

Inner Sydney Tenants' Advice & Advocacy Service

Tenancy Advice (02) 9698 5975



Auditor-General

The Audit Office of NSW

Dear Audit Office of NSW

Thank you for your invitation to contribute to your 'Responses to homelessness' Audit. Please find attached our submissions to this Audit.

We would welcome the opportunity to meet with you to discuss our submission.

Yours faithfully,

Redfern Legal Centre

A handwritten signature in black ink that reads 'A. Goodstone'.

Alexis Goodstone

Principal Solicitor and Acting CEO

A handwritten signature in black ink that reads 'A. Brooker'.

Amanda Brooker

Acting Team Leader

Inner Sydney Tenants' Advice & Advocacy Service

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SUBMISSION: Audit Office of NSW – Responses to Homelessness – Response to NSW Government’s Homelessness Strategy 2018-23

AUTHORS: Alison Mackey, Solicitor
Amanda Brooker, Acting Team Leader

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1. Introduction: Redfern Legal Centre

Redfern Legal Centre is an independent, non-profit, community-based legal organisation with a prominent profile in the Redfern area. RLC has a particular focus on human rights and social justice. Our specialist areas of work are tenancy, credit and debt, financial abuse, employment and police and government accountability. By working collaboratively with key partners, RLC specialist lawyers and advocates provide free legal advice, conduct casework, deliver community legal education and write publications and submissions. RLC works towards reforming our legal system for the benefit of the community.

2. RLC's work in tenancy

RLC has a long history of providing advice, assistance and advocacy to the local community, with a key focus on the provision of information and services to public housing tenants and a strong emphasis on the prevention of homelessness. Since RLC was founded in 1977, tenancy has been one of our core areas of advice. Since 1995, RLC has been funded by NSW Fair Trading to run the Inner Sydney Tenants' Advice and Advocacy Service ('**ISTAAS**'). ISTAAS assists tenants living in the City of Sydney, Randwick, Inner West and Bayside local government areas through the provision of advice, advocacy and representation.

The Inner Sydney area has a significant number of people living in public housing and these tenants make up approximately 30% of all people advised by our practice. Our submission is informed by the experiences of our clients, many of whom face the prospect of homelessness if their tenancies are terminated.

We have provided input into similar inquiries in the past, such as:

- FACS Discussion Paper on Social Housing in NSW;
- NSW Legislative Assembly Inquiry conducted by the Public Accounts Committee into Tenancy Management and Social Housing; and
- Select Committee on Social, Public and Affordable Housing Inquiry into Social, Public and Affordable Housing.

This submission highlights RLC's concerns about the effectiveness of the current processes identified in the *NSW Homelessness Strategy 2018-2023* (**the Strategy**) in supporting the prevention of homelessness. We have considered each of the three focus areas identified in the Strategy and have also provided feedback on the Department's response to the Covid-19 pandemic.

3. RLC's views in summary

Access to housing is a human right. Having a safe and secure house in which to reside is essential to the physical, mental and emotional wellbeing of a community. Housing also influences the sense of belonging experienced by individuals.

Within NSW, the housing system has failed to ensure that everyone has access to safe, secure and affordable housing. As a result, vulnerable renting households in both the private and social housing rental markets have an increased risk of entering into homelessness.

RLC has assisted a large number of tenants who are at risk of homelessness with advice, advocacy and representation. In 2020, RLC gave 1901 advice sessions and approximately 550 related to termination.

RLC endorses the submission provided by the Tenants' Union of NSW.

We provide the following short submission and recommendations as a supplement to the concerns raised by the Tenants Union. RLC provides this submission in response to Focus Areas 1.2 and 3.3 of the Strategy. We have not provided a response to the other actions identified in the Strategy.

Our submission focuses on the experience of social housing tenants and the impact of COVID-19 in increasing the risk of homelessness within the Inner Sydney area.

RLC has identified the following concerns with the effectiveness of focus areas 1.2 and 3.3 of the Strategy in producing outcomes to reduce homelessness:

- Focus Area 1.2: The tendency for social housing providers to pursue termination as a first step rather than a last resort.
- Focus Area 3.3: Lack of trauma informed and culturally appropriate practice by front-line housing provider staff.

In terms of the government's response to the impacts of the COVID-19 pandemic, RLC is concerned that there has been an unwillingness to provide adequate protections to renters who have been affected by COVID-19.

We note that the actions identified in the Strategy also have significant implications for renters in the private rental market where there are also insufficient protections in place to support vulnerable renters. As our submission will largely focus on the experience of our social housing clients, RLC refers to the submission provided by the Tenants Union to highlight the wider implications for renters within the private rental market.

4. RLC's Response to specific issues

a) Focus Area 1: Prevention and Early Intervention

As highlighted in the Strategy, there are many factors which can result in homelessness. These factors are multifaceted and vary between individuals.

Many of the tenants who approach RLC for advice are at risk of eviction and facing imminent homelessness. A significant proportion of our clients are experiencing vulnerability and often need additional support to maintain their tenancies.

Focus Area 1.2: "Support people to maintain their tenancies and avoid entering the homelessness system"

The NSW Government identifies one of its key actions to support people to maintain their tenancies as the following:

"Take action to sustain existing tenancies in social housing through local strategies to deliver intensive person-centred support and case management to address a range of complex needs such as mental health and alcohol and other drug issues.¹"

RLC supports the commitment to engage with tenants to sustain tenancies where they are at risk. However, in practice this commitment has not been borne out. This has had detrimental impacts on tenants experiencing vulnerability and has contributed to the growing numbers of those experiencing homelessness.

It has been RLC's experience that often, the initial response from social housing providers (including the Department of Communities and Justice (**DCJ**)) is to seek termination of a tenant's tenancy as a first step when there is an allegation of breach. These breaches include: anti-social behaviour or alleged illegal use of the premises, property care issues or rental arrears. It is our experience that termination is pursued even where the tenant is experiencing vulnerability that acts as a barrier to maintaining their tenancy. Such vulnerabilities include mental health conditions, addiction issues, experience of trauma and domestic violence and other disabilities which may have influenced their actions in relation to the alleged breach. Rather than linking up these tenants with support services to assist them in sustaining their tenancies, social housing providers' initial responses have been to issue a termination notice or make an application to the NSW Civil and Administrative Tribunal.

¹ NSW Government, "NSW Homelessness Strategy 2018-2023", page 17.

Case study: DCJ attempts to terminate public housing tenancy where mental health is significant factor in breach

Sam (not his real name) contacted RLC for assistance after receiving notice that his landlord, LAHC, had made an application to NCAT seeking termination of his tenancy on the basis that he had “intentionally or recklessly caused or permitted the use of his premises for an illegal purpose.”

Sam was suffering from multiple physical ailments including stomach ulcers and osteoarthritis and also suffered from depression.

Sam had a friend who offered to come and care for him, and stayed at his premises a couple of days a week. While she was staying at the premises and unbeknownst to Sam, his carer was supplying drugs from the premises.

Sam’s carer was arrested and charged by police and a short time later Sam was issued with a notice of termination.

RLC represented Sam in the Tribunal and argued that his tenancy should not be terminated as he had no knowledge of the supply of the drugs from his premises and he would suffer undue hardship if his tenancy was terminated. Sam had never had an issue with his tenancy previously and had always paid his rent on time. RLC obtained evidence from a clinical psychologist who conducted an assessment on Sam. It was the psychologist’s professional opinion that Sam’s depression had resulted in him being taken advantage of by his carer.

Amongst other things, RLC argued that Sam’s mental health condition would be exacerbated if he was made homeless. The Tribunal declined to terminate Sam’s tenancy and instead ordered a specific performance order.

The above case study highlights just one of many circumstances where the effects of a tenant’s mental health condition led to breach of his tenancy agreement. RLC was ultimately successful in saving this tenancy, however it is our view that upon becoming aware of the alleged breach, DCJ should have worked directly with the tenant to ensure he was receiving adequate support to sustain his tenancy rather than immediately proceeding to termination.

This is a clear example of the way in which the action identified in the Strategy to “deliver intensive person-centred support and case management” has not been implemented by DCJ in an attempt to sustain existing tenancies. The tenant in the above case study would have benefitted from a referral to a support service for assistance in managing his various health conditions. With adequate support, it is likely that he would not have required his friend to come and care for him and in turn the breach of his tenancy agreement would not have occurred.

It is our experience that even where a tenant in similar circumstances is engaging with a support or advocacy service and taking steps to ensure that they are able to sustain their tenancy, matters are often still referred to DCJ Legal Branch and termination is pursued. These actions are in direct contradiction to the stated Strategy.

While we endorse the action identified in the Strategy to “deliver intensive person-centered support and case management”, in our experience it has not yet been effectively implemented, nor has it produced outcomes to reduce homelessness. A greater commitment is required to implement this action if it is to positively impact tenancies that are at risk and reduce vulnerable households entering homelessness.

Recommendation 1: DCJ should form local partnerships with support services and non-government organisations and commit to actively referring a tenant to these services before engaging in any action to terminate a tenancy.

b) Focus Area 2: Effective supports and responses

RLC does not intend to provide any submissions in relation to Focus Area 2 of the Strategy.

c) Focus Area 3: An integrated, person-centred system

RLC accepts that no single agency is responsible for delivering responses to homelessness in NSW. Services are, and should be, provided by a variety of government, non-government and community organisations in accordance with community need.

However, there is a lack of communication and connection between such organisations, despite widespread recognition of the importance of integrated approaches to service delivery.

The Strategy states that the NSW Government is committed to making the service system more integrated, to ensure that people are able to access appropriate support if they need it. This is consistent with our understanding that people experiencing homelessness (or at risk of homelessness) often have complex needs and it is common for a range of supports to be needed in order to attain or sustain tenancies. Individuals who have experienced severe or ongoing trauma typically present to multiple services over an extended period of time and may have periods of disengagement before reengaging. A range of supports are often need to assist the tenant to sustain their tenancies.

In the Strategy the NSW Government highlights its commitment to improve the services delivered to individuals who have experienced trauma in order to produce outcomes which reduce homelessness.

Focus Area 3.3: “Improve services by increasing trauma-informed care and culturally appropriate practice”

The Strategy outlines that another key focus for the government in addressing homelessness in NSW is to:

“improve the way agencies and frontline staff work with people, building on current training to ensure best practice and culturally appropriate approaches to service delivery.”²

² Ibid, p 28.

Again, RLC supports this approach but considers that to date it has not been effectively implemented across the board to effectively reduce homelessness.

It is our experience that in many instances, social housing providers or their staff do not engage in a culturally appropriate way with tenants. As a result, tenants report feeling frustrated and disenfranchised in their interactions with their housing provider.

This threatens the sustainability of their tenancies and puts them at risk of homelessness as they fail to engage with inquiries being made by their housing provider. For example, RLC is aware of instances where tenants have been asked to provide updated evidence of their household income to be reviewed by their social housing provider. Due to a failure by provider staff to communicate with tenants in a culturally appropriate way (for example, by utilising an interpreter) tenants report that they did not understand that they were required to provide certain information for review. In many of these instances, we see tenants having their rental subsidies cancelled and falling into rent arrears, which in turn increases their risk of homelessness when their housing providers seek termination of their tenancies.

Additionally, it has been our experience that some front-line social housing provider staff have not exhibited appropriate trauma-informed care when dealing with tenants, despite being aware of their complex trauma history. In many cases, this once again increases the risk of tenants entering into homelessness.

Case study: DCJ have acted without demonstrating a ‘trauma-informed’ approach

Alicia (not her real name) had been approved for a priority transfer on an ‘at risk’ basis as she was at risk of domestic violence by her ex-partner in her current property. There had been a number of traumatic events at the property which meant being forced to remain at the property was triggering for both herself and her children.

RLC advocated on behalf of Alicia and a representative from her local office arranged for Alicia to inspect another property to be transferred to. Despite having knowledge of Alicia’s history as a survivor of domestic violence, DCJ proposed to transfer her to a property in a building from which she had previously fled domestic violence.

RLC wrote to the local office and were notified that DCJ were aware of Alicia’s history with that complex. RLC made representations about the inappropriateness of the offer, particularly in light of Alicia’s history. Alicia and her family were forced to reside in their current property for a further six months before they were offered an appropriate property to transfer to.

The above case study highlights one situation where a social housing provider has not exhibited trauma-informed practice when interacting with tenants. A failure to engage with clients in a trauma-informed way exacerbates the risk of homelessness. In our interactions with clients we have seen on multiple occasions that where there is a lack of trauma-informed practice and clients’ experiences are not honoured by their housing providers, this has led to distrust and a loss of hope which has resulted in the tenant either relinquishing their tenancy or fleeing their property and ultimately becoming homeless.

Recommendation 2: In order to ensure a trauma informed and culturally appropriate service, all social housing providers should be required to recruit staff with skills and expertise in trauma informed care and culturally appropriate service provision, and provide regular training and supervision in trauma informed care and culturally appropriate service provision.

d) NSW Government's Response to COVID-19

The COVID-19 amendments to the *Residential Tenancies Act 2010* (**the Act**) and the *Residential Tenancies Regulation 2019* (**the Regulations**) which the government enacted in March 2020 were a legislative response to the pandemic and do not apply to social housing tenancies. They are currently in force until March 2021.

It is our experience that the amendments have provided some additional protections for tenants in financial hardship as a result of the pandemic. Landlords are currently required to negotiate in good faith with their tenants through the Department of Fair Trading's formal rent negotiation process before commencing termination action where a tenant has failed to pay rent.

However, under the amendments there is no requirement for a landlord to agree to a rent reduction for their tenants and it is not clear what is required to meet the definition of "good faith".

RLC has advised a significant number of tenants who are facing imminent homelessness as negotiations about a rent reduction with their landlords have failed, and their landlords have applied to the Tribunal for termination orders as a result of the tenant's rent arrears.

Many of these tenants are reporting that their real estate agents are being obstructive and unhelpful and do not espouse any concern for the tenant's financial circumstances. Where rent reduction negotiations are unsuccessful, tenants continue to accrue significant debt to their landlords which is likely to have a significant and ongoing impact on their financial security.

By its nature, a pandemic is unexpected and unpredictable and it is impossible to know how long it will continue to impact the NSW community. It is likely that long after the pandemic is over, members of the community will still be struggling financially as a result of a loss of work or work hours during the pandemic. This has been compounded by legislation that has provided no real financial relief for tenants and only allowed them to remain in properties while accruing significant debts. RLC is concerned that without further amendments being made to the Act and Regulations, a significant number of tenants in NSW will face a real possibility of homelessness for an extended period of time.

Recommendation 3: The COVID-19 amendments to the Act and the Regulations should be amended to include a requirement that landlords are required to reduce the rent where a tenant can demonstrate that they have been financially impacted by COVID-19. Additionally, legislation should be created to ensure that tenants are not crippled by the debts accrued through rental arrears during the COVID-19 pandemic. The amendments to the Act and Regulations should be extended until at least the end of 2021.

5. Recommendations

1. DCJ should form local partnerships with support services and non-government organisations and commit to actively referring a tenant to these services before engaging in any action to terminate a tenancy.
2. In order to ensure a trauma informed and culturally appropriate service, all social housing providers should be required to recruit staff with skills and expertise in trauma informed care and culturally appropriate service provision, and provide regular training and supervision in trauma informed care and culturally appropriate service provision.
3. The COVID-19 amendments to the Act and the Regulations should be amended to include a requirement that landlords are required to reduce the rent where a tenant can demonstrate that they have been financially impacted by COVID-19. Additionally, legislation should be created to ensure that tenants are not crippled by the debts accrued through rental arrears during the COVID-19 pandemic. The amendments to the Act and Regulations should be extended until at least the end of 2021.