victims/survivors can adequately participate in the Tribunal proceedings and make use of the provisions in the Act designed for their protection, we submit that there should be a comprehensive review of the safety requirements of victims/survivors of domestic and/or family violence with respect to Tribunal matters.
69. Consideration should also be given to the need for staff training in relation to domestic and family violence. This should include Tribunal Members and other staff at the Tribunal.

Protections for victims/survivors of domestic and/or family violence in NSW discrimination laws

70. Protection from discrimination on the grounds of status of being a victim/survivor of domestic and/or family violence in the *Anti-Discrimination Act 1977 (NSW)* provides an opportunity to further educate and engage the community in addressing domestic and family violence.
71. Such protection builds on the important work undertaken across Australia, including by the NSW government, to provide work entitlements for victims/survivors of domestic and/or family violence in the form of flexible work arrangements and additional paid leave through enterprise agreements and awards. Significantly, 1 million Australian employees have access to domestic violence leave as a consequence of the inclusion of such clauses in their enterprise agreements and awards.²⁵
72. However, such provisions do not address negative treatment, attitudes and stereotyping that lead to unfair treatment. Anti-discrimination laws have traditionally been used to address stigma and challenge barriers posed to equal participation in public life.²⁶

²⁵ 'Domestic Violence Leave Comes of Age,' *Media Release*, 30 November 2012 accessed on 23 February 2014 at: <http://newsroom.unsw.edu.au/news/social-affairs/domestic-violence-leave-comes-age>

²⁶ Tashina Orchiston and Belinda Smith, 'Empowering Victims of Family Violence: Could Anti-Discrimination Laws

73. Additionally, protection through clauses in enterprise agreements and awards is limited to employment only and not to all areas of public life. There is growing evidence highlighting the need for protection from discrimination on the grounds of status of being a victim/survivor of domestic and/or family violence in all areas of public life, including accommodation.²⁷
74. The Legal and Constitutional Affairs Legislation Committee recommended the inclusion of domestic violence as a protected attribute in the commonwealth Human Rights and Anti-Discrimination Bill.²⁸

Recommendation:

Domestic and family violence be included as a protected attribute in the *Anti-Discrimination Act 1977 (NSW)*.

75. If you would like to discuss any aspect of this submission, please contact Gabrielle Craig, Senior Solicitor or Liz Snell, Law Reform and Policy Coordinator on

Yours faithfully,
Women's Legal Services NSW

Janet Loughman
Principal Solicitor

Play a Role?' *Australian Review of Public Affairs*, March 2012.

²⁷ National Association of Community Legal Centres, *Submission in Inquiry into the Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012* (2012) (NACLC HRAD Bill submission) p25-29; ADFVC, *Submission to the Inquiry into the Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012* (2012) p 8; Ms Adams, Ms Davis & Ms McCormack, *Senate Legal and Constitutional Affairs Legislation Committee, Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012*, Hansard (23 January 2013) p 29-30, 32-33.

²⁸ *The Senate Legal and Constitutional Affairs Legislation Committee, Report on the Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012* (2013), Recommendation 3.