

Redfern Legal Centre



23 November 2015

The Chairperson, The Hon. Greg Donnelly, MLC
Legislative Council General Purpose Standing Committee No. 2.
Parliament of NSW
Inquiry into Elder Abuse in NSW

By email: gpscno2@parliament.nsw.gov.au

Dear Mr Donnelly,

Re: Submission to Parliamentary Inquiry into elder abuse in New South Wales

Thank you for the opportunity to contribute to the Parliamentary Inquiry into elder abuse in New South Wales.

Redfern Legal Centre regularly encounters vulnerable older who encounter financial, physical, sexual and psychological abuse and neglect.

Our casework experience informs our submissions and recommendations in relation to long-term systems and proactive measures to respond to the issues that an increasing number of older persons face.

We would welcome the opportunity to appear before the inquiry to further discuss our submission.

Yours faithfully,
Redfern Legal Centre

Joanna Shulman
Chief Executive Officer

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General enquiries: Monday to Thursday 9am – 9pm, Friday 9am – 6pm

Interviews by appointment: Monday to Thursday 6.30pm – 8pm

SUBMISSION:

Elder Abuse in NSW

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‘RLC acknowledges that we work on Aboriginal land, traditionally the home of the Gadigal people of the Eora Nation’

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Introduction: Redfern Legal Centre

Redfern Legal Centre (RLC) is an independent community legal centre providing access to justice for disadvantaged individuals throughout inner Sydney and across NSW. RLC has a particular focus on human rights and social justice, with specialised practices in domestic violence, tenancy, credit and debt, employment, discrimination and complaints about police and other governmental agencies.

Our experience assisting vulnerable clients across this range of legal practice areas provides RLC with a unique insight into common legal difficulties and the value of law reform. We work collaboratively with key partners to promote awareness of legal issues and legal rights within the community. RLC has a long history of working with Aboriginal and Torres Strait Islander people to engage with the justice system to exercise rights across many areas of law.

RLC's work with older people

Since 1977, RLC has worked with vulnerable and disadvantaged citizens, including older people particularly those who reside in inner Sydney. We recognise that the legal issues facing older people cover a broad range of economic and social rights. We also recognise that access to legal information and assistance needs to be tailored for older people. We recognise that online resources and legal information may be less accessible for older people.

EXECUTIVE SUMMARY

Redfern Legal Centre welcomes the opportunity to give input into the elder abuse inquiry.

Our domestic violence workers have seen older mothers suffer elder abuse from their adult children. These people are often connected to services and supports already, but the supports are not tailored to address elder abuse.

Redfern Legal Centre also regularly provides legal advice in relation to the financial abuse of older people. We suggest stronger safeguards against older people being pressured to take out loans that are inappropriate for them. We also suggest raising more awareness of elder abuse and increasing access to legal advice for elder abuse through the establishment of health justice partnerships.

In our submission we also discuss housing issues, such as forced relocation, that can make older people more vulnerable to elder abuse, isolation and loneliness. We make recommendations that aim to improve older people's housing stability, including when they are experiencing elder abuse.

RECOMMENDATIONS

Domestic and Family Violence

1. The immediate, complete roll out of It Stops Here: Safer Pathway across NSW to allow government and non-government agencies to share information regarding serious threat victims of elder abuse to ensure that a holistic picture of risk and options for increasing safety are visible.

Credit and Debt

2. Ensure that specialist community legal centres and financial counsellors are better resourced to help older people when they have entered into a loan with a lender who is in breach of relevant legal obligations;
3. Better resource Health-Justice partnerships to ensure that older people have effective referrals between medical and legal advice.
4. Review the Australian Bankers' Association Guidelines to translate into responsible lending and implementation at bank branches.
5. Mandatory training for banks to identify early signs of financial exploitation.

Tenancy

6. The Government should allow older people in social housing to age in place and not subject them to involuntary relocation from their homes.
7. Where the Government does decide to relocate older people from their homes, the policies applied by Housing NSW should include additional protections for older people.
8. The Residential Tenancies Act 2010 should be amended to give older people security of tenure by removing powers that allow a landlord to evict a tenant for no reason.
9. Housing NSW should not place older people on fixed term residential tenancy agreements that subject the person to ongoing eligibility reviews and the risk of losing their housing.
10. Older people in social housing should be granted joint tenancy with their partner/spouse.
11. Older people in social housing should be granted joint tenancy with other household members.

1. DOMESTIC AND FAMILY VIOLENCE

RLC's Sydney Women's Domestic Violence Court works with many women experiencing elder abuse. SWDVCAS clients in this area are commonly older mothers who are the victims of financial, emotional, psychological and physical violence from their adult children. This section of the submission addresses the inquiry's terms of reference 2, 5 and 7.

Issue 1: Reluctance to Report to Police

Clients in this area experience complex emotions relating to the violence. Clients express that they wish to protect and support their children who are the abusers at the same time as wanting the violence to stop.

Due to this emotional conflict, clients often are unwilling to make statements to Police in order to obtain an Apprehended Domestic Violence Order and in the case that there is already an ADVO in place, may be reticent to report breaches to Police for fear of negative outcomes for their children. This dynamic makes obtaining effective legal protection for women experiencing elder abuse more difficult.

Issue 2: Contributing Factors

Adult children who perpetrate elder abuse often experience drug and/or alcohol dependency, gambling addiction and mental illness. These factors contribute to their continuing financial and emotional dependence on their parents.

Clients often express that they know they shouldn't be providing financial support to their adult children as it enables drug and alcohol dependence and gambling addiction, but at the same time they can't bear to see their child with no money for food and other necessities.

Another factor that complicates this type of violence is when adult children who perpetrate elder abuse also have children of their own and victims of elder abuse feel responsible for their grandchildren.

Older clients are also more vulnerable due to disability. Recently a client stated in relation to violence she was experiencing from her grandson, "He knows I have osteoporosis, so if he pushes me even a little, I'll crumble." Many clients also experience cognitive decline or impairment, which also contributes to increased vulnerability and risk.

Issue 3: Compound Consequences of Elder Abuse

Clients who are victims of elder abuse become more vulnerable in many ways as a result of the violence. Clients often find that their housing may become more precarious, if they are renting privately or living in social housing. Adult children who may be drug and/or alcohol dependent being present at the home can lead to complaints from other social housing tenants.

Financially, many clients are emotionally manipulated into giving their adult children an unsustainable proportion of their income, leading to credit card debt and insufficient funds to pay for basic necessities such as food and utilities.

Because elder abuse can contribute to financial hardship, precarious housing and injury and disability this group of clients are experiencing a compound vulnerability as a result of the violence.

Case Study: Bonnie's Story

Bonnie was an older Aboriginal woman with a large extended family. Her two granddaughters lived with her and her son visited regularly. Bonnie was still able to live in her own home but had dementia and her cognitive abilities were rapidly deteriorating.

Her son, Ray, regularly came around to the house and would continually ask Bonnie for money. Bonnie sometimes couldn't remember if she'd already given him money and gave him more and then find that she had no money for food and other necessities. If Bonnie resisted giving Ray money he would scream abuse at her for hours.

Bonnie was connected with several different Aboriginal Specialist Workers in the community who were trying to put services in place for her, but found that when support workers would arrive to care for Bonnie, Bonnie would have forgotten they were coming and not be home. The Aboriginal Specialist Workers who were working with Bonnie didn't want to place Bonnie in a care facility, but it was becoming unsafe for her to be at home without support, especially in the context of the escalating financial and psychological violence by Ray.

Police suggested that if Bonnie would make a statement about Ray's abuse, they could apply for an ADVO to prevent him coming to her home, but Bonnie couldn't remember whether it was Ray who took the money or one of her granddaughters and wouldn't make a statement to Police as she wanted to protect her family. For this reason, although Police were very concerned for Bonnie, as she would not provide a statement about the violence, they couldn't take action.

Bonnie lived a Housing FaCS property and she also started to experience problems with her neighbours due to the erratic and abusive behaviour of Ray when he was at the house. Ray was often affected by ICE when he was at the property. These factors contributed to Bonnie's tenancy being at risk also.

Bonnie's matter was listed on the agenda of the Waverley Safety Action Meeting due to the many incidents to which Police were called. Bonnie's Aboriginal Specialist Worker from the Benevolent Society attended the SAM to advocate for Bonnie and provide a deeper level of information about the circumstances of the violence. As a result of Bonnie's matter being listed on the SAM, Housing FaCS was made aware of the elder abuse and the other contributing factors and could respond to neighbour complaints accordingly. Due to Bonnie's dementia it was difficult for other services including Police to take further action at that time. However Bonnie's worker from the Benevolent Society is now aware of the resources available through the SAMs and will be able to re-refer Bonnie's matter if further incidents or risk become apparent.

This case study demonstrates the complexity of conflicting emotions experienced by women experiencing elder abuse. Bonnie wanted to protect Ray but at the same time needed protection from him. Additional factors such as cognitive decline, alcohol and ICE use significantly increase the risk to older people in abusive situations. The repercussions of elder abuse can be far reaching, as can be seen through the risk posed to Bonnie's tenancy by Ray's actions.

Safety Action Meetings and Information Sharing

RLC's Sydney Women's Domestic Violence Court Advocacy Service hosts the Waverley Local Coordination Point, one of the initial launch sites of It Stops Here: Safer Pathway. Through the creation of Safety Action Meetings (SAMs) and the introduction of information sharing under Part 13A of the Crimes (Personal and Domestic Violence) Act 2007, government and non-government agencies are now able to engage in targeted information sharing in relation to victims of domestic violence who are considered to be at serious threat of harm or homicide.

This new system has been very effective in combatting some of the challenges outlined above such as victims' reluctance to report to Police and the comorbidity of mental health, drug and alcohol and gambling issues. Older mothers are reluctant to share the full story of the violence they are experiencing perpetrated by their adult children and through information sharing between agencies the holistic picture of risk can be seen, such as information about ICE use or alcohol use through NSW Health or information about risk of eviction gained through FaCS Housing.

Through SAMs, support can be coordinated across multiple agencies to assist women escape elder abuse.

Health-Justice Partnerships described in the section below also provide an opportunity to identify victims of elder abuse who would not otherwise access legal assistance.

Recommendations

To ensure that a holistic picture of risk and options for increasing safety are visible Redfern Legal Centre recommends the immediate, complete roll out of It Stops Here: Safer Pathway across NSW to allow government and non-government agencies to share information regarding serious threat victims of elder abuse.

2. CREDIT AND DEBT

This section of the submission discusses financial abuse, mainly the inquiry's terms of reference 2, 5, 7 and 9.

The most common form of abuse experienced by older persons in NSW is financial abuse. This can include a broad range of conduct, such as misleading door to door sales and telemarketing scams. It can also include fraudulent schemes such as overcharging for consumer services and misusing bank accounts or credit facilities.

Older people are attractive targets of financial abuse due to a lack of familiarity with financial matters; they are often dependent on others for help and generally don't understand consumer rights and are hesitant to use any complaint mechanisms.

The Financial Ombudsman Service ('FOS') has indicated that financial abuse of vulnerable older people has emerged as a national and international issue. The reason for this more recent emergence can be attributed to an increasingly ageing population and the fact that older people are often wealthier than earlier generations in terms of owning assets. FOS has also recognised a statistically high representation of under-reporting of financial abuse.¹ In around 66% of financial abuse cases, the victim's children are the perpetrators.² Thus, this area requires statutory attention.

Redfern Legal Centre recognises key areas for reform are responsible lending process and recognition of the increased risk of unconscionable conduct in the context of older people accessing credit or assisting family members to access credit.

Issue 1: Responsible Lending

Elder abuse may involve the perpetrator pressuring an older person into taking out loans that cause them financial stress and disadvantage. The current responsible lending provisions impose an obligation on lenders to make reasonable inquiries in relation to a borrower's circumstance to ensure the granting of a loan is not unsuitable and repayments will not cause significant hardship.³ However, our casework experience indicates that the implementation of responsible lending obligations in this context is often inconsistent. For example, we encounter people are still granted loans despite triggering the 'presumptions of unsuitability' in the lending provisions.⁴

The consequence of these responsible lending failures is that vulnerable consumers, including the older people, are granted loans that are inappropriate for their circumstances. For example, a large number of our clients enter into loan agreements that they cannot afford to pay after covering their basic living expenses. In the context of elder abuse, we hear anecdotally of older people providing guarantees or otherwise underwriting loans in circumstances in which they cannot afford the cost, or appropriately bear the risk, of this level of credit.

Another weakness in current responsible lending safeguards is that the Credit Act does not require lenders to consider people's social or medical consequences. This is particularly concerning as many older people have a broad range of health or cognition issues. For example, the Financial Services Council stated that a specific risk factor for financial abuse to the older is dementia, which affects a large portion of older citizens and is estimated to rise.⁵ Credit providers should better recognise circumstances in which vulnerable older people are affected by mental illness or cognitive impairments, such as dementia. People in these circumstances do not have the cognitive capacity to provide genuine

¹ Financial Ombudsman Service, 'Banking & Finance: Bulletin 56,' Dec 2007.

² Alzheimer's Australia, 'Discussion paper 10: Preventing Financial Abuse of People with Dementia,' June 2014.

³ *The National Consumer Credit Protection Act 2009* (Cth), chapter 3.

⁴ Australian Securities and Investments Commission, 'Report 426: Payday lenders and the new small amount lending provisions', March 2015.

⁵ Financial Services Council, 'Elder Financial Abuse Symposium: Sydney,' 19 October 2015, Accessed at: < <http://www.agedcare.org.au/national-report/acsa-national-report-issue-367-29-october-2015/publications-reports-and-resources/elder-financial-abuse-symposium.pdf> >

or informed consent to enter into these agreements and remain at significant risk of financial abuse. We suggest that responsible lenders should be required to properly consider an applicant's capacity with the same level of examination that is applied to their financial circumstances.

Issue 2: Unconscionability

Older people are also often targets of unconscionable conduct in commercial transactions.

*Commonwealth Bank of Australia v Amadio*⁶ is a significant High Court decision. It recognises that an agreement which gives rise to an imbalance of bargaining power, by lack of knowledge, education or otherwise, will not be enforced on the grounds of unconscionable conduct.

Despite this influential common law decision, our cases indicate that these situations consistently arise in commercial transactions. An imbalance of bargaining power is often evident when an older person is a party to the transaction. The reasons for this imbalance are complex, but can be attributed to social and psychological pressure together with an inadequate level explanation, advice and understanding of the risks involved in these transactions.

One particular example where there is an imbalance in commercial transactions is when older persons are obtaining credit. While RLC recognises that older people should still be able to access credit, we suggest strengthening the obligation and responsibility of financial service providers to take more care where older people are involved in the lending process. This is particularly important in cases where the older person is incurring significant risk without deriving much personal benefit from the credit agreement.

RLC believes financial services, such as banks, should play a key role in the protection of vulnerable older citizens from financial abuse. The Australian Bankers' Association has articulated an industry guideline, *Protecting Vulnerable Customers from Potential Financial Abuse*, for protecting vulnerable consumers from potential financial abuse, this is not a wholly effective tool for the following reasons:

- a) it is merely a *voluntary* guideline for member banks;
- b) the implementation of general industry guidelines is poor at the local branch level.

RLC believes there needs to be mandatory training programs on part of banks, particularly at the branch level, to be able to identify a vulnerable customer or any signs of financial exploitation. As financial abuse often takes the form of misuse of or theft from a bank account or other facility or financial services product, employees of financial institutions are often in the best position to recognise financial exploitation. In addition to this, under-reporting of financial abuse by older people is a significant issue so it is critical individual banks are adequately trained to identify early signs of financial abuse.

Issue 3: Reluctance to Report

RLC has noted a reluctance to report financial abuse on the part of older citizens. This is in part due to shame, humiliation, intimidation by the user and even unawareness of the financial abuse.

Elder abuse is under-reported for various reasons. A significant reason is that often the perpetrator is the victim's child. The victim is often reluctant to report their own child or other family member, afraid of getting their loved ones into any trouble.

To encourage more reporting of elder abuse, we first suggest raising older people's awareness of elder abuse. This includes increasing older people's ability to identify elder abuse, prevent it from happening

⁶ [1983] HCA 14.

to them, and know what they can do about it. Second, we suggest increasing older people's access to legal assistance.

In order to raise awareness and access to help for elder abuse, we recommend that the NSW Government better resource health–justice partnerships between community legal centres and health services.

These partnerships would enable the better identification of elder abuse and more effective referrals between service providers. It could also help to facilitate the provision of free legal advice to older people at hospitals, local and rural health services, nursing homes and other geriatric health services.

For example, we have formed Royal Prince Alfred Hospital to form a health justice partnership in which vulnerable people can access our free legal assistance while seeing their health practitioner. This program presents a good opportunity for older people to seek legal advice through the recognition of potential legal problems by medical and health practitioners. It also allows the older person to obtain legal advice in a confidential setting in circumstances where the perpetrator is not aware they are obtaining legal advice.

Recommendations

Redfern Legal Centre recommends the following actions to reduce the risk of financial abuse to older people:

- 1) Fund specialist community legal centres and financial counsellors to help older people when they have entered into a loan with a lender who is in breach of relevant legal obligations;
- 2) Fund Health-Justice Partnerships;
- 3) Enable older people free financial/legal advice to assist them to make financial decisions;
- 4) Review Australian Banking Association industry guidelines on financial abuse to ensure better implementation at the local branch and customer level. Implementation should require mandatory training for local bank branch employees to identify early signs of financial exploitation and better procedures for responding to this.

3. TENANCY

Since Redfern Legal Centre (RLC) was founded in 1977, tenancy has been one of the services core areas of advice. Since 1995, RLC has been funded by NSW Fair Trading to run the Inner Sydney Tenants' Advice & Advocacy Service (ISTAAS). ISTAAS provides advice, advocacy and representation for tenants living in the City of Sydney, Leichhardt and Botany local government areas. The inner Sydney area has a significant number of people living in private rental and public housing and these submissions are informed by the experiences of older people renting in the area.

This section of our submission focuses on the terms of reference that most directly relate to issues of elder abuse for older tenants - terms of reference 3, 7 and 9. We also provide some information on the broader context of affordable housing for older people.

Redfern Legal Centre endorses the submissions of the Tenants' Union of New South Wales, Seniors Rights Service and JusticeConnect.

Background: Older peoples' need for affordable housing

The older population's need for affordable housing is often underestimated due to the popular perception that many elder persons own their houses. While the Australian Bureau of Statistics identified in its 2009 Survey of Income and Housing that four in five persons aged 55 years or over are homeowners, this leaves approximately 20% of the older vulnerable to high private rental rates and at possible risk of homelessness. The Australian Housing and Urban Research Institute (AHURI) has identified an increasing trend of housing equity withdrawal by older home owners aged 45 years and over, leading to financially vulnerable elders falling back on selling up as their last resort when hit by adverse life events.¹ Increased longevity, leading to longer periods of retirement and an increasing need for older care,² further stretches the financial capacity of older people and calls for an affordable housing scheme focusing on the older.

This need for affordable housing is increased by the culture of independence among older Australians. While the Australian older are a diverse demographic, Olsberg (1997) found the culture to be characterised by an unwillingness to financially depend on family members and of placing value on a sense of control over one's life.³ The NSW Government's 'NSW Ageing Strategy' takes a 'life course' approach to ageing, placing a priority on helping NSW residents to remain healthy and independent for as long as possible.⁴ A necessary subset of this strategy is to enable the older to afford and maintain their own independent homes for as long as possible before resorting to nursing homes and other forms of residential aged care. This is not only due to the undesirability of an elder person's dependence associated with being confined to a residential care, but also because of the heavy financial costs that accompany the move. According to the AHURI's projections, the maximum income-tested fee of residential aged care residents as of September 2010 amounted to \$23,170.20 per year.⁵ As the estimate for the average housing equity of home owners aged 75 years or over is \$773,000 by the end of their life expectancy, AHURI projects that moving into a high-level residential care for the expected remaining lifespan will spend over 58% of the person's housing equity, which is the primary or even sole source of equity for many older Australians.⁶

¹ Judd, B., Liu, E., Easthope, H., Davy, L. and Bridge, C. (2013) *Downsizing amongst older Australians*, AHURI Final Report No.214. Melbourne: Australian Housing and Urban Research Institute, p 1, 34

http://www.ahuri.edu.au/downloads/publications/EvRevReports/AHURI_Final_Report_No214_Downsizing_amongst_older_Australians.pdf

² Elder Abuse Prevention Project 2005, 'Strengthening Victoria's Response to Elder Abuse', Elder Abuse Prevention Project, Melbourne, p 14.

³ Olsberg, Diana, 1997, *Ageing and Money*, Allen & Unwin, St Leonards.

⁴ FACS, *NSW Ageing Strategy*, p 6 http://www.adhc.nsw.gov.au/data/assets/file/0011/257276/1282_ADHC_NSW-AgeingStrategy_WEB.pdf

⁵ Ong, R., Jefferson, T., Wood, G., Haffner, M. and Austen S. (2013) *Housing equity withdrawal: uses, risks, and barriers to alternative mechanisms in later life*, AHURI Final Report No.217. Melbourne: Australian Housing and Urban Research Institute, p 47

http://www.ahuri.edu.au/publications/download/ahuri_81004_fr

⁶ Above n 1.

Background: Provision of housing for older people

An important government service that provides older NSW residents with long-term, affordable housing solutions is Housing NSW, an agency of FACS. Housing NSW operates under the *Housing Act 2001 (NSW)* (“the Act”), which aims “to maximise the opportunities for all people in New South Wales to have access to secure, appropriate and affordable housing” (s 5(1)(a) of the Act) and provides public housing for low-income and/or disadvantaged community members. An important priority of Housing NSW when providing public housing is to ensure that the public housing system focuses on those who are “most in need”. Older people, and in particular those who have experienced or are at risk of elder abuse, are particularly important client base for public housing. Housing NSW’s current Eligibility for Social Housing Policy includes an entitlements scheme that allows certain situations of the applicant to determine or affect an applicant’s priority for public housing and the type of housing they receive.⁷ Under this scheme, both domestic violence (a subset of which is older abuse) and old age are recognised as factors that entitle an individual to a reduction in the waiting time to obtain public housing. As acknowledged by the Housing NSW policy, there are “special needs of older and their households, and the need to deliver services that are culturally appropriate” that warrants a prioritised provision of public housing to the older.⁸

By 2050, there will be 2.3 million seniors in NSW, an increase from 1.3 million seniors as of 2015.⁹ Accompanying this increase will be a rising need for public and social housing services for older clients. The rate of home ownership amongst older people is predicted to drop from 77% to 55% by 2050,¹⁰ and the proportion of social housing clients of age 65 or older will be increased from the current 18% to 32% by 2021.¹¹

Terms of reference 3 - The types of government and/or community support services sought by, or on behalf of, victims of elder abuse and the nature of service received from those agencies and organisations

Issue 1: Impact of loss of housing on older people

The Final Report of the Select Committee on Social, Public and Affordable Housing acknowledged the importance of housing providing stability, safety and security for an individual.¹² We refer to RLC’s submission to FACS dated 20 February 2015, in which the following important advantages of stable housing were outlined:¹³

- Greater stability;
- Reliance upon established support networks such as neighbours and service providers;
- Consistent access to support services; and
- Integration into the community.

The older have a greater need for secure housing and integration into stable communities, as they have often left the mainstream workforce and rely on care from neighbours and local support services. In light of this greater need, loss of housing can severely affect an older person because of the negative impact on their self-care ability, the removal of their social and support networks, and the loss of their positive contribution to their local communities.

⁷FACS, ‘Eligibility for Social Housing Policy’, 6 October 2015

<http://www.housingpathways.nsw.gov.au/Ways+we+can+Help/Social+Housing/Eligibility+for+Social+Housing+Policy.htm>

⁸ FACS, above n 7.

⁹ FACS, above n 4, p 16, 17.

¹⁰ FACS, above n 4, p 17.

¹¹ Auditor General, ‘Making the Best Use of Public Housing’ Performance Audit, Audit Office of NSW, 2013, p 12

https://www.audit.nsw.gov.au/ArticleDocuments/280/01_Public_Housing_Full_Report.pdf.aspx?Embed=Y

¹² Select Committee Report – Inquiry into Social, Public and Affordable Housing, p 17

[http://www.parliament.nsw.gov.au/prod/parlament/committee.nsf/0/12b4da4578015782ca257d4d00120ffe/\\$FILE/Report%20on%20Social,%20public%20and%20affordable%20housing%20X%20September%202014.pdf](http://www.parliament.nsw.gov.au/prod/parlament/committee.nsf/0/12b4da4578015782ca257d4d00120ffe/$FILE/Report%20on%20Social,%20public%20and%20affordable%20housing%20X%20September%202014.pdf)

¹³ Redfern Legal Centre, Submission to Family & Community Services, *Social Housing in NSW: A discussion paper for input and comment*, 2015

<http://rlc.org.au/publication/submission-response-department-family-and-community-services-discussion-paper-social>

Stable management of one's own home is an important aspect of an elder person's life and their sense of independence. Loss of housing has the potential to be perceived by the older person as a manifestation of a general decline in their ability to control their own affairs (or 'self-care ability'). A study in Southern Norway by Dale et al. (2011) found that self-care ability among the older, of which an important aspect is dwelling in one's home, can be a decisive factor in their perception of their own health, sense of coherence, nutritional risk and general life satisfaction.¹⁴ The study analysed the survey answers from a randomly selected sample of 1050 persons of age 65 or over from a diverse range of municipalities in Norway and found that that dwelling in one's own home is a reliable indicator for one's own perception of a high self-care ability, leading to general wellbeing and positive self-conception.¹⁵ It is important to note that the particular cultural emphasis placed on independence by older people in Australia makes the potential impact of loss of housing particularly damaging to their sense of self and well being and places them at increased risk of elder abuse.

Additionally, security of tenure is crucial for an older person to maintain a social and support network they have established in their community, especially in light of the devastating health effects of loneliness found by medical research.¹⁶ This can include: health care or medical practitioners; counselling services; elder care services; local Centrelink or other government services; and neighbours and friends residing in the area. In multiple studies, an older person's participation in a robust and nourishing social network was found to be an important factor of an older person's pursuit of a health-promoting lifestyle and management of their homes.¹⁷ The objective of older participation is endorsed by FACS, which has set a target to increase the rates of older participation in the community and sports and recreational activities by 10% by 2021.¹⁸

"I've been to my ophthalmologist and my general practitioner for a quarter of a century. I am not about to change at 88. There is a community and people I know, and help me and I can help them."
- Myra Demetriou, a Public Housing Tenant at Millers Point (quote from the video submission)

Another beneficial aspect of elder person's enjoyment to stable housing is the contribution they make to the local community. As the NSW Ageing Strategy identifies, seniors are valuable to the community as frequent volunteers and as part of their families and neighbourhoods.¹⁹ In Millers Point (discussed below), many older public housing tenants have a deep connection to their community and contribute as volunteers, friendly neighbours and activists.

The benefits of stable housing discussed above are particularly important as mechanisms to prevent elder abuse. The NSW Elder Abuse Helpline & Resource Unit outlines the need for the older person to be socially connected, regularly engaging with family, friends and neighbours, and connecting with community groups as prevention mechanisms for elder abuse. The negative impacts of loss of housing, which could include restricted mobility, social isolation or fear or alienation, and a perceived or actual lack of options of access to services are all factors that are identified as barriers to older people reporting abuse.²⁰ Similarly, for victims of past abuse, stable housing provides an important foundation for "recovery from health issues, mental illness, and trauma".²¹ These benefits are recognised

¹⁴ Bjørg, Dale, Söderhamn, Ulrika, Söderhamn, Olle, Self-care ability among home-dwelling older people in rural areas in southern Norway, 2011, *Scandinavian Journal of Caring Sciences* 26:1, 113-122. <http://onlinelibrary.wiley.com/doi/10.1111/j.1471-6712.2011.00917.x/abstract;jsessionid=D36F74A36642E528A9A4B0C1A0D94068.f02t01>

¹⁵ Dale et al., above n 14, p 10.

¹⁶ The Guardian, Loneliness twice as unhealthy as obesity for older people, study finds, 17 February 2014 <http://www.theguardian.com/science/2014/feb/16/loneliness-twice-as-unhealthy-as-obesity-older-people>

¹⁷ Byam-Williams J, Salyer, J. Factors influencing the health-related life-style of community-dwelling of older adults. *Home Health Nurse* 2010; 28:115-21; Dale B, Sævareid HI, Kirkevold M, Söderhamn O. Older home nursing patient's perception of social provisions and received care. *Scand J Caring Sci* 2010; 24: 523-32.

¹⁸ FACS, above n 4, p 10.

¹⁹ FACS, above n 4, p 20.

²⁰ Bagshaw, D., Wendt, S., & Zannettino, L. 2009, 'Stakeholder Paper 7: Preventing the abuse of older people by their family members', *Australian Domestic & Family Violence Clearinghouse*, ISSN: 1443-8496.

²¹ FACS, Social Housing in NSW: A Discussion Paper for Input and Comment, 2014 http://www.facs.nsw.gov.au/_data/assets/file/0009/303030/Social-Housing-in-NSW_Discussion-Paper.pdf

internationally. For example, the National Committee for the Prevention of Elder Abuse in the US has identified the importance of co-dependency and building support networks for victims of elder abuse.²²

Issue 2: Sale of public housing in Millers Point

In March 2014, FACS announced its proposed sale of all 293 public housing properties in Millers Point, Dawes Point and the Rocks. The sale has meant the relocation of several hundred tenants to other Housing NSW properties, many of whom are older.

This is an unprecedented sale of public housing in NSW and the Government has stated that it intends to reinvest proceeds from the sales into building 1,500 new social housing dwellings across Sydney and Regional NSW. However, disposal of the Millers Point properties will severely deplete the supply of public housing properties in inner Sydney, an area of high demand for public housing tenants due to their established needs of family, carers and medical, social and community services in the inner city region.

In Millers Point, there are 481 social housing tenants, nearly half of whom are aged over 60²³. Many of those older tenants have restricted mobility and access the medical, social and other support networks available in the city, many of which will be discontinued or severely limited by the relocation²⁴. Almost 20% have lived in the area for more than 20 years, and 55% over 10 years.²⁵ The State Heritage Register identifies Millers Point as a “living cultural landscape”. One of the properties to be sold is the landmark Sirius building, a block of 79 units purpose built as public housing for the older and those living with disabilities.

Prior to announcing the sale, the NSW Land and Housing Corporation (the Corporation) released a Social Impact Assessment on the likely effect that relocation would have on the Millers Point community. The assessment was based on consultations with a considerable number of residents and other stakeholders, many of whom expressed concerns about the impact of sales on older residents. The assessment noted that *‘people were adamant that older people be able to stay in their houses for the final duration of their lives’*²⁶. The authors cited current research demonstrating the importance of older people being able to age in place and found:

‘There may be ongoing negative health impacts for older people relocated involuntarily from their homes...[i]n particular, older residents who are relocated away from friends and support networks may become socially isolated and there may be increased dependence on social services for support’.

Significantly, the draft report provided to Government highlighted the real risk of deaths occurring as a result of relocation, citing a Danish study on increased morbidity amongst older people moved from their homes²⁷. However, references to those risks were removed or altered prior to the publication of the final assessment²⁸. To mitigate the impact of relocation on older residents, the assessment recommended that purpose built seniors housing be built in the Millers Point area. The Government rejected that recommendation.

²² National Committee for the Prevention of Elder Abuse, ‘What Services Are Available to Stop Abuse?’ <http://www.preventelderabuse.org/elderabuse/help/help2.html>

²³ Land and Housing Corporation ‘Social impact Assessment of the potential impacts on the existing Millers Point community, and the broader social housing system, that may result from the sale of any further social housing in Millers Point’ (2014), p 22

²⁴ *ibid*, p 23

²⁵ Auditor General, above n 11, p 7, 8.

²⁶ Land and Housing Corporation, above n 23, p 35

²⁷ Berth D Danermark, Mats E Ekstrom, Lennart L Bodin, ‘Effects of residential relocation on mortality and morbidity among elderly people’(1996) 6 *European Journal of Public Health* 212

²⁸ Nicole Hasham, ‘Government downplayed death warning at Millers Point’, *Sydney Morning Herald* (Sydney), 11 August 2014 <http://www.smh.com.au/nsw/government-downplayed-death-warning-at-millers-point-20140808-1020pc.html>

Case Study: David's Story

David is a public housing tenant in his eighties. He lived in Millers Point and The Rocks for most of his life and was a very active member of the community, representing his precinct on the local estates advisory board. He was well known and well respected, with many close connections with his neighbours and friends.

David didn't want to leave his home in The Rocks, but eventually his doctors told him that he needed to move as the stress and uncertainty of the relocation process was having a serious impact on his health. David accepted a property in an inner city suburb, but was hospitalised with a heart condition on the day of his move. David is satisfied with his new property, but misses his community, neighbours and friends. David stays in touch with other residents who have moved and told Redfern Legal Centre that the one thing all his friends tell him is that they are lonely in their new area.

Issue 3: Impacts of relocation for older tenants

As discussed above, there are a significant number of older public tenants living in Millers Point. Many residents have lived in Millers Point for most, if not all, of their life. They are not familiar with a life outside of their area and have established and maintained their medical, social and support services in Millers Point and the inner city. RLC agrees with the conclusions of the social impact statement, that the Millers Point sale entails "the potential negative health and wellbeing outcomes for the residents with long-term or generational connections to the area, particularly older people, [which] has been clearly noted through engagement and other social research".²⁹

One older tenant, 81-year-old Ms Florence Seckold, was born in the area and has lived there all of her life. In an interview with ABC, Ms Seckold has said about the proposed relocation, "How long am I going to live for? Leave us here. That's all we ask".³⁰ 88-year-old Myra Demetriou said "I'm hoping that they'll leave those of us who can't move about too quickly where we are". Mr Barney Gardner, in his 60s, has said "It's the only place I've ever known, this is where I grew up, this is my life. It will be a fight [to evict us] because we will have many many supporters. We don't want violence, but we are prepared to go to jail".³¹

Ms Seckold and Ms Demetriou's views are reflected in the experience of RLC advocates who are working with Millers Point tenants. When talking about the relocation, many older residents express feelings of sadness, depression, anger and trauma that they have to move out of their homes.

The impacts of the relocation process on older people's health and wellbeing are illustrated by the experience of Cecilia. Cecilia is in her eighties and has lived in the Sirius building since it was built 35 years ago. Cecilia strongly opposed the sale of her home and didn't want to move away from the area she has lived in all her life. She lives with respiratory disease and has limited mobility, but has been able to live independently in an apartment that is well designed for tenants with medical issues. However, Cecilia is one of only a dozen tenants left in the Sirius building and the stress and anxiety of the situation is having a serious impact on her health. Cecilia is very worried about what will happen to her when she moves, but she feels like she just can't stay without basic services and the support of the neighbours and friends who have been moved away.

Issue 4: Impacts of relocation for older people

For those older residents who have been moved from Millers Point, loneliness is their primary concern. A number of tenants who were assisted by RLC have expressed their feelings of isolation and of

²⁹ Auditor General, above n 11, p 9.

³⁰ 'Public housing tenants in Millers Point make desperate plea to stay despite Government sell-off plans', *ABC News*, 22 May 2015 <http://www.abc.net.au/news/2015-05-22/millers-point-residents-meet-government-minister/6490120>

³¹ 'Millers Point: A Community Under the Hammer: The Plan', *Sydney Morning Herald* <http://www.smh.com.au/interactive/2014/millers-point/plan.html>

missing their old community. The impact of loneliness can be significant. Research has shown that loneliness and isolation are damaging to a person's physical and mental health, with the effects that include:

- Increased risk of high blood pressure
- Increased mortality equivalent to smoking 15 cigarettes a day
- Greater risk of cognitive decline

While FACS has provided tenants with access to a worker who has some experience in referrals and social support, this does not resolve the basic issue that older residents have been moved away from their networks and social supports.

Case Study: Jerry's story

Redfern Legal Centre assisted Jerry, who was an older tenant in his eighties living in Millers Point. Jerry had lived in Millers Point all his life and had close connections with his neighbours and friends in the area, many of whom he had known for decades. Jerry was moved out of his home as a result of the NSW Government's decision to sell all public housing in Millers Point. Jerry now lives in a different part of town, but comes back to Millers Point to see his doctor and his friends who are still in the area. While

Jerry's new property is adequate for his needs, he feels like it can't replace what he had in Millers Point. Jerry doesn't have close connections in his new area and finds it much more difficult to get around. Jerry told Redfern Legal Centre that he feels lonely and misses his friends and the support he got from the Millers Point community.

Summary

RLC has ongoing concerns about the decision to forcibly relocate older residents from Millers Point. The decision did not take into account the recommendations of the social impact assessment and older tenants should have been allowed to remain in their homes. For those residents who have moved, there are ongoing issues of medical problems, loneliness and social isolation - the unavoidable result of moving older people out of their communities.

Allowing older residents of Millers Point to remain would have been consistent with the NSW Ageing Strategy and current research on the social and economic benefits of older people maintaining their independence. It would also have preserved a strong, well-integrated community providing critical affordable housing for older people in inner city Sydney.

Recommendations

1. The Government should allow older people in social housing to age in place and not subject them to involuntary relocation from their homes.
2. Where the Government does decide to relocate older people from their homes, the policies applied by Housing NSW should include additional protections for older people.

Terms of reference 7 - The effectiveness of NSW laws, policies, services and strategies, including the 2014 Interagency Policy Preventing and Responding to Abuse of Older People, in safeguarding older persons from abuse

and

Terms of reference 9 - The consideration of new proposals or initiatives which may enhance existing strategies for safeguarding older persons who may be vulnerable to abuse,

The submissions above address the need for older people to have access to secure and affordable housing and the importance of social housing in reducing the risk of elder abuse. However, there are other aspects of NSW law and FACS policy that undermine older private and social housing tenants' ability to age in place.

Issue 1: Security of tenure

Currently, the *Residential Tenancies Act 2010 (NSW)* (the Act) allows both private and social housing landlords to issue a tenant with a 90 day no grounds notice. The landlord can give such a notice for any reason and the tenant must move out of the property. While the NSW Civil & Administrative Tribunal (the Tribunal) can consider the validity of the notice, it has no choice but to terminate the tenancy.

Australia is one of only a small number of OECD countries that allow landlords to evict tenants for no reason³². Other countries have recognised that a landlord's right to take their property back needs to be balanced with tenants need for security of tenure. The impact of no grounds evictions has been the subject of considerable comment by tenants' groups and other organisations in the housing sector.³³

Although, the current laws allow the Tribunal discretion for tenants who have been living in their property for more than 20 years, such tenancies are very rare and can still be ended if the landlord sells the property.

The effect of these laws is to seriously undermine security of tenure for all tenants in New South Wales. A tenant cannot be certain whether they will be able to remain in their property for 6 months, a year or 5 years. The impact of this lack of security is particularly acute for older people, who benefit from stable accommodation and who may have limited means to rent another property. Older people, who have lived in a property for a number of years developing connections with neighbours and other social supports, face the prospect of having to find new accommodation and move within three months. This causes considerable financial stress, exposes older people to the risk of health problems, and increases the likelihood that they will move into an inappropriate property. These are all factors that increase the possibility that they will be victims of elder abuse

Issue 2: Fixed term agreements in social housing

Since 2006, the policy of FACS is to offer fixed term agreements to all new public housing tenants. Prior to 2006, an existing tenant who acquired assets or property that would otherwise make them ineligible for public housing would remain in their home but would pay a higher rent. The overall benefits of allowing tenants to remain in public housing when their income increases have been discussed at length³⁴.

³² Hulse, K. et al, 'Secure occupancy in rental housing: conceptual foundations and comparative perspectives' (2011) AHURI Final Report No.170. Melbourne: Australian Housing and Urban Research Institute, p 8

³³ see for instance, AHURI above n 1, '5 Years of the Residential Tenancies Act 2010 in New South Wales 2015 (2015) Tenants' Union of New South Wales, Carr, P and Tennant, M 'A Better Lease on Life: Improving Australian Tenancy Law (2010) National Shelter

³⁴ Shelter NSW, Submission to Family & Community Services, *Social Housing in NSW: A discussion paper for input and comment*, 2015

Under the new policy, FACS makes a decision when a person is accepted into public housing about the length of the tenancy agreement, either 2, 5 or 10 years, based on personal circumstances and likelihood of the tenant requiring public housing in the future³⁵. At the end of the fixed term, a tenant is subject to an eligibility review and required to leave public housing if they are no longer eligible. Applying this policy of fixed term leases to older people undermines their sense of stability and security in circumstances in which it is highly unlikely that they will not be eligible for public housing in the future. In those rare circumstances where an older tenant is no longer eligible, such as being left a property in the will of a sibling, it is not appropriate to force the person to leave their home. Such decisions expose the tenant to the risks of increased morbidity and the breakdown of social supports, as discussed above.

Example:

Fiona entered public housing when she was 71 years old and was offered a 10 year fixed term lease by FACS. She lived in an inner city suburb and accessed local medical services and social supports. Nine years later, Fiona's sister passed away and left her with a part share of a small property in western Sydney. When Fiona's 10 year fixed term expired, FACS conducted an eligibility review and determined that because of her property ownership, she was no longer eligible for public housing. Fiona is expected to move into the western Sydney property or sell it and rent in the private market. Fiona can't move into the property and must move out of the area in which she has developed social and medical supports.

Issue 3: Joint tenancies in social housing

The current policy to only grant a public housing tenancy to one member of the household places older people at risk of eviction. FACS policy states that ordinarily only one person will be made the tenant, with other household members being approved occupants who do not have tenancy rights, or a right to remain in the property in the absence of the tenant.³⁶ This policy disadvantages older people and places them at risk of eviction if the tenant dies or moves into residential care.

Although an occupant remaining in the property can apply for public housing, the current FACS policies on succession mean that a number of older people will not be eligible. The succession policies do allow a spouse or de facto partner to be recognised as a tenant if they meet the social housing eligibility criteria (income and assets test are not required for these people). However, older people may be sharing a household in a range of domestic relationships that are outside of this policy. An older person may be living with a sibling who is the named tenant, or may have moved in to the property to care for a parent. These people must pass a much stricter test to be recognised as a tenant, including establishing a need for priority housing and occupation of the property for at least two years.

As an example, RLC has previously assisted two elderly brothers who live together in a social housing property. Only one of the brothers is named as the tenant, so if he moves out or passes away the other brother will face possible homelessness if he is unable to satisfy the stricter eligibility criteria for succession.

Exposing older people in public housing to the risk of eviction makes them more vulnerable and increases the risk that they will be victims of elder abuse.

³⁵ Family and Community Service, *Types and Length of Lease Policy* (16 November 2015) <<http://www.housing.nsw.gov.au/Forms+Policies+and+Fact+Sheets/Policies/Types+and+Length+of+Lease+Policy.htm>>

³⁶ Ibid

Issue 4: Changes to social housing law

The changes to tenancy law introduced by the *Residential Tenancies and Housing Legislation Amendment (Public Housing – Antisocial Behaviour) Bill 2015* are likely to have a negative impact on older people in social housing.

The new laws will require the Tribunal to make a mandatory termination order if a tenant or occupant engages in certain criminal activity.³⁷ For instance, if the elderly tenant has family members living with them who are non-tenant occupants and that person engages in criminal activity on the property, the Tribunal will have no choice but to evict the older person. Even if the elderly tenant was unaware of the criminal activity or was not able to control the other person's behaviour, they must be evicted and will be made homeless.³⁸

Amendments were made to the Bill before it was passed by Parliament to ensure the Tribunal is not obliged to make a termination order if it would likely result in undue hardship to: a child, a person whose favour an apprehended violence order could be made, or a person suffering from a disability who is an occupant of the premises. However, the amendment does not allow the Tribunal to consider specifically the impact of termination on an older person. While some older people may be suffering abuse and have, or could have, applied for an apprehended violence order, elder abuse can take different forms. Without specific provision for the Tribunal to take into account the impact of eviction on an older person, there will be circumstances in which such people are unreasonably terminated and made homeless.

The serious consequences of being made homeless and excluded from the social housing system are obvious and further amendment to the law is required to adequately protect older people.

Recommendations

1. The Residential Tenancies Act 2010 should be amended to give older people security of tenure by removing powers that allow a landlord to evict a tenant for no reason.
2. Housing NSW should not place older people on fixed term residential tenancy agreements that subject the person to ongoing eligibility reviews and the risk of losing their housing.
3. Older people in social housing should be granted joint tenancy with their partner/spouse.
4. Older people in social housing should be granted joint tenancy with other household members.

³⁷ Grounds for mandatory termination of tenancy include activity such as the use of the premises for manufacture, sale, cultivation or supply of any prohibited drug s 154D(1)(b); intentional or reckless damage of premises or adjoining premises s 154D(1)(c); tenant or occupant's intentional or reckless permission of the premises or adjoining premises for specific illegal purposes s 154D(2).

³⁸ *Residential Tenancies and Housing Legislation Amendment (Public Housing – Antisocial Behaviour) Bill 2015*, s 154D.