



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

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Inquiry into Domestic and Family Violence—Policy approaches and responses

Submission No. 6
Canberra Community Law

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20 September 2017

Dr Andrea Cullen
Secretary
Standing Committee on Justice and Community
committees@parliament.act.gov.au

Dear Dr Cullen

Inquiry into Domestic and Family Violence

Please find attached our submission to the Inquiry into Domestic and Family Violence.

If you have any queries or wish to discuss the submission further, please do not hesitate to contact Ms Genevieve Bolton at our office
or by email at gbolton@canberracommunitylaw.org.au

Yours faithfully,
CANBERRA COMMUNITY LAW LIMITED

Genevieve Bolton
Executive Director/Principal Solicitor

Canberra Community Law acknowledges the traditional custodians of the land on which we work in the ACT and surrounding region and pay our respect to their elders past, present and future for they hold the memories, traditions, the cultures and the hopes of Australia's First Peoples. We are grateful that we share this land and express our sorrow for the costs of this sharing to Australia's First Peoples. We will continue to acknowledge the legacy of our history and strive in our goals to empower our community through social justice. We hope that our efforts can contribute to a realisation of equity, justice and partnership with the traditional custodians of this land.



Submission to ACT Inquiry into Domestic and Family Violence

Canberra Community Law, 20 September 2017

Introduction

1. Canberra Community Law (CCL) is a community legal centre providing free legal advice, assistance and representation to people in the ACT on low incomes for matters relating to tenancy, public housing, social security and disability discrimination law.
2. CCL also operates:
 - the Street Law outreach program which provides legal advice, assistance and representation on relevant areas of law to people who are experiencing or at risk of homelessness;
 - the Night Time Legal Advice which provides legal advice to any member of the public on most areas of law from 6 to 8pm on Tuesday nights;
 - the Socio-Legal Practice Clinic which combines legal assistance with intensive social work support to maximise the prospect of a successful outcome; and
 - the Aboriginal Human Rights Program which provides services in housing, social security and race discrimination law to Aboriginal and Torres Strait Islander communities in Canberra through a human rights framework.
3. CCL estimates 34 percent of its clients are women escaping family and domestic violence. Through our case work with women escaping domestic violence we have become aware of a number of barriers to women escaping violence in the housing and homelessness system. As such this submission addresses the Inquiry's first Term of Reference: the adequacy and effectiveness of current policy approaches and responses in preventing and responding to domestic and family violence in the ACT. It focuses specifically on aspects of the ACT's housing and homelessness system that impact on victims of domestic violence. In this regard, CCL notes that Domestic Violence is the number one reason why people present to specialist homelessness services.¹

Housing First Approach²

4. CCL supports a 'Housing First' approach to addressing homeless, including homelessness driven by domestic violence. A 'Housing First' is an approach to social housing which recognizes that 'everyone deserves a home of their own, regardless of personal circumstances'.³ It acknowledges that it is almost impossible to engage with support services, and overcome challenges without a fixed address. Many

¹ Homelessness Australia Fact Sheet, *Fact Sheet: Homelessness and Women* available at http://www.homelessnessaustralia.org.au/sites/homelessnessaus/files/2017-07/Homelessness_and_Women.pdf

² CCL acknowledges the contribution of Australian National University Community Law Clinical Program student, Jacqueline Smith in researching and analyzing the Housing First approach.

³ Jeanette Waegemakers Schiff and Rebecca A.L. Schiff, 'Housing First: Paradigm or Program?' (2014) 23(2) *Journal of Social Distress and the Homeless* 80, 80.

women escaping domestic violence have experienced trauma and facing prolonged periods in crisis accommodation services can serve to exacerbate that trauma.

5. The key advantages of Housing ACT adopting 'Housing First' rather than delaying independent housing through the use of crisis accommodation are:
 - Retention rates for 'Housing First' applicants holding tenancies are very high internationally and locally⁴
 - Communal living in crisis accommodation is often unsuitable for people experiencing homelessness with complex needs⁵; and
 - Temporary accommodation creates further instability and barriers for people experiencing homelessness.
6. CCL acknowledges that there will always be a need for crisis accommodation to allow for a rapid crisis response (particularly for people escaping violence). CCL also acknowledges that not everyone who experiences domestic violence is eligible for social housing. However, we are of the view that where possible, people who are eligible for social housing, should be transitioned into long term stable housing as quickly as possible. Prolonged periods of instability are not conducive to overcoming the trauma that may be caused by experiences of violence.
7. Currently, to be eligible for a priority allocation of Housing Assistance, applicants are required to demonstrate that they are able to 'sustain a tenancy'. In CCL's experience of the application of this policy by Housing ACT, previous failed tenancies, or extended periods of homelessness are considered to be evidence that a person is unable to sustain a tenancy. In some cases, where women have experienced domestic violence, their tenancies may have failed due to property damage caused by a violent partner or due to rent arrears which may have arisen in the context of financially controlling behaviours. These experiences of violence can then present a barrier to them being rehoused.
8. In order to demonstrate an ability to sustain a tenancy, Housing ACT often requires applicants to spend an indefinite amount of time in a refuge before they are deemed fit for housing. This not only strains resources of crisis accommodation providers (which are government funded) but presents a myriad of barriers to already vulnerable members of the community.
9. The practical effect of this criterion is significant for women escaping violence as, in CCL's experience, it can mean that applicants are often denied access to public housing not based on a lack of need but because they cannot prove their capacity to sustain a tenancy to the satisfaction of Housing ACT. This policy has the effect of

⁴ Elizabeth Conroy, Marlee Bower et.al, 'From Homelessness to Sustained Housing 2010-2013' (Research Report, Mission Australia: The Misha Project, 2014), 6.

⁵ Volker Busch-Geertsema 'Housing First Europe' (Final Report, European Union Programme for Employment and Social Security, 2013), 59.

placing the onus on the person escaping violence to connect with multiple support agencies and to ask those organisations to provide support letters committing to assisting that person through the early stages of their tenancy. This support coordination task places a significant burden on people in crisis.

10. The Housing First approach acknowledges that housing provides a stable base from which to address any outstanding issues, including overcoming trauma. Attempting to address personal issues whilst still in crisis is almost impossible for many people and requiring people to do this can serve to prolong periods of homelessness.

11. A Housing First Approach would require a significant increase in public housing in the ACT (although we note that some of the cost of this increase may be offset by savings in relation to the crisis accommodation services).

Recommendation 1

CCL recommends that Housing ACT adopt a 'Housing First' approach and alters its policy to allow people to be housed prior to having to engage with support services.

Recommendation 2

CCL recommends that the ACT Government increase its existing housing stock to allow people to be allocated to long term stable and secure housing as opposed to short term crisis accommodation.

Providing Crisis Accommodation that will allow for pets

12. CCL is aware that some women experience domestic violence in the form of threats of violence to their pets. As such, they want to take pets with them when escaping from violence. Currently there are no crisis accommodation services in the ACT who have the capacity to allow people to stay with pets. This means that people who are escaping violence with a pet are not able to access crisis accommodation. For some, this can prevent a barrier to leaving a violent relationship.

Recommendation 3

CCL recommends that the ACT Government work with crisis accommodation support providers to develop the capacity to accommodate pets of people accessing crisis accommodation services.

13. HOUSING ACT PROPERTY ALLOCATION

a. Current circumstances

Property allocation to Housing ACT tenants is governed by the Property Size Guidelines (**Guidelines**). The Guidelines provide for the distribution of property based on allocating the minimum number of bedrooms necessary for a tenant. The Guidelines restrict the number of additional bedrooms allocated to a tenant based on the number, age and sex of children.

Importantly, the Guidelines restrict the allocation of additional bedrooms to children who are not currently in a tenant's care. Under the Guidelines, a tenant must provide evidence of finalised child contact arrangements (such as a Parenting Order or Parenting Plan) to secure a property with additional bedrooms for children.

This evidentiary requirement has a disproportionate, adverse impact on victims of family and domestic violence who apply for public housing. In situations of family and domestic violence, children may not be in the tenant victim's care by reason of intervention by Child and Youth Protection Services or as a result of care arrangements being contested in ongoing Family Court proceedings. In order for the Family Court to return children to a tenant victim's case, the Family Court is generally required to form the view that suitable living arrangements are in place to accommodate the children. However, where a tenant victim has not been allocated a property with bedrooms for children (because no final orders have been made), the Family Court is unlikely to be satisfied that such suitable arrangements exist. As a result, victims of family and domestic violence who are applying for public housing and who do not have legally finalised child care arrangements are caught in an endless loop.

Case study: Melanie

Melanie is a mother of two young children and has fled an abusive partner, leaving her children behind. While Melanie sought a secure home environment for her children, her partner became sole carer and opposed restoration of contact between the children and their mother. While the Family Court had made interim contact orders, no final orders had been issued. Melanie applied for public housing and her application was approved on the High Needs List for a one bedroom property. No additional bedrooms were allocated for her children because they were not presently in her care. A major obstacle to securing final orders was the Family Court's concern that Melanie did not have suitable housing for her children to stay overnight. Meanwhile, Housing ACT were waiting for the Family Court to make final orders before it was willing to make such an allocation.

Recommendations 5 and 6

The ACT Government should make the following changes to the Guidelines and *Domestic Violence Policy Manual 2015 (Policy Manual)*:

- i. Amend the Guidelines to add new documents to the list of documents which may be relied upon to evidence child contact arrangements. These documents could include correspondence from a solicitor or the Federal Circuit Court or Family Court confirming that an individual is in the process of seeking parenting orders that, if made, would result in a child or children spending time overnight with the individual.
- ii. Insert a sub-section under "section 3: procedures" in the Policy Manual requiring that, in circumstances of family and domestic violence and where Housing ACT is presented with the aforementioned document, the Commissioner should exercise discretion and allocate additional bedrooms for children to account for children not currently in a woman's care.

14. BACKDATING RENT REBATES

a. Current circumstances

Rent rebates are ACT Government subsidies based on weekly income that assist public housing tenants to meet the market rent of their property. Rent rebates ensure eligible tenants pay no more than 25% of their gross household income towards rent. Housing ACT tenants are required to apply to renew their rent rebate every six months to avoid a lapse in coverage.

The Housing ACT Rent Rebate Policy relevantly provides that:

- a tenant's rebate will be cancelled if they do not complete a new application by the date requested; and
- the tenant is then charged market rent.

Where a tenant is charged market rent, the tenant cannot afford the full rent and accrues rental arrears. This can result in the tenant being evicted from the property. Where a tenant has not submitted a new application on time, tenants may make a renewal application for backdated rent rebate. However, the rent rebate will only be backdated to "an earlier date in circumstances decided by the Commissioner."

The *Housing Assistance Public Rental Housing Assistance Program 2013 (No 1) (ACT) (Program)* and the *Housing Assistance Public Rental Housing Assistance Program*

(Rent Rebate) Operation Guideline 2008 (No 1) (ACT) (Guidelines) indicate that the Commissioner's discretion is constrained to "unusual or out of the ordinary" circumstances. Such circumstances include, as identified in the Guidelines, where a tenant's physical or mental incapacity, unconsciousness, family death or serious family illness prevented the prompt completion of the application form. Unless the tenant's situation is determined to fall within these circumstances, the tenant will be liable for any accrued arrears (at market rent) even though they would have been otherwise eligible for the rebate during the period.

Women in circumstances of family and domestic violence often have difficulty in making an application for renewal of rent rebate. Without a backdated rebate, tenants are left with a debt they have no reasonable means to repay and which potentially puts them at risk of termination proceedings.

While there is no express limitation period to request for a backdated rent rebate, in our experience Housing ACT narrowly interprets these provisions such that any request for backdating must be 'timely'.

CCL understands and acknowledges the need to have sensible arrangements to assess a tenant's eligibility for rental rebate, which avoid a tenant inadvertently receiving a rebate to which he or she is not entitled. However, CCL considers that Housing ACT should adopt a more practical approach to dealing with applications for backdated rental rebate, including in circumstances where tenants are affected by family and domestic violence.

Case Study: Kim

Kim is a 48 year old woman who has two surviving adult children. She applied for public housing and was allocated her current property two years ago. She has experienced a lot of trauma in her life, including the deaths of two of her children and this has had a profound impact on her physical and mental health. Her surviving son is a perpetrator of violence against her, and he recently moved in as he had no other accommodation. Soon after this, Kim was experiencing threats and violence to such a degree that she left her property. She spent several months away from her home, during which time she struggled with depression, self-harm and suicide. As a result of her absence from her property, her rebate was cancelled. This meant that the rent became unaffordable, particularly in light of the fact that Kim also needed to pay for her temporary accommodation. In a short amount of time, she had accrued significant arrears. As a result, the Commissioner commenced termination and possession proceedings in the ACT Civil and Administrative Tribunal and although Kim's son is now incarcerated, meaning that Kim can return home, Kim is facing eviction because of her arrears. The Commissioner refused to backdate her rebate preferring to uphold the original decision that her rebate should remain cancelled.

Recommendations 7-10

The ACT Government should make the following changes to the Guidelines and Program:

- i. Amend section 8 of the Guidelines to include being the victim of family and domestic violence as an example of "unusual or out of the ordinary" circumstance preventing an individual renewing their rent rebate;
- ii. Amend clause 25(8) of the Program to include an additional provision that has the effect that the provision of a rental rebate takes effect from the cancellation of any previous rent rebate which is within two years of the application for a backdated rent rebate. The two year limitation period is a reasonable timeframe for tenants to request a backdated rent rebate and limits the opportunity for long term debts to carry on without redress;
- iii. Amend the current clause 25(8)(d) such that the rent rebate takes effect from a date earlier than two years in circumstances decided by the Commissioner. This provision will give the Commissioner the discretion to backdate rent rebates beyond the two year limitation in compelling circumstances; and
- iv. Amend the example to clause 25(8)(d) of the Program, clause 8 of the Guidelines, and the Policy to broaden the scope of the relevant circumstances considered by the Commissioner. This should include a particular example of where a women is prevented from making an application for renewal due to circumstances of family and domestic violence.

15. MINIMUM RENT CHARGE

a. Current circumstances

Generally, a tenant who is not occupying their Housing ACT property is not entitled to receive a rent rebate. However, the Policy suggests that where an absence (up to three months) is approved in writing by Housing ACT a tenant may still receive a rebate for that period of absence. After three months of absence, market rent is charged if the tenant is still absent from the property.

Women escaping family and domestic violence are often required to leave their Housing ACT property for their safety and the safety of their family, sometimes for extended periods. This will usually result in a woman seeking accommodation elsewhere, and being liable to pay rent for the Housing ACT accommodation as well as meet the costs of the alternative accommodation. The financial burden of escaping family and domestic violence is exacerbated by a woman being required to meet the

costs of maintaining two properties, particularly in circumstances where they will be charged market rent for the Housing ACT property.

Case Study: Ingrid

Ingrid is a 20 year old Indigenous mother of two who is a victim of family and domestic violence. Ingrid fled her Housing ACT property after an episode of violence and was unable to return to the property. Child and Youth Protection Services told Ingrid that if she returned she was at risk of having her children removed from her care.

However, Ingrid did not want to leave her home and was hoping to return once appropriate security measures had been taken to secure her home. Ingrid sought temporary accommodation with her sister and then later at a women's refuge, both of which required financial contributions. Ingrid was not able to continue to pay full rent at her Housing ACT property and ended up abandoning it. Ingrid's tenancy was terminated with \$10,000 of accumulated debt owed to Housing ACT comprising rental arrears and repair debt. Repaying this debt has a detrimental impact on a young mother's ability to provide basic necessities, such as food and housing, for herself and her children.

Recommendations 11-15

Policy should be amended to ensure that where a tenant is the victim of family and domestic violence and is required to leave their Housing ACT property for safety reasons, they continue receiving a rent rebate even where their absence extends beyond three months.

At present, if a tenant is not earning an income and is absent from their property as the result of incarceration or entering a residential rehabilitation facility for an extended period, the Policy states a tenant may receive a rent rebate to the extent that only the minimum rent is charged (five dollars per week). In order to further minimise the financial burden on victims of family and domestic violence who have been forced to leave their Housing ACT property and fund accommodation elsewhere, it may be appropriate to maximise the rent rebate such that only the minimum rent of five dollars per week is charged during the period in which the person is absent from their property.

To achieve this end, the ACT Government should make the following changes:

- (a) Amend clause 25(1) of the Program to state the following: "Unless subclause (11) applies, the Housing Commissioner may provide the tenant of a public housing property a rent rebate provided that the tenant satisfies the eligibility criteria in clause 9(4) and this clause.";
- (b) Insert a new clause 25(11) in the Program that has the effect that the Housing Commissioner must provide a tenant of the public housing property a rent rebate provided that the tenant satisfies the eligibility criteria in clause 9(4) and the Housing Commissioner is satisfied that the tenant is escaping family and domestic violence;
- (c) Amend clause 25(8) of the Program to include an additional provision that has the effect that the provision of a rental rebate takes effect from the date the tenant left the property to escape family and domestic violence which is within two years of the application for a backdated rent rebate;
- (d) Insert a new clause 25(12) in the Program that has the effect that notwithstanding subclause (2) and (4), where subclause (11) applies the rent rebate for the tenant is calculated so that weekly rent payable by the tenant (after deduction of the rebate) will be \$5; and
- (e) Insert a new clause 26(7) in the Program that has the effect that: notwithstanding subclause (5) and (6), where a tenant of a public housing property abandoned that property to escape family and

domestic violence, a suspension, amendment or revocation cannot take effect before the relevant assessment date.

16. HOUSING ACT DECISION MAKING PROCESSES

a. Current circumstances

Allocation to Priority category (the most urgent waiting list) is a decision of a committee called the Multi-Disciplinary Panel (MDP) following a recommendation by the assessment officer.

If a tenant is aggrieved by a Housing ACT decision, they may request review of the decision. The first level of review is by a senior officer in the area where the original decision was made. If the tenant does not agree with the outcome of the review they may seek further internal review. The Housing Assistance and Tenancy Review Panel (HATRP) is the second level internal review panel for Housing ACT clients wishing to have decisions made by Housing ACT reconsidered. The HATRP has the power to review decisions and subsequently make a recommendation to the Commissioner with respect to the decision

Housing ACT clients often seek the assistance of CCL with regard to decisions made which arise from recommendations made to the Commissioner by the HATRP. In undertaking work for clients, we have identified a number of issues arising out of the HATRP decision making process and reports. These include:

- neither the HATRP nor the Commissioner (in deciding whether or not to adopt the HATRP recommendation) provide detailed reasons for decisions as a matter of course;
- there is some confusion about which facts, legislation and/or policy is considered by the HATRP when making its decisions;
- there is inconsistency about whether new information regarding the circumstance not available at the time of the original decision is to be considered when the HATRP is reviewing such a decision; and
- the HATRP does not take into account tenant's human rights (either expressly or apparently) when making decisions. (the obligation to do this has recently been clarified in *Miller v Commissioner for Social Housing (Administrative Review)*[2017] ACAT 10 and *Little v Commissioner for Social Housing (Administrative Review)* [2017] ACAT 11).

It is essential for vulnerable persons and, in particular, women suffering from family and domestic violence to:

- have confidence in the decisions made by Housing ACT and the HATRP; and

- understand the reasons behind decisions made by Housing ACT and the HATRP.

For women escaping family and domestic violence it is also essential that applications for review are dealt with in a timely manner. Once a review process extends beyond 3 months, other support services, such as crisis accommodation, lapse in their ability to assist women escaping family and domestic violence. The identified issues must be addressed promptly to ensure that HATRP decisions do not put vulnerable individuals at further risk.

Recommendations

The Administrative Review Council (ARC) publishes best practice guidelines for internal review. The guidelines ensure efficacy and accountability in decision making. The subsequent recommendations are informed by ARC best practice.

The MDP, HATRP and the Commissioner should provide detailed reasons

The MDP, HATRP and the Commissioner are not legislatively required to provide reasons. A practice of not providing reasons means vulnerable people do not understand the reasons for the decision and may not be afforded procedural fairness.

When detailed reasons are not provided, a review process becomes drawn out and crisis services can lapse leaving already vulnerable people in circumstances where they may become homeless. If the MDP, HATRP and the Commissioner provided reasons for denying an application or appeal, individuals would be in a better position to understand the decision and community legal centres who assist clients would also be in a better position to advise clients of the prospects of successfully appealing the decision, and less time would be spent by Canberra Community Law and other community organisations trying to determine what those reasons may have been. It is particularly important that reasons be provided when the Commissioner decides not to accept the HATRP's recommendation. This is because, in the absence of reasons, it is difficult to explain the outcome to the tenant and for the tenant to accept the outcome.

The MDP and HATRP should only take into account relevant information and should consider new information

There appears to be confusion in some cases before the HATRP as to which information, legislation and policy is relevant to reaching the correct decision. A correct decision cannot be made without the correct factual and legal basis. The *Domestic Violence Policy Manual* expressly states that the principles in the policy manual must be considered in all decision making, including 'any determination and application of discretion by the Commissioner for Social Housing'. The HATRP and the Commissioner are required to take into account circumstances of family and domestic violence. However, it appears they do not consistently acknowledge that family and domestic violence has ramifications beyond physical and mental injury.

Further, the HATRP should also be required to consider any new information provided to an individual, even in circumstances where that information may not have been made available to the decision maker at the time of making the original decision. This is consistent with its function as a merits review body, which requires HATRP to determine the correct and preferable decision based on information before it: *Drake v Minister for Immigration and Ethnic Affairs* (1979) 2 ALD 634, 46 FLR 409.

The policy manual identifies 'provision of safe, secure and affordable housing' as a critical support for women affected by family and domestic violence. In our experience, there are cases where the MDP has formed the view that an individual is unable to sustain a tenancy. However, the fact that this may be a consequence of family and domestic violence currently or recently experienced by the applicant does not appear to be considered in the decision making process. For example, a woman may be 'unable to sustain a tenancy' because she has been locked out of her bank accounts by the perpetrator of family and domestic violence, yet the MDP does not acknowledge that this is the underlying reason for her inability to sustain a tenancy. In not properly and consistently considering the effects of family and domestic violence on applicants, the MDP and the Commissioner are not upholding Housing ACT's commitment to providing support to women escaping family and domestic violence.

The HATRP should consider human rights (*Human Rights Act 2004* (ACT))

The *Human Rights Act 2004* (ACT) requires that all policies and legislation of government bodies must be interpreted and applied in accordance with human rights principles. The *Human Rights Act 2004* (ACT) applies to Housing ACT's decision making processes.. Relevant rights in the Act include:

- section 12(a) – freedom from arbitrary interference to the home; and
- section 11 – right to protection of family and children.

Family and domestic violence necessarily infringes on these rights and, in giving effect to its obligations under the *Human Rights Act 2004* (ACT), the Housing ACT should ensure that its decision making processes involve consideration of these basic rights and, wherever practically possible, protection of these rights.

Recommendation 16

The MDP, HATRP and the Commissioner should provide detailed reasons

Recommendation 17

The MDP and HATRP should only take into account relevant information and should consider new information

Recommendation 18

The HATRP should consider human rights (*Human Rights Act 2004* (ACT))



Contact for this submission

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