

**INQUIRY INTO HOMELESSNESS AMONGST OLDER
PEOPLE AGED OVER 55 IN NEW SOUTH WALES**

Organisation: Public Interest Advocacy Centre (PIAC)

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Inquiry into homelessness amongst older people aged over 55 in New South Wales

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Public Interest Advocacy Centre
ABN 77 002 773 524
www.piac.asn.au

Gadigal Country
Level 5, 175 Liverpool St
Sydney NSW 2000
Phone +61 2 8898 6500
Fax +61 2 8898 6555

About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is a leading social justice law and policy centre. Established in 1982, we are an independent, non-profit organisation that works with people and communities who are marginalised and facing disadvantage.

PIAC builds a fairer, stronger society by helping to change laws, policies and practices that cause injustice and inequality. Our work combines:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change and public interest outcomes.

Our priorities include:

- Reducing homelessness, through the Homeless Persons' Legal Service
- Access for people with disability to basic services like public transport, financial services, media and digital technologies
- Justice for First Nations people
- Access to sustainable and affordable energy and water (the Energy and Water Consumers' Advocacy Program)
- Fair use of police powers
- Rights of people in detention, including equal access to health care for asylum seekers (the Asylum Seeker Health Rights Project)
- Improving outcomes for people under the National Disability Insurance Scheme
- Truth-telling and government accountability
- Climate change and social justice.

Contact

Thomas Chailloux
Public Interest Advocacy Centre
Level 5, 175 Liverpool St
Sydney NSW 2000

Website: www.piac.asn.au



Public Interest Advocacy Centre



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The Public Interest Advocacy Centre office is located on the land of the Gadigal of the Eora Nation.

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Introduction

The Homeless Persons' Legal Service (HPLS) was established by PIAC in 2004. HPLS provides free legal advice to people experiencing or at risk of homelessness at 16 clinics in the Sydney and Hunter regions. HPLS has provided legal assistance to more than 8,000 people on over 11,000 occasions.

In 2009, PIAC established its homeless consumer advisory committee StreetCare, whose members have lived experience of homelessness. StreetCare is a diverse group, including women and men of different ages, Aboriginal people, and representatives from inner Sydney, outer suburbs and rural and regional areas. With support from PIAC, StreetCare provides direct input from people with a lived experience of homelessness into government policy making and law reform, to tackle the structural determinants of homelessness.

We thank the Standing Committee on Social Issues for the opportunity to provide input into the inquiry into homelessness amongst older people aged over 55 in New South Wales. Our submission is based on our experience providing legal assistance to people experiencing or at risk of homelessness, including people over 55. In 2020/21, 16.6% of HPLS clients were aged 55-65 and 6.67% were over 66 years old. Our submission also considers relevant research and evidence.

1. Rate of homelessness

Older people are not disproportionately affected by homelessness. In 2020/21, 3454 people aged 55-64 and 1762 people aged over 65 accessed specialist homelessness services (SHS) in NSW.¹ These are the smallest two groups of SHS clients by age. National data also indicates that people aged over 65 have the lowest rate of SHS use per 10,000 inhabitants.²

There are a few factors indicating, however, that these rates of access to homelessness services do not offer a complete picture.

First, many people over 55 have accumulated assets such as a home, superannuation, or savings they can use to avoid homelessness. A low use of SHS is therefore expected for this cohort. People over 55 also usually have networks of support they can use, meaning they tend to experience secondary homelessness in the form of 'couch surfing'. This often affects older women experiencing homelessness and is not adequately captured by data. Many older people are also not aware of SHS or do not disclose their situation because of social stigma and shame, meaning rates of SHS access are an underestimate of homelessness amongst people older than 55.

¹ Australian Institute of Health and Welfare, *Specialist homelessness services annual report 2020–21* (report, December 2021) Content, services and outcomes. Supplementary table CLIENTS.1

² *Ibid.*

Second, people over 55 are overrepresented in home owners and social housing tenants, meaning a significant proportion of this cohort has security of tenure.³ Risk of homelessness is much higher for older people renting privately.

Third, access to superannuation and the relatively higher rate of the pension compared to other social security payments (\$987.60 for singles and \$1488.80 for couples combined) mitigate the incidence of homelessness for older people.⁴ But superannuation is mostly accessible from 60 years old and the pension age is now 67 years old. This potentially explains the higher rate of homelessness amongst 55-65 years old compared to people over 65. Aged care eligibility also starts at 65 years old.

Finally, trends are concerning. The NSW Homelessness Strategy 2018-2023 states that 'there is a growing trend for people to become homeless in later life for the first time' and indicates a 88% growth for older women accessing SHS between 2013 and 2017. And they are more likely to be homeless for long periods of time.⁵

2. Factors affecting the incidence of homelessness

Older people experiencing homelessness or at risk tend to:

- Rent privately
- Have lower incomes and low superannuation – this largely explains the overrepresentation of women
- Be unable to access the pension or aged care

In addition to these systemic issues, there are also individual risk factors such as:

- Physical, intellectual and psycho-social disability
- Mental health issues
- Alcohol and other drugs misuse

People who are discriminated against and marginalised including Aboriginal and Torres Strait Islander people, and people with disability, face cumulative and compounding risk. For example, they are even more likely than other lower income private renters to experience housing stress.⁶ Some policies take this into account such as the lower age to be considered elderly for Aboriginal and Torres Strait Islander people, which is set as 55 for access to the NSW Housing Pathways priority list, and 50 for access to aged care, for example.

It is important to note there are two clear cohorts of older people experiencing homelessness. The first are experiencing homelessness for the first time and many have had 'conventional' housing pathways including prior home ownership. The second cohort of people have long term,

³ Australian Bureau of Statistics, *Housing Occupancy and Costs 2019/20* (Report, 25 May 2022) Table 6.1 Household estimates. Age of household reference person.

⁴ Services Australia, 'How much you can get' *Services Australia Website* (Website, 6 June 2022) <<https://www.servicesaustralia.gov.au/how-much-age-pension-you-can-get?context=22526>>

⁵ Department of Communities and Justice, *NSW Homelessness Strategy 2018-2023* (Strategy, 2018) 10.

⁶ Defended as paying more than 30% of gross income in rent. Productivity Commission, *Vulnerable Private Renters: Evidence and Options* (Commission Research Paper, September 2019) p. 81

chronic experiences of homelessness, heavily use SHS, and tend to have mental health issues and/or substance use disorders.

50.6% of SHS clients do not present with a vulnerability factor such as domestic and family violence, mental health issues, or alcohol and drug use.⁷ The only issue they have is a housing and financial issue. This shows that increasing homelessness amongst people over 55 is a failure of our housing, retirement and social security systems rather than an increase that can be attributed to individual vulnerability factors.

3. Opportunities for early intervention to prevent homelessness

Lack of security of tenure in the private rental market is a major factor for risk of homelessness in NSW. There are multiple opportunities for services, and legislative and policy reform, to address this issue.

Evictions have a high cost to individuals and to society.⁸ Evictions into homelessness have an even higher cost, because people experiencing homelessness attract higher government spending; \$29,450 higher than the general Australian population.⁹ Services and reform to prevent evictions would be efficient at reducing incidence of homelessness and have a good cost benefit ratio.

Specialist legal assistance services have a proven track record of preventing evictions and delivering value to the community. Preventing financial hardship by assisting people experiencing homelessness with credit and debt issues and other financial matters also helps prevent eviction. The Women's Homelessness Prevention Project (WHPP) in Victoria has assisted 977 women and children in the last 7 years, achieving an 82% success rate in maintaining tenancies. Research found a benefit 6.3 times higher than investment, with \$4.9 million savings over 5 years.¹⁰

HPLS is developing a women's homelessness legal service in NSW to achieve similar outcomes.

Recommendation 1

NSW Government to fund specialised legal assistance services delivering eviction and financial hardship prevention services.

Legislative and policy reform to prevent unfair or unreasonable evictions would significantly reduce risk and incidence of homelessness.

⁷ Australian Institute of Health and Welfare, *Specialist homelessness services annual report 2020–21* (report, December 2021) Order contents. Figure OLDER.2

⁸ Tenants Union of NSW, *Eviction Hardship and the Housing Crisis* (Report, February 2022)

⁹ Kaylene Zaretsky et al., *The cost of homelessness and the net benefit of homelessness programs: a national study - Findings from the Baseline Client Survey* (Report, 2013) p.4,

¹⁰ Women's Homelessness Prevention Project, *Justice Connect* (Webpage, 2 June 2022)

<<https://justiceconnect.org.au/our-services/homeless-aw/womens-homelessness-prevention-project/>>

Currently, the *Residential Tenancies Act 2010* (NSW) allows landlords to terminate a residential tenancy agreement without providing a reason, with 90 days notice in the case of a periodic agreement (s 84) and 30 days notice at the end of a fixed term agreement (s 85). Landlords use these provisions for a range of reasons, including because they want to move back into the house or renovate. Some landlords, however, use these provisions in a retaliatory manner when tenants assert their rights. This undermines the entire residential tenancy legislation and increases risk of homelessness.

Reforming 'no-grounds' provisions by creating a set of 'reasonable grounds' for ending tenancies would increase transparency, reduce retaliation and discrimination, and contribute to greater security of tenure, leading to lower homelessness for older people. Importantly, this would not prevent landlords to evict tenants when they have a legitimate reason to do so.

Recommendation 2

Amend s 84 and s 85 of the Residential Tenancies Act 2010 (NSW) to prescribe a list of 'reasonable grounds' for landlord initiated terminations of residential tenancy agreements.

There are a number of other regulatory and policy changes that could be made to prevent evictions into homelessness and reduce the number of forced moves experienced by tenants. The *Eviction, Hardship and the Housing Crisis* report provides detailed discussion of issues surrounding evictions and recommendations to address them.¹¹

Regulation and policy should reflect the cost and potential devastating consequences of evictions, including homelessness. PIAC strongly supports the consideration of new regulations and policies including higher fees for eviction applications in NCAT, and a permanent tenancy hardship framework. HPLS lawyers report landlords, including social housing providers, often initiate eviction proceedings when the outcome they actually want to achieve is to negotiate a payment plan for arrears. Higher fees for NCAT eviction applications would promote dispute resolution and payment plans negotiation before rather than through tribunal proceedings. An efficient tenancy hardship framework would support people to maintain their tenancy rather than have short term financial issues spiral into homelessness.

Recommendation 3

Create disincentives to unreasonable eviction proceedings starting with increasing NCAT application fees for eviction applications.

Recommendation 4

Develop and implement a permanent tenancy hardship framework through NSW tenancy law.

¹¹ Tenants Un on of NSW, *Eviction Hardship and the Housing Crisis* (Report, February 2022)

4. Services to support older people who are homeless or at risk of homelessness, including housing assistance, social housing and specialist homelessness services

Services to support older people who are homeless or at risk of homelessness are insufficient or inadequate. There are no specialised services for older people experiencing or at risk of homelessness.

State housing assistance products delivered by the Department of Communities and Justice (DCJ) such as 'Rent Choice' are designed as time limited support and only available for up to three years. There are no NSW housing assistance products specifically designed for people over 55. The main federal housing assistance, Commonwealth Rent Assistance (CRA), is set at an insufficient level. Maximum payment rates have fallen behind average rent.¹² 40% of lower income households still experience rental stress after receipt of CRA. The Productivity Commission has warned that CRA 'no longer provides an adequate contribution towards rental costs for many households'.¹³

While housing assistance products might support older people experiencing temporary or short term financial hardship, they are inadequate for older people facing ongoing insufficient income to rent adequate private housing. They are also fundamentally unable to address the tenure insecurity of the private rental market.

The crisis oriented services such as Link2Home, temporary accommodation (TA) and other SHS do not cater particularly well to the needs of older people. The fact that Link2Home is not a physical service is a barrier for some. It is also not widely known amongst people who are experiencing homelessness for the first time later in life. Many older people experiencing homelessness (the cohort of first time service users described in section 2, above) have the skills to live independently and maintain a tenancy, as they have done most of their life. They need access to social housing rather than to progress through a transitional model of temporary accommodation and wrap around support services.

Social housing can provide both security of tenure and affordable rent to older people experiencing or at risk of homelessness. The dire shortage of social housing in NSW is well documented. Social housing as a proportion of total housing stock has been falling for decades, reaching a low of 4.7% in 2020.¹⁴ As at 30 June 2021, there were 49,928 applicants on the NSW Housing waiting list.¹⁵ And this is an underestimate of the need as many people in housing need often do not apply due to very long waiting times, of over ten years in many areas of Sydney and the rest of the State.

¹² Productivity Commission, *Vulnerable Private Renters: Evidence and Options* (Commission Research Paper, 2019) p2.

¹³ *Ibid*, p112.

¹⁴ Australian Institute of Health and Welfare, *Housing assistance in Australia* (Report, 2021) State and Territory summary data

¹⁵ Waiting times for social housing, *Department of Communities & Justice* (Webpage, 2 June 2022) <<https://www.facs.nsw.gov.au/housing/help/applying-assistance/expected-waiting-times>>

Responding to homelessness amongst older people requires NSW Government to deliver a substantial number of new social housing dwellings. There is no alternative to this. Recommendations related to changes in the service system, order of eligibility for the priority list, or better coordination and support for people at risk of homelessness will have limited impact without sufficient social housing stock. HPLS reiterates our recommendation to all inquiries related to homelessness: to invest at scale in social housing.

Recommendation 5

NSW Government to deliver at least 5,000 new, additional social housing dwellings per year for the next ten years.

Value capture mechanisms such as mandatory inclusionary zoning would also assist by delivering new social and affordable housing when rezoning of land delivering additional floor space occurs.

Recommendation 6

NSW Government to implement mandatory inclusionary zoning of at least 15% of uplift across the State through a State Environmental Planning Policy overriding local planning controls.

5. Challenges that older people experience navigating homelessness services

Older people experiencing or at risk of homelessness face a number of challenges when attempting to access homelessness services:

- Shame and reluctance to seek support, particularly for older people experiencing or at risk of homelessness for the first time
- Varying levels of digital literacy
- A burdensome assessment process

Older people have varying levels of digital literacy. Some people have difficulties with online forms. The Housing Pathways application form has recently moved online or via phone only. There are no more paper forms available. HPLS host agencies and outreach services report that the move to 'online-only' has created a barrier for some applicants, and is increasing workload for support services. Alternative options to online application for housing assistance would benefit older people and other people who have difficulties using the online process, such as people rough sleeping with complex needs.

Recommendation 7

NSW Government to provide alternative options to online application for housing assistance, including a paper form and in-person application process.

People in temporary accommodation have to complete a 'rental diary' in order to have their TA renewed. This is to show that they have attempted to 'resolve their housing need' in the private rental market. This requirement is time consuming for people experiencing homelessness,

government employees, and real estate agents. There are close to no adequate, affordable homes in the private rental market for people on lower incomes, more so when they are older, living with disability or complex health conditions, or have a recent history of rough sleeping. The requirement causes further distress and humiliation for older people experiencing homelessness living in TA, who are already well aware they are unable to access the private rental market. In addition to this, older people experiencing homelessness sometimes have difficulties completing online applications and/or using transport to go view properties.

People experiencing homelessness are best able to engage with housing and support services to identify long term solutions when they are provided with certainty and stability. The 'rental diary' requirement, combined with the low periods of TA awarded at a time (usually no more than 3 or 4 days), create uncertainty and actually prevent people living in TA to engage productively with services. Longer periods of TA at a time should be awarded and the rental diary should be abolished. During the COVID-19 response, initial periods of TA were 7 days and there was no requirement to submit a 'rental diary'. This saved time and resources for both people experiencing homelessness and DCJ employees which could be used to research actual solutions to their housing issues.

Recommendation 8

The Department of Communities and Justice to abolish the 'rental diary' requirement.

Recommendation 9

The Department of Communities and Justice to provide longer initial periods of temporary accommodation, of at least 7 days.

6. Examples of best-practice approaches in Australia and internationally to prevent and address homelessness amongst older people

As previously mentioned, HPLS considers the Women's Homelessness Prevention Project in Victoria to represent best practice for specialised legal assistance services and would support funding for similar services in NSW.

We are also aware of the Housing for the Aged Action Group (HAAG) 'Home at Last' service model in Victoria, and support the recommendation of HAAG submission to this inquiry to create a dedicated housing information and support service in NSW.

The other well documented best practice approach is the 'Housing First' model, which was successfully implemented in Finland. The principle of 'Housing First' approaches is to provide people experiencing homelessness with affordable, stable, adequate housing from which they can receive support services if they need them, rather than requiring them to transition to stable housing step by step. 'Housing First' requires sufficient stock of social housing.

HPLS would strongly support the use of 'Housing First' principles in NSW. This requires a high amount of new social housing, as per Recommendation 5, and to reform NSW TA system to focus on finding long term social housing for TA clients, as per Recommendations 8 and 9.

7. Options to better support older people to obtain and maintain secure accommodation and avoid homelessness

As mentioned above, reform of private rental market regulation to increase security of tenure, and funding for specialised legal services and information and support services would support older people to obtain and maintain secure accommodation and avoid homelessness.

People who are aged 80 or over, or 55 for Aboriginal and Torres Strait Islander people, are listed as 'elderly clients' on the NSW Housing Register and offered housing ahead of 'wait turn' clients.¹⁶ Consideration could be given to lowering the age requirement to be considered 'elderly' given the vulnerability of older people experiencing homelessness, and the severe impact it has on their health and wellbeing. Any changes to allocation priorities, however, must be done concurrently with an increase in social housing stock. Otherwise, changes fall back in the trap of distinguishing 'deserving' and 'undeserving' people experiencing or at risk of homelessness without making a difference to homelessness overall and making waiting times longer for other groups.

Recommendation 10

Consider lowering the age requirement to be considered an 'elderly client' under the DCJ Social Housing Eligibility and Allocations Policy Supplement.

8. Adequacy of the collection of data on older people experiencing or at risk of homelessness and opportunities to improve such collection

It is difficult to precisely assess the rate of homelessness amongst older people, due to lack of self identification as experiencing homelessness, reluctance to access services, and tendency to couch surf or sleep discreetly in vehicles. Collecting better data on older people experiencing homelessness is essential to inform policy making. For example, HPLS would be inclined to recommend changes to allocations policy to prioritise older people experiencing homelessness if data clearly indicated overrepresentation of people over 55.

¹⁶ Department of Communities and Justice, Social Housing Eligibility and Allocations Policy Supplement (Webpage, June 2022) < <https://www.facs.nsw.gov.au/housing/policies/social-housing-eligibility-and-allocations-policy-supplement/chapters/entitlements>> See also Robert Mowbray, Tenants Union of NSW, 80 to 55: the case for lowering the age for elderly allocation of social housing in NSW, *The Renting Life The Tenants' Union Blog* (Blog post, 12 November 2020) < <https://www.tenants.org.au/blog/80-55-case-older-ng-age-early-allocation-social-housing-nsw>>

Regular publication of statistics on residential tenancies evictions, as recommended by the Commonwealth inquiry into homelessness,¹⁷ and their outcomes, would assist in understanding entries into homelessness. The pilot bond exit survey run by Fair Trading in 2020 was successful in gathering data. It could be extended into a basic compulsory bond exit survey, meaning people would need to answer a few questions about the tenancy to get their bond back, gathering data on all tenancy exits.

Recommendation 11

Consider the implementation of a mandatory bond exit survey through the Rental Bond Board.

Recommendation 12

Fund research and regular publication of the outcomes of residential tenancies evictions.

9. Any other related matter

Older people at risk of homelessness overwhelmingly have low incomes. This means they have little choice over the housing they access. They do not have the purchasing power to access modern, accessible, step-free housing, and too often have to live in housing that is not adequate to their needs.

Better construction standards to make all housing accessible and usable would ensure older people have adequate housing and can age in place. It would also deliver higher amenity for all. Step-free access for example, is practical for people with groceries, prams, large luggage and other needs.

Minimum housing accessibility standards were adopted nationally in the 2022 update of the National Construction Code.¹⁸ NSW, however, is still yet to commit to adopting these standards in State level legislation. Requiring all new build to meet the Silver level of the Liveable Housing Design (LHD) Guidelines is sensible, overdue, and will over the long term drastically improve housing quality for older people.

Recommendation 13

Require all new build in New South Wales to meet similar requirements to at least the Silver Level of the Liveable Housing Guidelines. Consider aligning these requirements to minimum housing accessibility standards of the National Construction Code.

The NSW Government, as the largest landlord in the state, can and should lead the way when it comes to providing good quality housing supporting the health and wellbeing of older people. This means building social housing dwellings to a high accessibility standard. It would also create market signalling. In our submission to the Follow-up Review of the Management of NSW Public Housing Maintenance Contracts, PIAC noted that:

¹⁷ House of Representatives Standing Committee on Social Policy and Legal Affairs, *Inquiry into homelessness in Australia* (Final report, July 2021). Recommendation 6, 2.368

¹⁸ National Construction Code, What's new about NCC 2022, *National Construction Code website* (Webpage, 9 May 2022) < <https://ncc.abcb.gov.au/news/2022/whats-new-about-ncc-2022>>.

Our State must move faster to deliver universally designed dwellings that support occupants' health and wellbeing while reducing maintenance and retrofitting costs in the long term. LAHC can and should lead the way by delivering all new social housing dwellings at the LHD Gold Standard. We recognise, however, that this may pose challenges on some sites and that capacity building might be required. Ambitious targets are nevertheless required. We recommend that, as a minimum, 50% of new built meet the LHD Gold Standard by 2024, incrementally increased to 75% by 2026, and 100% by 2028.¹⁹

Recommendation 14

Consider requiring that all new social housing dwellings meet the LHD Gold Standard. As a minimum, amend the LAHC Dwelling requirements to incrementally increase the proportion of dwellings meeting the LHD Gold Standard in new developments, starting from a 50% target by 2024, to 75% by 2026, and 100% by 2028.

¹⁹ Tenants Union of NSW, Public Interest Advocacy Centre, Submission n7 to the Public Accounts Committee, Legislative Assembly of NSW, *Follow-up Review of the Management of NSW Public Housing Maintenance Contracts* (December 2020) p14.