

27 May 2022

Parliament of New South Wales
Legislative Council
Standing Committee on Social Issues

**SUBMISSION TO THE NSW PARLIAMENTARY ENQUIRY – HOMELESSNESS AMONGST
OLDER PEOPLE AGED OVER 55**

Marrickville Legal Centre welcomes the opportunity to contribute to the above-mentioned enquiry.

Marrickville Legal Centre (MLC) is a community legal centre that has been operating in Sydney's Inner West and across New South Wales for over forty years. The Centre operates two tenancy services, the Inner West Tenants' Advice & Advocacy Service and the Northern Area Tenants' Service. These services provide advice, advocacy and legal representation to over 2000 renters every year with the aim of improving the rights of tenants in New South Wales.

Please do not hesitate to contact me on (02) 9137 6051 if you wish to discuss this submission.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Justin Abi-Daher', is positioned above the typed name.

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Submission to the NSW Parliamentary Enquiry

Homelessness amongst older people aged
over 55

27 May 2022



**Marrickville
Legal Centre**
From the inner west,
serving NSW

About Marrickville Legal Centre

Marrickville Legal Centre (**MLC**) has provided legal services to vulnerable and disadvantaged members of its community for over 40 years.

MLC operates two tenants' advice and advocacy services, the Inner West Tenants' Advice & Advocacy Service (**IWTAAS**) and the Northern Sydney Area Tenants' Service (**NSATS**). The combined services (the **Services**) assist tenants across the Inner Western and Northern Suburbs of Sydney, from Strathfield to Berowra. The Services offer free legal services to private and social housing tenants, boarders, lodgers and residential community residents. The Services work to improve the rights of tenants in NSW.

In 2020-2021, the Services assisted more than 2500 tenants, providing over 6875 tenancy/strata services. The Services regularly represent tenants at hearings before the NSW Civil & Administrative Tribunal (the **Tribunal**) and provide outreach services to vulnerable clients within our catchment.

Through our work in the community, we approach our clients with a view of holistic legal provision and a person-centred approach. While our tenancy advice and advocacy services are often the first port of call for clients with housing issues, we also provide internal referrals to clients with various needs through our Legal Health Check. Our Health Justice Partnership also ensures we are able to access vulnerable clients within the health system. MLC remains actively engaged with other legal and non-legal services in the community.

Summary of Recommendations

MLC supports any relevant recommendations made by the Tenants' Union of New South Wales (the **Tenants' Union**). In addition, MLC makes the following recommendations:

Social Housing

Recommendation 1: Increased funding and availability of appropriate Public Housing Stock

Recommendation 2: Strengthening of the Private Rental Subsidy Scheme

Recommendation 3: Improved communication and transparency between social housing providers and housing applicants, social and community supports

Boarding Houses

Recommendation 4: That proprietors be required to provide a prescribed reason for evicting a resident

Recommendation 5: Boarding house agreements be subject to a legislated minimum notice period for termination by proprietors

Recommendation 6: Boarding house proprietors be required to obtain an order from the Tribunal prior to retaking possession of the resident's premises

Recommendation 7: All boarding houses continue to be registered with the Office of Fair Trading

Evictions

Recommendation 8: That landlords be required to provide a prescribed reason for evicting a tenant

Recommendation 9: Redefine the term 'long-term tenancy' in NSW tenancy law to 10 years

Recommendation 10: Increase the application fee for landlord-initiated termination proceedings at the New South Wales Civil and Administrative Tribunal

Other Support

Recommendation 11: Increased funding for outreach services, legal services, health services, and support services assisting older persons at risk of homelessness

Background

Marrickville Legal Centre has a long history of advocating for the rights of older persons at risk of homelessness. The recommendations outlined in this Submission draw on our experiences in the community and from feedback provided by the older clients we assist.

Older persons can face various personal hardships, placing them at an elevated risk of homelessness. This can include limited income, chronic health conditions, disability, limited access to technology and/or low technological literacy, limited mobility, interpersonal losses, and social disengagement.

These personal circumstances are frequently compounded by socio-economic and legal pressures, such as the rising cost of living and inadequate protections under the *Residential Tenancies Act 2010* (NSW) (the **Act**). In our experience, these multifaceted considerations affect the lives of our older clients in a multitude of ways and cannot be addressed in isolation.

The submissions outlined over the following pages acknowledge the above considerations in addressing what can be done to ensure older persons over 55 are provided with safe and affordable housing.

Social Housing

Recommendation: Increased funding and availability of appropriate Public Housing Stock

The present shortage of publicly owned social housing stock has resulted in unsustainable wait times for social housing applicants. In the CS07 Inner West Allocation Zone, the anticipated wait time for an offer of a studio to one-bedroom premises currently stands at over a decade.

Applications assessed as priority also face a lengthy wait, with the total number of applications exceeding the available properties. At time of writing, there are at least 260 priority applicants awaiting an offer of housing in the CS07 Allocation Zone.

Behind every priority applicant is a person who has been assessed as demonstrating urgent housing needs and/or having been unable to resolve their needs within the private rental market. Long wait lists mean that older persons at risk of homelessness remain in unsafe and unsustainable positions while awaiting an offer of housing. They often do not have the means, nor the ability, required to seek alternative housing in the interim and are often affected by health conditions which compound their vulnerability

In our view, any strategy for the prevention of homelessness must include a long-term aim of increasing appropriate social housing stock.

Consideration must also be given to obtaining housing stock appropriate to those with specific needs. This includes accommodation that is accessible to tenants with a disability, within reach of public transport, and that enables older people to retain existing community ties required to ensure their mental and emotional wellbeing.

In our experience, older persons will frequently have established ties to local community, medical practitioners, and with their nominated religious institutions. Sustaining these relationships are often fundamental to their overall health and wellbeing. Despite increasing rent prices, we have found that older people in these circumstances will opt to pay unaffordable rent within these established communities, rather than move to alternative premises in an area that is unknown to them. In such circumstances, the older person is left with a nominal amount to spend on their basic needs, placing them at serious risk of arrears, termination, and ultimately homelessness.

An adequate standard of living, including access to safe and secure housing is a fundamental human right. Article 25 of the Universal Declaration of Human Rights states that:

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including...housing”.

More specifically, approximately 19% of social housing tenants and 16% of community housing tenants are older women.¹ With an ageing population, increasing numbers of women experiencing housing insecurity will add

¹ Australian Institute of Health and Welfare, Housing Assistance in Australia 2017: Social Housing Tenants Data Tables, Excel (2017), Table 7. Findings based on source data.

pressure to an already overburdened social housing system. The Australian Human Rights Commission paper titled 'Older Women's Risk of Homelessness: Background Paper Exploring a Growing Problem (2019)² confirms that older women's homelessness is often hidden from view and the risk factors for women's homelessness include:

1. Being single;
2. Renting;
3. Living alone; and
4. Experiencing economic disadvantage.

A sole crisis, such as a termination can result in homelessness older tenants. This, coupled with financial insecurity, the high cost of housing and having little support may lead to older persons "slipping down the housing ladder over time".³

Recommendation: Strengthening and expansion of the Private Rental Subsidy Scheme

The Private Rental Subsidy (**PRS Scheme**) is a scheme administered by Family and Community Services that assists priority housing applicants with medium-term accommodation on the private rental market while they await an offer of housing.

Although we are of the view that older persons are best afforded the stability and certainty of public housing stock, the PRS scheme has been demonstrated to be a helpful option for assisting older clients obtain and/or retain accommodation while waiting for offer of housing.

Introducing an automatic assessment of priority applicants to the PRS Scheme can better assist older persons at risk of homelessness. In our experience, the allocation of priority housing applicants to the PRS Scheme tends to be more reactive than proactive. Even where an older person meets the eligibility criteria, they will often be required to ask for referral to the PRS Scheme, rather than be provided with an assessment. As a result, eligible clients may be left out due to a lack of knowledge or awareness of the PRS Scheme.

Recommendation: Improved communication and transparency between social housing providers and housing applicants, social and community supports

Older persons at risk of homelessness face significant barriers making an application for social housing (**Housing**). Making an application for Housing can be a daunting process for persons with complex needs, with multiple forms to complete and requirements to fulfill. Often older clients will not have access to technology or may lack the facilities required to submit forms electronically. Limited access to such resources can result in a disempowering experience for older persons, who may be required to take multiple trips to their respective Housing office despite their physical or practical constraints.

² Australian Human Rights Commission, 'Older Women's Risk of Homelessness: Background Paper Exploring a Growing Problem April 2019' (2019), 10.

³ Andrea Sharam, 'Going it Alone: Single, Low Needs Women and Hidden Homelessness' (Research Report, Women's Information, Support and Housing in the North, 2008) 28–35; Ludo McFerran, 'It Could be You: Female, Single Older and Homeless' (Report, Homelessness NSW, Older Women's Network NSW and St Vincent de Paul Society, 2010) 22–36; Trish Westmore and Shelley Mallett, 'Ageing in What Place? The Experience of Housing Crisis and Homelessness for Older Victorians' (Final Report, Hanover Welfare Services, 2011) 2, 35–36; Australian Association of Gerontology (AAG), 'Older Women Who are Experiencing, or at Risk of, Homelessness' (Background paper, AAG, 2018) 6

Moreover, older persons may not have the ability to appropriately advocate for themselves to be placed on the NSW Housing Register. In our experience, we have seen instances where eligible priority housing applications have been declined or delayed due to administrative errors, resulting in extensive delays for vulnerable applicants. Due to limited understanding of the systems in place, many of our elderly clients will have had great difficulty having their applications restored without legal representation.

Considering these barriers, the need for improved coordination between housing providers and their applicants is evident. Applicants with complex needs would also benefit from holistic case management support, with greater transparency and collaboration between housing providers and existing social or legal supports.

Case Study

Ahmed is an elderly gentleman in his 70s who suffers from multiple health conditions. After his tenancy was terminated, Ahmed was required to find another home for him and his chronically ill wife as a matter of urgency. As they had lived in their local area for many years, they searched for nearby available properties but were unable to find one that met their budget. Eventually, they were approved for a property but were left with a mere \$80 per fortnight to cover other expenses after rent.

Marrickville Legal Centre assisted Ahmed with making an application for housing and advocated for priority assistance on his behalf. Two months after making the application, his application was closed in error, and MLC successfully advocated for the application to be restored. Soon thereafter, Ahmed's wife passed away, leaving Ahmed with insufficient resources to cover his rental payments or purchase food to meet his basic needs.

Seven months after making a complete application to housing, Ahmed was approved for a Private Rental Subsidy.

Boarding Houses

Boarding houses are often occupied by older persons experiencing multiple forms of disadvantage. This frequently includes single persons on a low-income and other marginalised persons who do not have the means or ability to secure housing on the private rental market. For many clients we assist, registerable boarding houses are the only affordable option, and the only means of available accommodation while awaiting an offer of housing through the NSW Housing Register.

Registerable boarding houses in NSW are presently governed by the *Boarding Houses Act 2012 (NSW)* (the **BH Act**), legislation that may soon be replaced by the Shared Accommodation Act.

In 2019, Marrickville Legal Centre provided submissions to a parliamentary enquiry on the Review of the *Boarding Houses Act 2012 (NSW)*. We maintain that the submissions previously provided to this enquiry retain their relevance and would provide substantial protection to older persons.

Specifically, we recommend the following:

- **Recommendation:** *Proprietors be required to provide a prescribed reason for evicting a resident*
- **Recommendation:** *Boarding house agreements be subject to a legislated minimum notice period for termination by proprietors*
- **Recommendation:** *Boarding house proprietors be required to obtain an order from the Tribunal prior to retaking possession of the resident's premises*
- **Recommendation:** *All boarding houses continue to be registered with the Office of Fair Trading*

Evictions

Marrickville Legal Centre supports the recommendations made by the Tenants' Union in their Report *Eviction, Hardship, and the Housing Crisis (2022)*. In our view, the recommendations outlined in this Report are applicable and relevant to the prevention of homelessness in older persons.

Recommendation: That landlords be required to provide a prescribed reason for evicting a tenant

Landlords are not currently required to specify a reason for serving a termination notice on a tenant. The specified length of time required to terminate with no reason depends on whether the tenant is subject to a fixed term or periodic agreement. Under a fixed term agreement, a tenant may be provided with 30 days' notice to vacate the premises, and under a periodic agreement, a tenant may be served a 90-day 'no grounds' termination notice. The threat of being served a termination notice without reason can provide a disincentive for tenants who might otherwise assert their rights under the Act. In our experience, older tenants are less inclined to request repairs to their homes due to the risk of upsetting their landlords and risking termination.

The Services regularly advise tenants who have been served with no-grounds termination notice shortly after requesting that repairs be completed or attempting to negotiate a rent increase. Although there are provisions against retaliatory evictions in NSW, these provisions do not always provide sufficient protection for tenants who seek to exercise their rights.

There will always be a reason for a landlord's decision to end a tenancy. Replacing 'no grounds' evictions with a set of prescribed reasons will enable greater transparency and protection for tenants who might otherwise suspect an eviction is retaliatory. Inserting these provisions also empowers older tenants to secure a safe and habitable home while providing increased protections for older persons at risk of homelessness.

While facing a termination notice can be daunting for many tenants, older tenants - especially those with limited incomes - will often face practical barriers when searching and applying for a new home. Older tenants are more likely to face mobility issues, health concerns, and difficulties with communication (both due to technological illiteracy and where they are of a non-English speaking background). When applying for rental properties, older tenants may also encounter preferential treatment favouring younger tenants with disposable incomes and/or fewer limitations to their health or wellbeing. Even if an older tenant is successful in applying for a property, they can face difficulties with the practical and financial implications of packing up their belongings and moving house.

Recommendation: Redefine the term 'long-term tenancy' in NSW tenancy law to 10 years

The *Residential Tenancies Act 2010* (NSW) provides special protections for long term tenants. Under Section 94 of the Act, a long-term tenancy can only be terminated by a landlord with an Order by the Tribunal. In circumstances where termination is ordered, the tenant is provided with a minimum of 90 days to vacate the premises.

A 'long-term tenancy' is defined in the Act as one where the tenant has been in continual possession of the residential premises for a period of 20 years or more. In our view, this length of time is insufficient considering the practical and financial implications of relocating a longer-term tenancy that is not covered by the existing definition. In our experience, older people are disproportionately affected by this limited definition. We find that older tenants tend to stay in their accommodation for many years, even decades, as a means of establishing stability and security. As specified above, older tenants will often report that moving can be a monumental practical and economic burden, necessitating the need for additional protections.

Redefining the threshold required to establish a 'long term' tenancy to 10 years will provide increased protection for tenants to locate safe and appropriate alternative accommodation. In our view, lowering the threshold for a long-term tenancy also seeks to acknowledge the tenure of longer-term tenants, while appropriately balancing their rights with the rights of their landlords.

Recommendation: Increase the application fee for landlord-initiated termination proceedings at the New South Wales Civil and Administrative Tribunal

Under the Act, a landlord is required to obtain a Termination Order from the New South Wales Civil and Administrative Tribunal to formally terminate a tenancy. At time of writing, the standard application fee for residential proceedings under the Consumer and Commercial Division is \$52.

Given the serious implications that termination can place on a tenant's wellbeing and safety, it is our view that current fee structure does not appropriately acknowledge the significance of the proceedings at hand. There are also other reasons why a landlord may initiate termination proceedings at the Tribunal, which do not necessarily involve termination as the desired outcome. Frequently we find that landlords, especially social housing providers, will initiate termination proceedings with the view of obtaining a Specific Performance Order (**SPO**). A SPO is often sought after as a method of ordering a tenant to take certain acts in compliance with the Act. There are alternative means to achieve this outcome. For example, a landlord could apply for orders under Section 187 of the Act, achieving the same effect while negating the threat of termination and providing better protections to the tenant.

Unfortunately, we have found that many older tenants do not necessarily understand this practice and believe that receiving a termination notice means that they must leave the premises. Further, receiving a termination notice, even if the desired effect is to reach an agreement by consent, can have a detrimental impact on tenants with significant vulnerabilities and mental health concerns.

In our view, reviewing and increasing the application fee for landlord-initiated termination proceedings is an important step to disincentivising this practice while ensuring the that the Tribunal is utilised for its intended purpose: *to facilitate the just quick and cheap resolution of the real issues in the proceedings.*

Outreach and Social Support

Recommendation: Increased funding for outreach services, legal services, health services and support services assisting older persons at risk of homelessness

In our experience, older persons frequently reside in alternative living arrangements, such as granny flats, boarding houses, lodging arrangements or other forms of accommodation without a written agreement. These persons are particularly vulnerable to homelessness, as they may not necessarily be afforded the legislative protections provided under the Act or the BH Act.

We have frequently found that these older persons do not recognise the precarious situations in which they reside until it is too late. This may be due to limited access to technology, greater reliance on postal services, limited community support, lack of awareness of legislative protections, and a reluctance to reach out to the supports that may otherwise be available to them. It is only through qualified legal advice, or other social supports, that these clients can delay and/or avoid termination or be assisted into alternative housing. In this respect, early intervention, particularly legal intervention, can assist older clients to understand and protect their rights as a tenant, reducing the risk of homelessness.

In our view, these older persons will continue to be at risk of homelessness unless additional funding is allocated to such specialised services. While this includes the need for generalised legal, health and social services, we acknowledge the need for specialised support for older persons with specific needs, specifically:

- Increased funding for Tenants' Advice and Advocacy Services part of the TAAP Program to make provision for an older persons' housing advocate;
- Specialised housing programs for older women at risk of domestic violence and mental health concerns;
- Culturally appropriate and language specific community options for Culturally and Linguistically Diverse people;
- Homelessness services for older First Nations persons;
- Service provision for veterans from non-ADF backgrounds who are otherwise unable to seek specialised mental health and housing support and
- Readily available housing options for temporary visa holders, including those on refugee programs.