



public interest
ADVOCACY CENTRE LTD

Social Housing in NSW – more than a roof over our heads

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1. Introduction

1.1 The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights;
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the (then) Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from NSW Trade and Investment for its work on energy and water, and from Allens for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

1.2 PIAC's work with homeless people accessing social housing

Through its Homeless Persons' Legal Service (HPLS), PIAC has significant experience with people who are homeless or in housing crisis, and who are seeking to access social housing, or have had difficulties sustaining their social housing tenancy.

Since it commenced in 2004, HPLS has provided free legal advice and representation to over 9,500 people who are homeless or at risk of homelessness. In 2014, HPLS helped 755 clients with a range of civil and criminal law matters. Of these, 21 per cent displayed some form of mental illness or self-identified as having a mental illness. In 2014, HPLS provided advice and assistance to 79 people who had tenancy and/or housing related disputes with Housing NSW. Of these, 21 people displayed some form of mental illness or self-identified as having a mental illness.

From January 2010 to December 2014, the HPLS Solicitor Advocate provided court representation to 409 individual clients facing criminal charges. Of these 44 per cent disclosed that they had a mental illness.

PIAC believes that the active involvement of those who are or have been homeless leads to the development of more effective public policy in response to issues facing homeless people, as

well as assisting in the empowerment of participants. PIAC also recognises the fundamental right of people to ‘take part in the conduct of public affairs’, as enshrined in Article 25 of the International Covenant on Civil and Political Rights (ICCPR).¹

PIAC seeks the views of homeless people, primarily through its homeless consumer advisory committee, StreetCare. StreetCare is made up of nine people who have recent experience of homelessness. The members reflect the diversity of homelessness in NSW, and include men, women, transgender people, young people, and representatives from inner Sydney, outer suburbs and rural and regional areas. StreetCare also provides a mechanism for PIAC to engage actively with other people who are homeless or at risk of homelessness, to facilitate their input into public policy and law reform initiatives.

2. Executive summary and recommendations

This submission is in response to the discussion paper released by the NSW Department of Family and Community Services in November 2014, titled *Social Housing in NSW*. In this submission, PIAC comments primarily on the following issues raised in the Discussion Paper.

Pillar 1 - A social housing system that provides opportunity and pathways for client independence

- Security of tenure is a pre-requisite for the right to adequate housing;
- Security of tenure is a foundation for tenants achieving independence.

Pillar 2 - A social housing system that is fair

- Social housing is already housing the most vulnerable;
- The need for safe, secure, stable social housing for people with lived experience of mental illness and homelessness.

Pillar 3 - A social housing system that is sustainable

- Public housing stock transfers to non-government social housing providers to achieve sustainability;
- The need to ensure adequate regulation and governance of non-government community housing providers;
- Non-government housing co-operatives as an option to improve social housing sustainability.

PIAC makes the following recommendations:

Recommendation 1

PIAC submits that underlying any social housing framework is the recognition that affordable rent and security of tenure are the foundations for social housing tenants to have stability, safety, security, and the ability to achieve independence and meaningful economic and social participation in the community. Accordingly, the principal objectives that should be clearly articulated in the new social housing framework for NSW are:

¹ International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) ratified by Australia on 13 August 1980 (entered into force for Australia on 13 November 1980, except article 41, which entered into force for Australia on 28 January 1993). The full text of the ICCPR is available at: <<http://www2.ohchr.org/english/law/ccpr.htm>>.

- (1) All social housing should remain affordable for the overwhelming majority of social housing tenants who are in receipt of social security payments as their primary source of income.
- (2) Tenants' security of tenure is most important, and security of occupancy should be maintained, where tenants have options to stay in social housing, with flexibility regarding the particular property and manager.

Recommendation 2

That where a social housing tenant has fallen into arrears with their rent payments, or is facing other tenancy related debt, all social housing providers adopt an ‘eviction as a last resort’ policy. In such circumstances, social housing providers should make multiple efforts to contact the tenant via mail, telephone and personal visits, in order to ascertain if the tenant is facing circumstances of financial hardship or crisis, with a view to referring the tenant to appropriate support services. Only after multiple attempts to contact the tenant have been unsuccessful should social housing providers consider issuing a written warning that it is considering a Notice of Termination.

Recommendation 3

That all social housing providers develop procedures to enable identification of social housing tenants in financial crisis or hardship, by virtue of a history of falling into rental arrears, and provide warm referrals for such tenants to appropriate welfare support and financial counselling organisations.

Recommendation 4

That the NSW Government provide a comprehensive funding program to ensure the ongoing, long-term support from caseworkers for people with mental illness and disability in social housing, to identify their further support needs, and to facilitate ongoing support for these people to help them maintain their tenancy.

Recommendation 5

That the NSW Government provide additional funding to ensure greater access to community support programs such as brokerage services, financial counselling, training and education courses, mental health services, other counselling services, medical services and social activity programs, which will provide the support for a person with mental illness to maintain their social housing tenancy, and overcome feelings of isolation, anxiety and stress.

Recommendation 6

Any stock transfers to non-government community housing (comprising both title and management transfers) to achieve the COAG commitment for community housing to manage 35 per cent of social housing, must include a thorough and comprehensive process of tenant participation and inclusion in the transfer process.

Recommendation 7

That the NSW Government establish a new Office of Social Housing Registrar, with the purpose of being the sole regulator of the social housing sector, for both government and non-government providers of social housing, to ensure consistency, transparency, accountability, tenant satisfaction, tenancy sustainability, tenant participation in service provision and good governance.

Recommendation 8

That the NSW Government develop a Social Housing Tenants' Rights and Responsibilities Charter, outlining the rights and responsibilities of tenants and housing providers.

Recommendation 9

That the NSW Government develop an independent appeals process for tenants of non-government community housing providers, which complements the existing public housing appeals process.

Recommendation 10

That the NSW Government implement an enforceable independent complaints resolution process for non-tenancy law disputes for tenants of government and non-government social housing providers.

Recommendation 11

That the NSW Government review its previous position in relation to public housing asset transfers to non-government community housing rental co-operatives, and conduct a detailed study exploring the feasibility of public housing asset transfers to housing rental co-operatives, or parent organisations that manage housing co-operatives in NSW.

Recommendation 12

That the NSW Government amend section 556 of the Local Government Act 1993, to ensure that land that belongs to a rental housing co-operative is exempt from all rates, other than water supply rates and sewerage special rates.

3. Pillar 1 – A social housing system that provides opportunity and pathways for client independence

3.1 Security of tenure – an essential ingredient in the right to adequate housing

The right to adequate housing is clearly articulated in International Law. Therefore, it should be beyond question that addressing homelessness must take place within a human rights framework. PIAC strongly adheres to this principle, and this is reflected in the comments provided in this submission. In particular, PIAC submits that security of tenure and access to affordable housing are essential elements in the right to housing and the right to an adequate standard of living.

The right to adequate housing is recognised in Article 25 of the *Universal Declaration of Human Rights* and the binding right is set out in Article 11 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).² Article 11(1) of ICESCR recognises:

² *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) ratified by Australia on 10 December 1975 (entered into force for Australia on 10 March 1976). Australia ratified the *International Covenant on Economic, Social and Cultural Rights* on 10 December 1975. ICESCR came into force for Australia on 10 March 1976.

... the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

The UN Committee on Economic, Social and Cultural Rights has extensively defined the nature of the right to adequate housing. The Committee established that the right to adequate housing involves more than just having shelter but that it is the ‘right to live somewhere in security, peace and dignity’.³ The Committee also established seven indicia of adequacy, including security of tenure and that housing is affordable and accessible.⁴

As a State Party to ICESCR, Australia (including state governments) must, by Article 11(1), take appropriate steps to ensure the realisation of the right to adequate housing.

One of the homeless people with whom PIAC has previously consulted has articulated the following indicia as to whether housing is adequate:

- Stability;
- Allows you to belong to the community;
- Provides a sense of belonging;
- Is somewhere to call home;
- Provides opportunity to participate in society;
- Ensures security of items and security of the person.⁵

3.2 Security of tenure – a foundation for achieving independence

Security of tenure in public housing has been identified as likely to be of particular importance in facilitating economic participation, particularly for those tenants who have unstable and fractured family backgrounds, employment or housing histories. Fixed-term tenancies may counter efforts to promote work participation by creating or reinforcing links between income-based rent and work disincentives – ie, creating an incentive to remain below income-eligibility thresholds in order to secure ongoing tenure.

PIAC submits that security of tenure is the essential foundation in providing stability and functionality for a person exiting housing crisis or homelessness to allow them to pursue training, education and employment opportunities. While PIAC supports proposals to provide social housing tenants with more opportunities and pathways for independence, even to the point of enabling them to transition to the private rental market, it is submitted that this should not in any way be a pre-requisite for them continuing to remain in social housing. Any notion of mutual obligation to pursue education, training or employment opportunities as a condition for remaining in social housing undermines the stability, security and peace of mind that come with having permanent accommodation. Moreover, the undue stress and anxiety that would accompany a threat to one’s accommodation and security of tenure from not being able to exit social housing, or failing to meet training or education requirements, would essentially retard any progress towards independence or the ability to sustain one’s own tenancy.

³ General comment No. 4, The right to Adequate Housing (Art. 11(1)), UNCESCR, General Comment No 4, 6th sess, [7], UN Doc E/1992/23 (1991).

⁴ Ibid [8].

⁵ Public Interest Advocacy Centre (2009), *Homeless not Houseless: Submission to NSW Fair Trading on the draft Residential Tenancies Bill 2009*, 3-4.

I personally have engaged with education, training, and paid employment for periods across my time as a social housing tenant (without the support of any service). This has been extremely hard for many reasons and taxing on my home and family life, and caused severe psychological distress to my child in particular, for a significant period of time and to date I have not been able to improve our financial situation to the point where leaving our social housing tenancy is possible.

The thought of having to jump through another set of hoops to maintain our home, that I have worked so hard to build, frightens me. I will be more than happy to move on from social housing in the future but being pressured from yet another service provider in the meantime will undoubtedly affect my mental health and therefore my ability to achieve these potential new responsibilities attached to my housing eligibility and security.

- Mary, member of StreetCare, HPLS Homeless Consumer Advisory Committee

Recommendation 1

PIAC submits that underlying any social housing framework is the recognition that affordable rent and security of tenure are the foundations for social housing tenants to have stability, safety, security, and the ability to achieve independence and meaningful economic and social participation in the community. Accordingly, the principal objectives that should be clearly articulated in the new social housing framework for NSW are:

- (1) *All social housing should remain affordable for the overwhelming majority of social housing tenants who are in receipt of social security payments as their primary source of income.*
- (2) *Tenants' security of tenure is most important, and security of occupancy should be maintained, where tenants have options to stay in social housing, with flexibility regarding the particular property and manager.*

4. Pillar 2 – A social housing system that is fair

4.1 Social housing – already housing the most vulnerable

As the discussion paper clearly articulates, the current profile of social housing tenants and applicants in NSW indicates that social housing is already providing accommodation to the most disadvantaged and vulnerable in the community. The problem is not that some current social housing tenants are not deserving of their social housing. The problem is that the demand for social housing from the most vulnerable and disadvantaged far exceeds supply, as indicated by the profile of those currently on the NSW Housing Register awaiting social housing.

According to the discussion paper:

- The primary source of income for 94 per cent of subsidised public housing tenants is Centrelink benefits. Over two-thirds of these tenants are supported by Age or Disability Support Pensions;
- 35 per cent of social housing tenants have a disability;
- The prevalence of mental illness among those living in social housing is 2.4 times that of the general population;
- Two-thirds of social housing tenants have not completed Year 12 education;

- 95 per cent of approved applicants for social housing currently on the NSW Housing Register receive a Centrelink benefit as their main source of income.⁶

PIAC is concerned that the unstated assumption within the discussion paper is that there are significant numbers of social housing tenants who should not be regarded as a priority for social housing. However, as the above statistics from NSW FaCS suggest, the makeup of social housing tenants, and those who are waiting for a social housing tenancy, is overwhelmingly vulnerable and severely socially and economically disadvantaged. For such tenants, private rental accommodation is not affordable or accessible. It is highly unlikely that such tenants will be able to transition to private rental accommodation in the medium term, if ever. Social housing provides a safety net for these tenants, without which they would be vulnerable to becoming homeless or facing housing crisis.

According to members of HPLS homeless consumer advisory council, StreetCare, given the lack of affordability of private rental housing, social housing is the only option for those who do not wish to return to homelessness. The idea of transitioning to the private rental market, though desirable, is not feasible for the vast majority of social housing tenants.

I have been in public housing for about 5 years now. I have been thinking for some time that I wanted to move out and get myself established in private rental. Recently I started to make inquiries about possible places where I could rent. I worked out that I could afford a maximum of \$250 per week in rent. So I made inquiries in Liverpool and Bankstown but there were no one-bedroom places available at that price.

I then checked down for Wollongong. Again, there was nothing. I just can't afford any more, but I can't access anything in private rental because it is so expensive. It is unaffordable for me. I am therefore stuck with social housing – it's all I can afford.

- Dave, member of StreetCare, HPLS Homeless Consumer Advisory Committee

I have a very real idea of what it takes to become a social housing tenant and the option of exiting into the private rental market is unrealistic for a lot of tenants, that includes me and my child. As things stand the cost and availability of rentals in the private market are hugely prohibitive to more than just those in social housing or on the waiting list.

- Mary, member of StreetCare, HPLS Homeless Consumer Advisory Committee

The importance of social housing for people with mental illness has been a particular focus of HPLS for the last two years. It is that discussion to which this submission now turns.

4.2 Social Housing for people with lived experience of mental illness and homelessness

As noted above, in 2014, HPLS provided advice and assistance to 79 people who had tenancy and/or housing related disputes with Housing NSW. Of these, 21 people displayed some form of

⁶ Family & Community Services NSW (2014), *Social Housing in NSW: A discussion paper for input and comment*, November 2014, pp.21-22.

mental illness or self identified as having a mental illness. In all of these 21 cases, the individual was either in receipt of a Centrelink payment, or did not receive any income at all. This would suggest that none of the 21 individuals could afford accommodation in the private rental market, with public and community housing likely to be the only option for safe, secure accommodation.

In 2013, PIAC commenced two projects that focused on the relationship between mental illness, homelessness, and accessing stable housing. In particular, PIAC wanted to look at the difficulties faced by people living with mental illness in exiting homelessness, accessing safe, stable and secure accommodation, and sustaining that accommodation.

These projects resulted in the release of two research papers based on the casework and consumer engagement work of HPLS:

- *Skating on thin ice: Difficulties faced by people living with mental illness accessing and maintaining Social Housing* – based on the casework of HPLS, this publication looks at the close relationship between homelessness and mental illness, and considers alternative strategies to respond to the needs of homeless people with mental illness who are reliant on social housing for their accommodation needs.⁷
- “Somewhere over the rainbow...” – *The opinions and experiences of people living with mental illness in getting housing* – this publication is based on a series of consumer consultations, which had the principal aim of identifying the experiences and difficulties of people living with mental illness in applying for and sustaining accommodation, as identified by the individuals themselves. The publication documents comments and input from the consumers who participated in these consultations.⁸

These two research papers are included with this submission for consideration in the review of social housing in NSW.

These research papers illustrate some of the difficulties social housing tenants face in relation to current tenancy management services; record their experiences of tenancy support services, both positive and negative; and suggest possible measures to improve tenancy management services. The research papers look at the close relationship between homelessness and mental illness, and consider alternative strategies to respond to the needs of homeless people with mental illness who are reliant on social housing for their accommodation needs.

Given the likelihood that people living with mental illness are reliant on disability support pensions or other forms of Centrelink payments, or are on low incomes, social housing is the most likely option for stable, safe accommodation. For people with mental illness, legal issues associated with obtaining and sustaining tenancies with social and community housing providers constitute one of the more commonly identified areas of legal need. This is confirmed by HPLS casework, in

⁷ Public Interest Advocacy Centre (2013), *Skating on thin ice: Difficulties faced by people living with mental illness accessing and maintaining Social Housing*, available online at <<http://www.piac.asn.au/publication/2013/10/skating-thin-ice>> (Last accessed 3 February 2015).

⁸ Public Interest Advocacy Centre (2014), “Somewhere over the rainbow...” – *The opinions and experiences of people living with mental illness in getting housing*, available online at <<http://www.piac.asn.au/publication/2014/05/somewhere-over-rainbow>> (Last accessed 3 February 2015).

which problems with social housing are the second most commonly reported legal problem for people with mental illness.

Some of the particular difficulties experienced by HPLS clients and consumer participants with tenancy management services, as documented in these reports, include:

- Poor customer service and delayed/inadequate communications from Housing NSW;
- Inappropriate offers of social housing premises that are unsuited to the physical or psychological needs of the applicants;
- Inflexible application of Housing NSW policies in relation to accessing priority status;
- Housing related debts leading to tenancy termination; and
- Neighbour disputes.

HPLS Case Study 1

A and M reside together in a Housing NSW unit. Both have a history of mental illness. M is an approved occupant. In late 2010, Housing NSW approved a transfer within zone CS1, based on A's degenerating medical condition.

In early 2011, HPLS first sought to obtain updated medical assessments on A & M so as to elevate their priority. Housing offers were made in July 2011, September 2011 and February 2012. All were rejected by M as they did not meet A's medical needs. It became clear, when talking to Housing NSW after the February 2012 offer that Housing NSW had very little idea about the suitability or condition of the housing when it was offered. Housing NSW did not inspect the property before making the offer and seemed to base its offer simply on the fact that the housing was a ground floor unit. One of the units offered was in such a poor state of repair as to be virtually uninhabitable.

HPLS was told by Housing NSW that it would only repair damage to stock which presented an occupational health and safety risk to tenants. Therefore, Housing NSW policy did not include the mending of broken windows (although they would be boarded up for safety), patching holes in walls, replacing broken light bulbs or anything else that it considered 'aesthetic'.

Further medical assessments were provided to Housing NSW in April 2012 to demonstrate the continuing deterioration of A's condition, to ensure these three offers were not counted as 'reasonable' offers by Housing. An offer that fully met A and M's medical needs was finally made in August 2012.

HPLS Case Study 2

R sought assistance to obtain priority housing, having been homeless for 12 months. He had previously lodged an application with Housing NSW for priority housing on the basis of mental illness. Housing NSW advised HPLS that R did not satisfy the 'priority criteria', as R had indicated that he had no 'special need' to be located close to a particular service or facility, and was happy to be housed anywhere.

The only basis upon which R could claim 'priority status' was his mental illness, which needed to be supported by an up-to-date medical report. The medical report provided by R

was outdated and did not provide any assessment of R's mental health condition. R did not have a regular doctor and was difficult to keep in contact with. It was difficult for R to obtain an updated medical report for this reason, and he is no longer in touch with appropriate support services.

HPLS Case Study 3

Housing NSW has removed G from his priority position on its waiting list on the ground that he has housing-related debt. Approximately 15 years ago, G incurred a debt of \$1100 after leaving a rental property. The landlord alleged that G had damaged fittings in the property, an allegation denied by G. Notwithstanding his denial, G has reduced the debt by \$800 to date. He claims that if had known earlier about Housing NSW's position on his debt he would have discharged it earlier, and that the delay in communication has unfairly prejudiced his case. G has had trouble liaising with Housing NSW, as he is currently homeless.

HPLS Case Study 4

H, a 57-year-old woman, had been residing at her present Housing NSW home for the past 18 years, and prior to that had been residing in other Housing NSW premises. H suffers from poor physical and mental health and has been diagnosed with multiple physical and psychological medical conditions. She was the victim of child abuse that included neglect and maltreatment.

In 2000, an arrangement was made whereby any payments H owed to Housing NSW would be deducted from her Disability Support Pension and paid directly by Centrelink to Housing NSW. This arrangement occurred without incident until 2009.

In November 2009, Centrelink wrote to H informing her that Housing NSW had contacted Centrelink and requested an increase of \$31.90 per fortnight in the deduction from her pension. The increase meant that instead of deducting \$144.30 per fortnight from H's pension, Centrelink would now deduct \$176.20 per fortnight. Centrelink, however, failed to increase the deductions from H's DSP and continued to pay \$144.30 a fortnight.

In January 2010, H received a phone call from Housing NSW stating she was in arrears. H instructed Centrelink to stop making payments to NSW Housing. The next day, a representative from Housing NSW visited H at her home and provided her with statements for her water account and rent account for the period June 2009 to January 2010. In late February 2010, H attended a Housing NSW office and offered to pay \$230 per fortnight for her rent, water and arrears until the arrears were paid. Housing NSW refused the offer and told her that a Notice of Termination was being sent to her. When she returned home that same day, H received the Notice of Termination in the mail.

H entered a new agreement with Housing NSW. The agreement authorised Housing NSW to deduct \$221.20 per fortnight from H's DSP, which included \$35 per fortnight in rent arrears and \$10 per fortnight in water arrears.

Housing NSW forwarded the new payment agreement to Centrelink in March 2010. On that same day, Housing NSW commenced proceedings in the Consumer Trader and Tenancy Tribunal seeking an order to evict H from her residence owing to her rent arrears.

These case studies suggest that greater collaboration and information sharing between Housing NSW and non-government organisations involved in crisis service delivery, welfare support or financial counselling could greatly assist in sustaining social housing tenancies for people with mental illness who are in financial crisis or hardship.

Where a social housing tenant has fallen into arrears with their rent payments, or is facing other tenancy related debt, Housing NSW should adopt an ‘eviction as a last resort’ policy. In such circumstances, Housing NSW should make multiple efforts to contact the tenant via mail, telephone and personal visits, in order to ascertain if the tenant is facing circumstances of financial hardship or crisis, with a view to referring the tenant to appropriate support services.

Housing NSW should also develop a process of identifying tenants who regularly fall into rental arrears, with a view to providing appropriate warm referrals to financial counselling and welfare support organisations. In addition, Housing NSW could seek consent from tenants to provide details of rent payment difficulties to financial counselling and welfare support organisations, to facilitate effective case management for a tenant in financial crisis.

PIAC considers that such pro-active identification and facilitation of support for tenants facing financial hardship will have a significant impact in assisting social housing tenants living with mental illness who are in hardship, sustaining their tenancies and avoiding eviction into homelessness.

Recommendation 2

That where a social housing tenant has fallen into arrears with their rent payments, or is facing other tenancy related debt, all social housing providers adopt an ‘eviction as a last resort’ policy. In such circumstances, social housing providers should make multiple efforts to contact the tenant via mail, telephone and personal visits, in order to ascertain if the tenant is facing circumstances of financial hardship or crisis, with a view to referring the tenant to appropriate support services. Only after multiple attempts to contact the tenant have been unsuccessful should social housing providers consider issuing a written warning that it is considering a Notice of Termination.

Recommendation 3

That all social housing providers develop procedures to enable identification of social housing tenants in financial crisis or hardship, by virtue of a history of falling into rental arrears, and provide warm referrals for such tenants to appropriate welfare support and financial counselling organisations.

The research papers identified some key areas for action, which would improve the ability of people with lived experience of homelessness and mental illness to access and sustain social, public and affordable housing. These include:

- Ensuring that all staff in Customer Service Operations in Housing NSW receive training focused on how to effectively engage with homeless people who live with mental illness. This training should be developed in consultation with people who have experienced homelessness.

- That Housing NSW ensure that there is consideration of a person's background and experience of mental illness before placing them in public housing, so that they are not placed in areas or accommodation in which they may feel at risk, unsafe, or where the accommodation is otherwise inappropriate given their particular circumstances.
- That Housing NSW ensures that there is easier access to transfer for people living in public housing if they have a history of mental illness and are fearful for their personal safety or have concerns about becoming/returning to homelessness because of the area in which they are housed.

Access to ongoing, long-term casework support, community programs and counselling services becomes essential in sustaining accommodation for people who have exited homelessness but who will always remain at risk of returning to homelessness. Several participants in an HPLS focus group stated that one of their most pressing difficulties in sustaining their accommodation was the difficulty they faced in accessing appropriate levels of support to help them with their ongoing mental illness issues, as well as practical support necessary to maintain a tenancy, whether it be financial counselling, life-skills support, or advocacy support with Housing NSW or community housing.

The worker [from the Catholic Care personal mentor programme] stayed with me while I was in hospital. He got me into here. He helped me get the papers together.

- Participant, HPLS focus group, Mental Illness and Homelessness Consultation, 2013

M, who works over at Mission Australia at Harris Park, is an angel. She rings up the Housing Commission until they get sick of her and then they give her a place to shut her up. But about three to four months is all you've got to wait in that housing hostel for men. And they gave me a lounge, a bed and a fridge. All sorts of things for the kitchen and everything, so I was pretty lucky.

- Participant, HPLS focus group, Mental Illness and Homelessness Consultation, 2013

These participants expressed strong appreciation for the committed, determined and competent caseworkers and outreach support workers, who assisted them in obtaining safe, secure and stable accommodation, and provided them with ongoing counselling, brokerage support and other services to assist them in maintaining their accommodation.

Recommendation 4

That the NSW Government provide a comprehensive funding program to ensure the ongoing, long-term support from caseworkers for people with mental illness and disability in social housing, to identify their further support needs, and to facilitate ongoing support for these people to help them maintain their tenancy.

Participants also spoke of the value of various support and educational programs that they had been able to access, and the importance of these programs in helping them sustain their

tenancies, including counselling, financial counselling, medical support, life-skills training, or social group activities.

Recommendation 5

That the NSW Government provide additional funding to ensure greater access to community support programs such as brokerage services, financial counselling, training and education courses, mental health services, other counselling services, medical services and social activity programs, which will provide the support for a person with mental illness to maintain their social housing tenancy, and overcome feelings of isolation, anxiety and stress.

PIAC notes that in the last 12 months, the NSW Government announced that it was reviewing the training of frontline staff in public housing, community housing and specialist homelessness services in working with people with mental health issues, with a view to identifying improvements to the current approach to training of these personnel. It is our understanding that Housing NSW has recently piloted a training program for frontline customer service officers focusing on mental illness and a trauma informed care approach to service delivery.

PIAC welcomes these developments, and looks forward to receiving updates with regard to the evaluation of the piloted training program and proposals concerning how the training will be rolled out across NSW to all Housing NSW customer service officers and staff in specialist homelessness services.

5. Pillar 3 – A social housing system that is sustainable

PIAC recognises that, at present, the sustainability of the public housing system in NSW is under considerable pressure. The discussion paper notes two factors underlying this pressure:

- A decline in revenue as a share of total expenditure; and
- Increasing operating costs closely linked to ageing assets.

PIAC submits that the following are also significant factors suggesting that the current public housing system is not sustainable:

- Demand for social housing in NSW far outstrips supply, with almost 60,000 approved applicants on the waiting list for social housing in NSW as of June 2014. The average waiting time for social housing is four years and up to 10 years or more in popular locations.⁹
- Those in social housing and those who are approved applicants for social housing are overwhelmingly reliant on social housing for their accommodation needs, and unable to afford accommodation in the private rental market. The primary source of income for 94 percent of subsidised public housing tenants is Centrelink benefits, with two-thirds of these supported by Age or Disability Support Pensions.¹⁰ Approximately 95 percent of approved applicants for social housing receive a Centrelink payment.
- A significant proportion of current government-owned public housing stock is uninhabitable and in need of repair and maintenance. As noted in the discussion paper, one in five

⁹ <http://www.facs.nsw.gov.au/about_us/media_releases/new-social-housing-data-released> (accessed 27 January 2014)

¹⁰ Family & Community Services NSW, n 6 above, p. 22.

dwellings was over 50 years old as at June 2014, causing a 5 per cent growth in maintenance and repair costs over a 10 year period up to 2014/15.

PIAC is concerned that fiscal pressures mean that the current ageing public housing stock is not being adequately maintained for accommodation, and that the stock is inadequate to meet current and future demands for low-cost housing, unless there is a significant and rapid injection of funds for the construction of new social housing stock.

PIAC notes the comments from the Community Housing Federation of Victoria (CHFV) in 2014 that transfers of tenancy management and assets from public to community housing is often proposed to resolve some of the current financial problems in public housing. Transfers can also help to grow the housing stock through borrowings. PIAC acknowledges that there is strong pressure on government to resort to stock transfers to non-government providers of social housing, in order to improve sustainability of the social housing system. Moreover, PIAC notes that in 2009, Australian Housing Ministers committed to an expansion of the community housing sector to 35 percent of social housing by 2014.¹¹

PIAC accepts that to make the social housing system in NSW more sustainable, it is likely that some transfer of title and responsibility for the management of social housing to the non-government community housing sector will have to occur. However, PIAC submits that the type and manner of such transfers must occur in tightly controlled circumstances in order to achieve the desired outcomes of sustainability and fairness in the social housing system.

5.1 Public housing stock transfers to achieve sustainability

As noted above, transfers of tenancy management and assets from public to community housing may resolve some of the current financial problems in public housing, as well as enabling the expansion of social housing stock through borrowings. However, PIAC agrees with CHFV that in the absence of other funding, and without careful attention as to the type of transfer undertaken, stock transfers will be unlikely to achieve both outcomes simultaneously.¹²

As noted by CHFV, transfers of tenancy management alone do not secure much growth in social housing stock. In addition, the following should also be seen as caveats on how transfers should be undertaken and what they can achieve:

- The transfer of poor quality and poorly maintained assets is unlikely to address the problem of insufficient social housing stock, as debt would be required to address the maintenance backlog. Indeed, as noted above, some properties in NSW may be in such poor condition that additional funding would be required to bring them up to standard;
- A suitable method of managing the transfer of tenancies, including tenant consultation and choice, needs to be determined before transfers can occur.¹³

¹¹ Ibid 16.

¹² Community Housing Federation of Victoria (2014), *Making Social Housing Work – Better homes for low-income Victorians*, March 2014, p. 20.

¹³ Ibid 21.

According to CHFV, in order to deliver benefits to tenants and achieve the overall growth of the social housing system, the following needs to be incorporated into the transfer process:

- Certainty and transparency so that community housing organisations, tenants and financiers have confidence in the new arrangements;
- Community housing organisations that already manage existing tenancies should have the first option for any asset transfer, as they have the best knowledge of the tenants needs and property condition;
- No disadvantage to tenants, who must be retained on the same terms and conditions in any transfer;
- Transfers must be conducted transparently with adequate preparation, consultation and tenant engagement.¹⁴

An essential element in any transfer process is ensuring that tenants are actively engaged and involved, including having the right to choose or refuse a transfer, especially if their entitlements or terms and conditions would be affected. Tenancy transfers must include:

- Respect and sensitivity as this is a highly personal decision about people's homes;
- Timely information and decision making, including open and honest communication with tenants, full disclosure of changes, and the opportunity to ask questions;
- Inclusive ways of informing tenants, including material produced in plain English and in other languages, as well as accessible for people with disabilities.¹⁵

In addition to this, PIAC submits that the following should also be core conditions for any transfer of title or management of public housing to non-government community housing providers:

- That there be no diminution in the availability of social housing stock as the result of the transfer;
- That all housing stock, the title for which is transferred to a non-government community housing provider, continue to be available for social housing for low-income tenants unable to afford market rent;
- That any prospective non-government transferee provide a comprehensive business case illustrating how the organisation will increase social housing stock, by leveraging the title of the transferred public housing stock to raise finance in order to increase the organisation's accommodation holdings.

Recommendation 6

Any stock transfers to non-government community housing (comprising both title and management transfers) to achieve the COAG commitment for community housing to manage 35 per cent of social housing, must include a thorough and comprehensive process of tenant participation and inclusion in the transfer process.

¹⁴ Ibid.

¹⁵ Ibid.

5.2 Ensuring adequate regulation and governance of non-government community housing providers

A key element in insuring a fair, sustainable social housing system in which there is a diversity of social housing providers that include government, non-government organisations and partnership arrangements, is that there be a standard system of regulation and governance across all social housing providers that provides an independent, enforceable and accessible complaints resolution process for tenants. While such a system provides greater opportunities for flexibility and potential for expanding social housing supply, it introduces a level of complexity given that both government and non-government entities will be responsible for delivery of outcomes of a key area of social policy. Such a complex system opens many doors through which error can enter.

So that tenants experience the same standard of housing, regardless of their provider, the NSW Government should ensure that public and community housing are regulated on the same basis. This would ensure that all social housing is the subject of independent oversight and performance measures, including asset management and maintenance, with safeguards for tenant wellbeing, regardless of whether the provider of social housing is a government or a non-government entity. Core reporting requirements for social housing providers should include:

- Annual survey of tenants to measure tenant satisfaction with the social housing provider;
- Annual reporting of tenancy sustainability and number of terminations;
- Annual reporting of tenant participation initiatives that have been undertaken.

A key element of such a system of regulation and oversight is the development of a Social Housing Tenants Rights and Responsibilities Charter. Such a Charter for social housing outlining the rights and responsibilities of tenants and housing providers would provide a clear and coherent set of expectations for all parties. In addition, the existing public housing appeals process should be complemented by a similar independent appeals process in community housing to improve the recourse for tenants should they experience a poor decision.

Recommendation 7

That the NSW Government establish a new Office of Social Housing Registrar, with the purpose of being the sole regulator of the social housing sector, for both government and non-government providers of social housing, to ensure consistency, transparency, accountability, tenant satisfaction, tenancy sustainability, tenant participation in service provision and good governance.

Recommendation 8

That the NSW Government develop a Social Housing Tenants' Rights and Responsibilities Charter, outlining the rights and responsibilities of tenants and housing providers.

Recommendation 9

That the NSW Government develop an independent appeals process for tenants of non-government community housing providers, which complements the existing public housing appeals process.

Recommendation 10

That the NSW Government implement an enforceable independent complaints resolution process for non-tenancy law disputes for tenants of government and non-government social housing providers.

5.3 Non-government housing co-operatives – an opportunity to improve social housing sustainability

According to the Belgium-based International Co-operative Alliance, rental housing co-operatives are governed by voluntary tenant members with support from professional staff. The key principles of living in such a cooperative include:

- The tenant must be willing and able to participate in the running of the cooperative, and is focused on fair and equal access to those who wish to participate which includes encouraging the occupancy, participation, and full social integration of people with special needs
- Cooperative housing is run democratically where all members have equal voting rights, and membership is distributed in a manner that encourages equal participation
- Members contribute fairly to the running of the housing
- Housing cooperatives are independent entities controlled by their members
- Housing cooperatives should support the further education of its members to help meet their responsibilities and deepen their commitment to the performance of the cooperative.¹⁶

According to CHFV, rental housing co-operatives are well placed to support growth in social housing that will be required to meet the need for affordable housing for lower income households whilst also preventing people from falling through the safety net and becoming high need clients of public housing.¹⁷

In Australia, housing cooperatives are almost exclusively non-equity. This means that residents (members) do not provide capital, do not own the property and do not benefit from capital appreciation. The assets are owned by a third party, often a state agency. Non-equity cooperative models are best suited to low-income tenants where it is unlikely they can contribute capital. As tenants are usually low income, paying a reduced rent, it is similar in contractual terms to renting in the social housing sector.¹⁸

Housing co-operatives are considered a significant source of social housing in several countries. Cooperatives manage a large portion of total housing stock in Egypt (33%), Poland (17%), the Czech Republic (17%), Sweden and Norway (15% each). On average, 10% of residents of the European Union live in housing cooperatives.¹⁹

¹⁶ International Co-operative Alliance, <<http://ica.coop/en/what-co-operative>> (accessed 29 January 2015).

¹⁷ Community Housing Federation of Victoria (CHFV) (2014), *Rental Housing Co-operatives – an essential option in a renewed social housing system*, 2014, p.4

¹⁸ Gilmour, Tony (2012), *We're all landlords and tenants: Contemporary housing cooperatives building sustainable communities*, October 2012, Common Equity NSW, p.8.

¹⁹ Comité Português de Coordenação da Habitação Social (CECODHAS), (Eds.) (2012), Profiles of a movement: co-operative housing around the world, Brussels, CECODHAS Housing Europe and ICA Housing.

By comparison, within Australia, housing cooperatives make up a relatively small proportion of total housing in general, and social housing in particular. According to Gilmour, Australian cooperative housing is:

- 10% of the community housing sector
- 1.23% of the social housing sector
- 0.06% of the total housing stock, based on 2011 census dwelling numbers.

Australia has around a third of the cooperative proportion of the UK, one-fifth the proportion of the US and less than one-tenth the proportion of Canada.²⁰

5.3.1 Benefits of rental housing co-operatives

According to CHFV, the key achievements of rental housing co-operatives are financial sustainability and the delivery of both economic and social benefits for tenant members.

According to Gilmour, some of the particular benefits of rental housing cooperatives that have been identified are:

1. Member satisfaction

There are significantly higher levels of satisfaction among cooperative housing residents than in the wider social housing sector due to the sense of community, physical safety and security felt by residents.²¹

2. Housing access and continuity

Housing cooperatives offer access to affordable and stable housing in an area where tenants wish to live, this being the main reason for joining a cooperative. This allows tenants to enjoy greater security of tenure and personal security.

3. Landlord flexibility

Housing cooperatives will often allow residents to stay over the longer term, even as their incomes fluctuate. This has the benefit of providing community continuity, and reducing fears of eviction.

4. Providing skills and training to cooperative members

Cooperatives operate on the principle of one member one vote. Co-operative member involvement in decision making provides members with the opportunity to build their individual independence and acquire new skills in such things as problem solving, negotiation with contractors, conflict management, particularly in disputes between residents, and good business practice.

Gilmour reports that some housing co-operatives also facilitate their members attending more formal training courses and workshops that will increase members' opportunities to participate in the workforce or pursue further education

5. Encouraging tenant independence and self-sustainability

Training, education and life skills acquired by tenants as a cooperative member may increase employment opportunities. Hence cooperatives can play a part in ending the dependency created by an expectation that the State will always provide. The principle of encouraging people to participate in decision making is of fundamental importance for social housing tenants who have

²⁰ Gilmour, Tony (2012), n 18 above, p.10.

²¹ Ibid15.

often become disempowered. Because people who live in co-operatives democratically manage their homes, they are able to take responsibility and build a sense of belonging, identity and ownership.

6. Community building and neighbourhood cohesion

Housing cooperatives play a role in developing stable, functioning communities. Housing cooperatives offer a sense of belonging, where there is a greater likelihood of residents getting to know their neighbours and therefore feeling less socially isolated. This is particularly important for people from vulnerable groups, including older people, young families and people having experienced domestic violence.

This can also have a broader positive effect on the broader local neighbourhood, with cooperative members more inclined to be engaged with their local community, resulting in increased civic participation.²²

7. Housing co-operatives are cost effective

According to Gilmour, the volunteer contributions of co-operative members taking responsibility for tenancy management and routine maintenance have been assessed as resulting in savings of approximately \$12,000 per property per year. The time of cooperative members in performing necessary tasks reduces the need for full time staff to be employed, and therefore saves money. This allows tenancy management and property maintenance to be delivered at a lower cost than in conventional social housing.²³

Gilmour states that because housing co-operatives are run by their members for their members, they operate at cost and have no reason to substantially increase expenditures. They are less likely to either fall into rental arrears themselves, or tolerate arrears from fellow members. Because co-operative residents are responsible for the management of repairs and budgets and have a strong sense of ownership, maintenance costs are often lower for the State compared to other forms of social housing.

5.3.2 Housing co-operatives in NSW

According to Gilmour, the current NSW Government has been hesitant in transferring assets and properties to not-for-profit community housing providers. Moreover, a reluctance to transfer ownership of properties currently managed by non-government housing co-operatives has inhibited the ability of these organisations to raise private finance and develop new social and affordable housing properties.²⁴

The current review of the future of social housing in NSW presents as an opportunity to revisit the option of asset transfers to non-government housing co-operatives, given the benefits and cost efficiencies offered by community co-operative housing. The transfer of property titles of existing public housing to rental housing co-operatives will create greater opportunities for co-operatives to leverage retained earnings and private finance for growth. Without ownership through title to these properties, co-operatives have limited capacity to leverage finance for growth that would enable them to develop further social housing accommodation.

²² Ibid 16-17.

²³ Ibid 20-21.

²⁴ Ibid 35.

In addition, transferring responsibilities for management of Government-owned housing stock will help deliver economies of scale and improved cash flow for rental co-operatives. However, as indicated above, mere transfer of management responsibilities alone will not secure much growth in social housing stock. Ultimately, title transfers are required to provide rental housing co-operatives with opportunities to leverage finance to develop additional social housing accommodation.

Rental housing co-operatives provide a model to achieve several of the goals articulated under Pillar 1 of the envisaged future social housing system (a social housing system that provides opportunity and pathways for client independence). The skills, training opportunities, security and community cohesion that members of rental housing co-operatives enjoy offer pathways for them to access education, employment and better health, and potentially enable them to transition to market rate housing.

The underwriting principle behind the provision of social housing is that housing be accessible and affordable for the most vulnerable and disadvantaged in the community. Accordingly, in a framework in which it is anticipated that significantly more social housing will be provided by non-government social housing providers, including rental housing co-operatives, it is necessary to ensure that such providers of social housing are exempt from rates, charges and other expenses that will increase the cost of social housing provided by these non-government providers. A recent decision by the NSW Land and Environment Court found that an organisation responsible for provision of social housing for the disadvantaged, while a public charity, was not a public benevolent institution for the purpose of being exempt from rates and charges on land that it owns for purposes of social housing.²⁵

It is therefore submitted that the NSW Government amend section 556 of the *Local Government Act 1993* to ensure that, where land is owned by a non-government social housing provider such as a rental housing co-operative, and that land is used for the provision of social housing, the land is exempt from all rates, other than water supply rates and sewerage special rates.

Recommendation 11

That the NSW Government review its previous position in relation to public housing asset transfers to non-government community housing rental co-operatives, and conduct a detailed study exploring the feasibility of public housing asset transfers to housing rental co-operatives, or parent organisations that manage housing co-operatives in NSW.

Recommendation 12

That the NSW Government amend section 556 of the Local Government Act 1993, to ensure that land that belongs to a rental housing co-operative is exempt from all rates, other than water supply rates and sewerage special rates.

²⁵ *Community Housing Limited v Clarence Valley Council* [2014] NSWLEC 193 (23 December 2014).