



NATSILS

National Aboriginal and
Torres Strait Islander Legal Services

TRUE JUSTICE FOR OUR PEOPLE

Submission to the Standing Committee's Inquiry on Homelessness in Australia

July 2020



TRUE JUSTICE FOR OUR PEOPLE

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Introduction

As noted in the Royal Commission into Aboriginal Deaths in Custody, homelessness for our people is the direct result of the loss of Aboriginal land.¹ Homelessness is part of the ongoing legacy of colonisation for our people. Without strategies which acknowledge the complex factors driving the incidence of homelessness in our people, particularly those that and which empower us to work alongside governments in implementing solutions, homelessness and home insecurity will continue.

This submission considers the factors affecting the incidence of homelessness for our people, including our people's experiences of overcrowding, scarcity of public homes, and lack of housing affordability. This submission also specifically considers the interrelationship between homelessness and entry into the criminal legal system. This includes consideration of the experiences of child removal and family violence faced by our people, these being factors which are not only connected with homelessness, but also with over-incarceration as a driver of homelessness. In addition, there are many civil legal needs arising out of housing issues for Aboriginal and Torres Strait Islander people, which the legal sector needs more resourcing to meet.

For many Aboriginal and Torres Strait Islander people, the perspective of homelessness is complex and multidimensional arising from experiences of colonisation, land dispossession and attempts to destroy our cultures.² Homelessness for some of our people also has a cultural dimension which arises from a disconnection from traditional lands, waters, family, and kinship networks, as well as a separation from our strong and proud cultures and identities as First Nations people.

As Aboriginal and Torres Strait Islander people, we have historically been, and continue to be, overrepresented across a range of statistics related to disadvantage, including the incidence of homelessness. Despite our people comprising only 2% of the general population we make up 21% of people experiencing homelessness.³ Many, if not all, of the other disadvantages we are pushed into like poverty, under employment, poorer health, lower educational attainment, and imprisonment, are often interlinked with the incidence of homelessness, creating complex cycles of reoccurrence.

Summary of recommendations

1. The Commonwealth Government implements the United Nations Declaration on Indigenous Peoples into domestic law across all jurisdictions in Australia.
2. The Commonwealth Government implements the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all Forms of Discrimination Against

¹ Royal Commission into Aboriginal Deaths in Custody (Final Report, 1991) vol 2, [18.2.7].

² Donna Ah Chee, Central Australian Aboriginal Congress, Submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs Inquiry into homelessness in Australia (Submission, 2020) <<https://www.caac.org.au/uploads/pdfs/Congress-Submission-to-Homelessness-Inquiry-June-2020.pdf>>

³ Australian Bureau of Statistics, Census of population and housing: Reflecting Australia-Stories from the Census, 2016 (Catalogue No 2071.0, 27 March 2018).

Women, the Convention on the Rights of Persons with Disabilities, and the Convention on the Rights of the Child into domestic law across all jurisdictions in Australia.

3. All Australian governments fund and resource Aboriginal Community Controlled Organisations to provide culturally safe and appropriate housing and homelessness services. Where these do not exist, they must be developed in true partnership with Aboriginal and Torres Strait Islander people.
4. The Commonwealth Government partners with the states and territories to fund a new ten-year National Partnership Agreement for Remote Indigenous Housing.
5. A new National Partnership Agreement for Remote Housing should implement the recommendations from the *Remote Housing Review*, particularly on governance, transparency, fairness, and accountability.
6. A new National Partnership Agreement for Remote Indigenous Housing should require that:
 - a. Local people are involved in the design, development and construction processes for new and existing homes, community infrastructure and community facilities.
 - b. Include design and construction principles that enable homes that facilitate and support Aboriginal and Torres Strait Islander relationships and kinship connections.
 - c. Construction companies and organisations engage local people for the building and maintenance of homes, including capital works, and to provide local employment.
 - d. Cultural spaces and facilities, artworks, and other forms of cultural recognition are included in the built environment and surrounds.
7. The National Cabinet supports ending Aboriginal and Torres Strait Islander homelessness and housing insecurity as a target in the next Closing the Gap agreement.
8. The Commonwealth Government, in partnership with the states and territories, urgently commits to building the 727,000 public homes that will be required to accommodate the current and projected backlog by 2036.
9. In partnership with Aboriginal Community Controlled Organisations, the Australian Government updates the National Indigenous Housing Guide so it mandates regulatory oversight for the proper construction of long lasting homes that are suitable for their environments and include appropriate penalties for breaches of the Guide.
10. All governments require public and social housing providers to develop public policies for timely housing maintenance, including public reporting on compliance.
11. All Australian governments urgently fund and resource all Aboriginal and Torres Strait Islander Legal Services to allow them to continue providing civil and tenancy legal services, particularly to people living in public and social homes, or those applying to live in public and social homes.

12. All housing service providers in regional, rural, and remote areas need to ensure that they provide accessible tenancy management services to all people living in their homes and, where possible, employ local people to provide tenancy management services.
13. Public and social housing service providers are required to provide automatic pecuniary compensation to people living in their homes for every day that maintenance and repair works are not carried out in accordance with their maintenance and repair timelines.
14. All Australian governments implement the recommendations of the Royal Commission into Aboriginal Deaths in Custody to urgently eliminate ill-treatment and violent and abusive police behaviour towards our people, particularly in light of the COVID-19 pandemic.
15. All governments designate and/or establish National Preventive Mechanisms (NPM) to oversee the conditions of detention and treatment of people in places of detention, which must, at a minimum, comply with international human rights standards. Governments.
16. NPMs need to ensure that their operations, policies, frameworks, and governance are always culturally appropriate and safe for our people. NPMs need to also ensure their findings are publicly available and published in different formats and languages, including our languages.
17. Police services implement receipting practises for stops and searches nationwide to prevent racial profiling and over targeting by police during the COVID-19 pandemic. Police services must make this disaggregated data publicly available by tabling it in their respective parliaments quarterly.
18. All Australian governments immediately increase funding and resourcing for Aboriginal Community Controlled Organisations to provide crisis accommodation for Aboriginal and Torres Strait Islander women and children experiencing family violence.
19. The Commonwealth Government in partnership with the states and territories permanently ends the effective criminalisation of homelessness and poverty by:
 - a. Abolishing/repealing low level offences that disproportionately impact people experiencing homelessness, including begging alms and public drunkenness.
 - b. Transitioning away from enforcement-based responses for low level offences and any other offence that is a direct result of someone experiencing homelessness, including sleeping, or camping in public.
 - c. Implementing the Royal Commission into Aboriginal Deaths in Custody's full recommendations.
 - d. Ending the unsafe and inappropriate removal of our children and the full implementation of the Aboriginal Child Placement Principles in all states and territories, including taking a community-centred, family inclusive approach to child protection concerns to ensure our children are culturally, physically, and emotionally safe.
 - e. Increase funding and support for Aboriginal and Torres Strait Islander community-led prevention and early intervention efforts to reduce violence against our women and offending by our women

- f. Increasing culturally safe diversion programs, including Aboriginal community-controlled programs for young people, and other alternatives to imprisonment.
20. The Commonwealth Government significantly increases funding and resourcing for Family Violence Prevention Legal Services including their peak body the National Family Violence Prevention Legal Services Forum.
 21. All Australian Governments review sentencing practices and bail conditions, particularly short sentences for non-violent offences, including providing multi-agency support with effective integration of legal, social, healthcare, and other agencies to create pathways out of the criminal legal system.
 22. All Australian governments commit to fully funding and resourcing the culturally safe throughcare programs and support services run by ATSILS so that our people are fully supported when they are transitioning from imprisonment into the community.

Self-determination is key to ending homelessness for Aboriginal and Torres Strait Islander people

Homelessness for Aboriginal and Torres Strait Islander people is rooted in hundreds of years of colonisation and dispossession from our lands, families, and cultures. Our people are experiencing the worst and most intense social and health inequity in Australia.⁴ These preventable inequities as well as the psychological distress, mental health conditions, and harmful behaviours experienced by our people are rooted in the ongoing effects of colonisation and the intergenerational trauma it causes.⁵

As noted in the National Health Leadership Forum's submission to this inquiry, systemic racism and the failure to value our people within Australian society, coupled with political and social environments that are unsupportive of our right to self-determination are significant barriers to addressing our homelessness.⁶ As signatories to the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**), Australia has a legal and moral obligation to advance the UNDRIP in domestic laws. Including, our right to self-determination⁷, our rights to our own type of governance and economic development⁸, our rights to health⁹, and our rights to ancestral lands, including its ownership¹⁰.

Any measures to improve homelessness among and for our people must be guided by a strong human rights framework grounded in our right to self-determination. These are found in the numerous international human rights instruments that Australia is a signatory to, including the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, the *Convention on the Elimination of all Forms of Discrimination Against Women*, the *Convention on the Rights of Persons with Disabilities*, and the *Convention on the Rights of the Child*.

To develop strategies to eliminate homelessness without the fundamental recognition of our right to self-determination would echo decades of failed, paternalistic policy that neglects the will of our people. Our people experience, or are pushed, into homelessness at rates approximately 10 higher than non-Indigenous people. The main drivers of our homelessness are severely overcrowded dwellings, including homes that are unsuitable to the sizes and dynamics of some of our families, impoverishment, a lack of available and suitable homes, and women and children escaping family violence without suitable homes to go to.¹¹

⁴ National Health Leadership Forum, *Inquiry into Homelessness in Australia* (Parliamentary Paper, 2020) Commonwealth Parliament Inquiry into homelessness in Australia, Submission 149, 3

⁵ *Ibid.* 3

⁶ *Ibid.* 3

⁷ Articles 1-8; 33-34

⁸ Articles 17-21, 35-37

⁹ Articles 23-24

¹⁰ Articles 26-30, 32

¹¹ AIHW, *Aboriginal and Torres Strait Islander people: a focus report on housing and homelessness* (Catalogue No HOU 301, 29 March 2019) 46.

Ms Donna Ah Chee, a proud Bundgalung woman and CEO of the Central Australian Aboriginal Congress (CAAC) writes in the CAAC submission to this inquiry that the concept of ‘home’ for our people and our relationship to kin and country is central to our cultures and our wellbeing.¹² Despite the brutal effects of colonisation, land dispossession and attempts to erase our cultures and identities, Aboriginal and Torres Strait Islander people have shown remarkable resilience in nurturing, maintaining and, where possible, re-establishing a connection to our traditional lands and waters.¹³

For many of our people, Western assumptions of safe housing and family structures omit Aboriginal and Torres Strait Islander kinship protocols, in particular the raising of children communally or the need to care for extended family members in the same households.¹⁴ For example, under Western notions of safe and adequate housing overcrowding is deemed to be the result of a home being too small or when there aren’t enough bedrooms for the size and composition of the household that lives in it.¹⁵ However, for our people overcrowding is the result of inadequate housing which includes housing that is inappropriate for the sizes and dynamics of our families.¹⁶

As noted in the National Health Leadership Forum’s submission to this inquiry: “Understanding the relevance of culture to the issue of homelessness is to understand the relationship between Aboriginal and Torres Strait Islander peoples’ culture and how that relates to health and wellbeing.”¹⁷

Professor Kerry Arabena, a proud Meriam woman and Chair for Indigenous Health and Director of the Indigenous Health Equity Unit at The University of Melbourne, writes that cultural determinants, like our unique connection to country, family, kinship, community, and the self-determination and leadership of our people are intrinsic to understanding and ameliorating our experiences of homelessness.¹⁸ The National Health Leadership Forum illustrates how Professor Arabena’s scholarship provides guidance on the implementation and translation of how advancing our cultural determinants can reduce homelessness, by:

¹² Donna Ah Chee, Central Australian Aboriginal Congress *Submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs Inquiry into homelessness in Australia* (Submission, 2020) <<https://www.caac.org.au/uploads/pdfs/Congress-Submission-to-Homelessness-Inquiry-June-2020.pdf>>

¹³ *Ibid.*

¹⁴ Victorian Aboriginal Child Care Agency, *Submission the House of Representatives Standing Committee on Social Policy and Legal Affairs: Inquiry into Homelessness in Australia The Victorian Aboriginal Child Care Agency June 2020* (Parliamentary Paper, 2020) Submission 126, 12

¹⁵ Australian Institute of Health and Welfare, *Overcrowding – Housing assistance in Australia* (Report, 2019) quoted in Victorian Aboriginal Child Care Agency, *Submission the House of Representatives Standing Committee on Social Policy and Legal Affairs: Inquiry into Homelessness in Australia The Victorian Aboriginal Child Care Agency June 2020* (Parliamentary Paper, 2020) Submission 126, 12

¹⁶ Victorian Aboriginal Child Care Agency, *Submission the House of Representatives Standing Committee on Social Policy and Legal Affairs: Inquiry into Homelessness in Australia The Victorian Aboriginal Child Care Agency June 2020* (Parliamentary Paper, 2020) Submission 126, 12

¹⁷ National Health Leadership Forum, *Inquiry into Homelessness in Australia* (Parliamentary Paper, 2020) Commonwealth Parliament Inquiry into homelessness in Australia, Submission 149,9, 22

¹⁸ *Ibid.* 25

1. Engaging our people in the design, development and construction processes for new and existing homes and community infrastructure by including design and construction principles that enable these places to facilitate cultural relationships.¹⁹
2. Engaging local people to be involved in the development of guidelines on how to properly consider the needs of the local community.²⁰
3. Partnering with construction companies and organisations to ensure local workforces can contribute to the building and maintenance of homes, including capital works, to ensure employment, confidence, and build local pride.²¹
4. Commissioning local performances to open new or reconstructed buildings and facilities and for these to include cultural spaces, artworks, and other forms of cultural recognition.²²

As noted in the National Health Leadership Forum’s submission, not only can implementing Professor Arabena’s guide to cultural determinants inform housing and homelessness but they can also address the impact of the intergenerational trauma of our people and also facilitate healing for many of our people.²³ Without centring our right to self-determination and approaching ending homelessness as a critical human rights issue, coupled with commensurate funding and resourcing, homelessness amelioration programs will not succeed.

Housing programs specific to our people, such as the National Partnership Agreement for Remote Indigenous Housing 2008-2018, have seen limited success. The initial \$5.4 billion scheme lacked transparency, had poor governance, and was hampered by constantly changing policies. Further, at the end of the agreement, a prolonged disagreement between the Commonwealth and the states, particularly those with many remote Indigenous communities including Queensland, the Northern Territory, South Australia and Western Australia ensued as to which level of government was responsible for the continued funding of the program, allowing it to lapse leading to great uncertainty. In Western Australia, this led to the threat of community closures and in some instances essential services being removed from communities entirely.²⁴ The Commonwealth sought individual, one-off agreements with the states and territories for funding, despite the review into the Agreement finding that the program was lacking and did not achieve its aims of easing overcrowding and ending poor housing conditions.

¹⁹ *Ibid.* 25.1

²⁰ *Ibid.* 25.1

²¹ National Health Leadership Forum, *Inquiry into Homelessness in Australia* (Parliamentary Paper, 2020) Commonwealth Parliament Inquiry into homelessness in Australia, Submission 149, 9, 25.2

²² National Health Leadership Forum, *Inquiry into Homelessness in Australia* (Parliamentary Paper, 2020) Commonwealth Parliament Inquiry into homelessness in Australia, Submission 149, 9, 25.3

²³ Arabena, K (2020) *Country Can’t Hear English: A guide supporting the implementation of cultural determinants of health and wellbeing with Aboriginal and Torres Strait Islander peoples*. Commissioned by the Australian Department of Health and completed on behalf of Lowitja Consulting. Melbourne. Victoria. Australia. P15 quoted in National Health Leadership Forum, *Inquiry into Homelessness in Australia* (Parliamentary Paper, 2020) Commonwealth Parliament Inquiry into homelessness in Australia, Submission 149, 10, 26

²⁴ D Harrison, Remote indigenous communities under threat, *Sydney Morning Herald* (online), 14 November 2014, <<https://www.smh.com.au/politics/federal/remote-indigenous-communities-under-threat-20141114-11myb9.html>>; R Hirini, ‘War of words continue as remote housing funding deadline looms’, *NITV News* (online), 10 January 2018 <<https://www.sbs.com.au/nitv/nitv-news/article/2018/06/28/war-words-continue-remote-housing-funding-deadline-looms>>; C Wahlquist, ‘WA minister says Scullion ‘unsuitable’ to resolve remote Indigenous housing dispute’, *The Guardian* (online), 2 July 2018, <<https://www.theguardian.com/australia-news/2018/jul/02/wa-minister-says-scullion-unsuitable-to-resolve-remote-indigenous-housing-dispute>>.

Problems were also identified with the fairness and efficiency of the Agreement. Despite these issues, independent research found that the program led to improvements on a range of wellbeing indicators, especially when the housing was managed and delivered by our people through an Aboriginal Community Controlled organisation.

For these gains to be maintained, the Commonwealth needs to uphold its obligation to ensure the rights of Aboriginal and Torres Strait Islander people to live on their homelands and traditional country through its funding commitments, with a view to prioritising the resourcing and funding of local people and Aboriginal Community Controlled Organisations to run programs and services for our communities. The rights of Aboriginal and Torres Strait Islander people to live on our homelands and traditional country can be protected through a national partnership agreement that is designed in partnership and consultation with communities. As noted in Professor Arabena's work, it is critical to engage local people in all stages of program and service delivery from planning, to design, construction, and ongoing maintenance.²⁵ The Commonwealth needs to demonstrate political leadership and work with our people to end homelessness, home overcrowding, and housing insecurity. Real progress in housing and other social determinants of health can only be made via sustained, long term commitments of funding and resourcing and they can only succeed if they are grounded in, and constantly advancing our self-determination.

Recommendations:

1. The Commonwealth Government implements the United Nations Declaration on Indigenous Peoples into domestic law across all jurisdictions in Australia.
2. The Commonwealth Government implements the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all Forms of Discrimination Against Women, the Convention on the Rights of Persons with Disabilities, and the Convention on the Rights of the Child into domestic law across all jurisdictions in Australia.
3. All Australian governments fund and resource Aboriginal Community Controlled Organisations to provide culturally safe and appropriate housing and homelessness services. Where these do not exist, they must be developed in true partnership with Aboriginal and Torres Strait Islander people.
4. The Commonwealth Government partners with the states and territories to fund a new ten year National Partnership Agreement for Remote Indigenous Housing.
5. A new National Partnership Agreement for Remote Housing should implement the recommendations from the *Remote Housing Review*, particularly on governance, transparency, fairness, and accountability.

²⁵ Arabena, K (2020) *Country Can't Hear English: A guide supporting the implementation of cultural determinants of health and wellbeing with Aboriginal and Torres Strait Islander peoples*. Commissioned by the Australian Department of Health and completed on behalf of Lowitja Consulting. Melbourne. Victoria. Australia. P15 quoted in National Health Leadership Forum, *Inquiry into Homelessness in Australia* (Parliamentary Paper, 2020) Commonwealth Parliament *Inquiry into homelessness in Australia*, Submission 149

6. A new National Partnership Agreement for Remote Indigenous Housing should require that:
 - a. Local people are involved in the design, development and construction processes for new and existing homes, community infrastructure and community facilities.
 - b. Include design and construction principles that enable homes that facilitate and support Aboriginal and Torres Strait Islander relationships and kinship connections.
 - c. Construction companies and organisations engage local people for the building and maintenance of homes, including capital works, and to provide local employment.
 - d. Cultural spaces and facilities, artworks, and other forms of cultural recognition are included in the built environment and surrounds.

7. The National Cabinet supports ending Aboriginal and Torres Strait Islander homelessness and housing insecurity as a target in the next Closing the Gap agreement.

More properly maintained public homes are needed urgently

Access to a safe and secure home is a fundamental human right. The Universal Declaration of Human Rights, of which Australia is a signatory to states that:

“Everyone has the right to a standard of living adequate for the health and well-being of [themselves] and of [their] family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond [their] control.”²⁶

Similarly, the right to housing as a key component of the right to improve economic and social conditions, and the right to development, is reflected in the UNDRIP.²⁷

A lack of adequate, accessible, safe, and secure public homes is a driver of homelessness for our people. Australia has 20,000 fewer public homes than it did a decade ago.²⁸ It is estimated that 433,000 public homes are needed just to accommodate the backlog of current applications, currently approximately 3,000 social and public homes are constructed annually.²⁹ Projections to the year 2036 estimate that Australia will need 727,000 public homes, this projection was made before the COVID-19 pandemic and factored in expected population growth, current available homes, and assumes no improvement in private rental housing affordability.³⁰

Nationally, on 30 June 2018 there were 140,600 applicants on a public housing waiting list, and 8,800 applications on a waiting list for Indigenous housing services. It’s important to note that our people can apply for public homes under both mainstream and Indigenous housing programs.³¹ Of those people on the waiting list for Indigenous housing programs, almost 4,700 people were categorised as being in the greatest need, this is up from 3,800 at 30 June 2014.³²

Approximately a quarter of new public housing residents in 2017-18 who were classified as being in “greatest need” had been on the waiting list for over 12 months, with 13% waiting longer than two years to be homed.³³ For applicants to Indigenous housing services, 11% of applicants who were classified as being in “greatest need” had been on the waiting list for over 12 months, with 3%

²⁶ *Universal Declaration of Human Rights* Article 25

²⁷ Articles 21 & 23

²⁸ Luke Henriques-Gomes, ‘Australia lost 20,000 public housing units in a decade, study finds’, *The Guardian*, 18 July 2019 <<https://www.theguardian.com/australia-news/2019/jul/18/australia-lost-20000-public-housing-units-in-a-decade-study-finds>>

²⁹ Julie Lawson et.al., ‘Australia needs to triple its social housing by 2036. This is the best way to do it’, (Website, 15, November 2018) <<https://theconversation.com/australia-needs-to-triple-its-social-housing-by-2036-this-is-the-best-way-to-do-it-10596>>

³⁰ *Ibid.*

³¹ Australian Institute of Health and Wellbeing, *Housing assistance in Australia 2019*, (Report, 2020) <<https://www.aihw.gov.au/reports/housing-assistance/housing-assistance-in-australia-2019/contents/priority-groups-and-wait-lists>>

³² *Ibid.*

³³ Luke Henriques-Gomes, ‘Australia lost 20,000 public housing units in a decade, study finds’, *The Guardian*, 18 July 2019 <<https://www.theguardian.com/australia-news/2019/jul/18/australia-lost-20000-public-housing-units-in-a-decade-study-finds>>

waiting longer than two years to be homed.³⁴ While there has been an increase in social housing, that is housing run by private providers, these homes have less security of tenure and can have higher rents and fewer rights for people that live in them compared to those in public homes.

The acute shortage of public homes is worse in remote communities, particularly in the Northern Territory. NATSILS member, the Northern Australian Aboriginal Justice Agency (**NAAJA**) reports that in the Northern Territory's remote and very remote communities there are no homelessness programs or services available as well as limited housing services, like tenancy management services for reporting and fixing maintenance requests, for tenants of existing public homes.³⁵ The lack of these services, including staff on-the-ground in remote communities to deliver them, has caused significant problems in remote communities, including:

- Delays in reporting repairs and maintenance leading to impacting people's enjoyment of their home while also deteriorating Department of Housing assets faster,
- A lack of application forms for public homes and a lack of services and support to assist people to apply,
- People with need for modifications to their home because of disability are not properly identified or assisted to obtain the necessary documentation for the required modifications.³⁶

With the absence of proper, effective, responsive, and culturally appropriate services provided by the Department of Housing of the Northern Territory, advocacy services like NAAJA assist people living in remote communities with applications for public homes and in fixing repairs. In effect, NAAJA subsidises a service that needs to be provided by the Territory Government without additional funding or resourcing to provide this service.³⁷

³⁴ Australian Institute of Health and Wellbeing, *Housing assistance in Australia 2019*, (Report, 2020)

<<https://www.aihw.gov.au/reports/housing-assistance/housing-assistance-in-australia-2019/contents/priority-groups-and-wait-lists>>

³⁵ NAAJA, Northern Territory Housing Issues Paper and Response to the Housing Strategy Consultation Draft (February 2016)

³⁶ NAAJA, Northern Territory Housing Issues Paper and Response to the Housing Strategy Consultation Draft (February 2016)

³⁷ NAAJA, Northern Territory Housing Issues Paper and Response to the Housing Strategy Consultation Draft (February 2016)

Case study: Linda, Inaccessible tenancy management in the Northern Territory

NAAJA assisted Linda, an Aboriginal woman who lives in a small remote community in Arnhem Land that does not have accessible tenancy management services. She cares for her niece, a young woman with disability, who has minimal use of her right arm and both legs. Her niece uses a wheelchair to move around.

When NAAJA visited Linda and her niece in their home on an unrelated matter, the NAAJA lawyer observed that the ramp at the rear of the house did not meet the ground so if Linda's niece wanted to move outside of the house, she was forced to do this on her hands by sliding or crawling with her one good arm. The house is surrounded by sand, making wheelchair access difficult.

NAAJA advised Linda that she could get disability modifications to the house to assist her niece and assisted her to obtain a report from the Office of Aged Care and Disability which recommended that the ramp be extended to meet the ground and a path be installed to the front of the house.

Had a tenancy manager been present and active in the community the need for and the ability of the NT Department of Housing to provide disability modifications would have been identified and communicated to Linda at a much earlier stage and without the need for legal intervention.

Source: NAAJA, Northern Territory Housing Issues Paper and Response to the Housing Strategy Consultation Draft (February 2016)

Housing Maintenance

The proper and timely maintenance of public homes is a problem in many communities around the country, particularly remote and very remote communities. Remote Aboriginal and Torres Strait Islander communities are often provided substandard homes that are not suitable for the environment they are in which causes them to deteriorate even faster.³⁸

Housing services in Australia (both mainstream, and Aboriginal Community Controlled) are heavily reliant on government funding, yet are often underfunded with client demand exceeding the rate of public funding provided.³⁹ As noted above, because of chronic underinvestment, public and social housing programs have long wait times. A chronic shortage of available housing stock or housing of poor condition or which otherwise do not meet the needs of inhabitants contributes to this long wait time.⁴⁰ In a recent case, Aboriginal woman Jasmine Cavanagh, successfully led a class

³⁸ Kieran Wong, 'We need to stop innovating in Indigenous housing and get on with Closing the Gap', (Website, 31 May 2016) < <https://theconversation.com/we-need-to-stop-innovating-in-indigenous-housing-and-get-on-with-closing-the-gap-96266> >

³⁹ Ibid 2–3.

⁴⁰ Melanie J Andersen et al, "There's a housing crisis going on in Sydney for Aboriginal people": focus group accounts of housing and perceived associations with health (BMC Public Health, 24 May 2016) 4.

action against the Northern Territory Government for pushing people to live in poorly maintained public homes in Santa Teresa, a community in the Northern Territory⁴¹.

In the case of *Various Applicants from Santa Teresa v Chief Executive Officer (Housing)* [2019] NTCAT 7, Ms Cavanaugh and others received a ruling from the Northern Territory Civil and Administrative Tribunal that they must be compensated for urgent repairs and maintenance not being carried out in a timely manner. The Tribunal found that despite paying their rents as required, the Northern Territory left houses to deteriorate into squalor.

Legal services in the Northern Territory, like NAAJA, have experienced a large upswing in matters related to housing since 2008.⁴² These include:

- Legal matters arising from faulty processes and timeframes for repairs and maintenance requests,
- Poor systems used to log, receipt, monitor and provide status reports to residents for repairs and maintenance requests,
- A failure to provide rent statements to tenants in breach of NT tenancy law, and
- Poor quality work on repairs and little action available to tenants to have faulty work rectified.⁴³

This situation is made worse for our people living on discrete, remote Aboriginal and Torres Strait Islander communities, particularly as there is little, if any, access to local tenancy management services to provide housing and maintenance services in these communities.⁴⁴ NAAJA assists large numbers of people living in remote communities to seek repairs and maintenance for their homes. NAAJA reports that a significant proportion of their work involves assisting people to obtain repairs that are essential to safe and healthy homes and therefore healthy occupants.⁴⁵

In a response to the *Issues Paper and Response to the NT Housing Strategy Consultation*, NAAJA reports that the vast majority of people living in remote communities that they work with have already reported the need for repairs numerous times to the Department of Housing before seeking NAAJA's assistance.⁴⁶

Common repair requests that NAAJA assists with, include: blocked sinks and toilets, leaking sewage and dangerous electrical wiring, broken ovens -which affect a family's ability to prepare and cook food- holes in walls that allow vermin and snakes to enter a home and affects the ability to maintain a clean and healthy environment; and faulty electrical wiring, which pose clear safety issues.⁴⁷

⁴¹ *Various Applicants from Santa Teresa v Chief Executive Officer (Housing)* [2019] NTCAT 7

⁴² NAAJA, Northern Territory Housing Issues Paper and Response to the Housing Strategy Consultation Draft (February 2016)

⁴³ NAAJA, Northern Territory Housing Issues Paper and Response to the Housing Strategy Consultation Draft (February 2016)

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

People living in remote communities advise NAAJA that they are frequently told that there are no funds to address non-urgent repairs. Alternatively, they are told that damage is deemed to be ‘tenant responsible damage’ and will not be fixed- despite the repairs arising from substandard housing, not tenant damage.⁴⁸ In a number of cases, like the case in Santa Teresa, people have had to seek recourse to the Northern Territory Civil and Administrative Tribunal for orders that emergency repairs be undertaken.⁴⁹

NAAJA regularly provides advice to people regarding their rights to compensation due to the Department of Housing’s failure to repair homes within the time limits imposed by the law. Again, effectively subsidising the failure of the Department of Housing’s procedures without additional public funding and resourcing to do so.⁵⁰ Where funding and resourcing is available, it is for short funding cycles and/or in insufficient amounts compared to the need. For example, NATSILS member the Aboriginal Legal Service of NSW and ACT (**ALS NSW/ACT**) auspices the Greater Western Sydney Tenants Advice Service (**GSATS**) and the Western Aboriginal Tenants Advice and Advocacy Service (**WATAAS**) which receive funding from Fair Trading NSW.

Both GSATS and WAATAAS assist Aboriginal and Torres Strait Islander people in public and social housing, as well as Aboriginal Community housing Organisations and private rental in the Central West, North West and Far West areas of NSW and in Greater Sydney.⁵¹ The program works in partnership with other organisations, such as the NSW Tenants Union to address systemic issues and to identify test cases for tribunals and courts to drive law reform for people that rent their homes.⁵² Both GSATS and WAATAAS advocate for the rights of people who rent their homes by helping people get timely repairs, assisting with Housing Appeals Committee applications and hearings and also referring on to services to help with other issues.⁵³

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ Aboriginal Legal Service of NSW and ACT, *Tenant Advocacy Services NSW*, (Website, last accessed 28 July 2020) <<https://www.alsnswact.org.au/tenancy>>

⁵² *Ibid.*

⁵³ *Ibid.*

Case study: WATAAS, New south Wales

The tenant is a senior Aboriginal woman who attended the WATAAS office in distress, because DCJ Housing were seeking the termination of her tenancy due to rental arrears.

The service spoke to DCJ Housing to explain the situation, including the difficulty the tenant had been having with Centrelink, however they were reluctant to change their stance with termination. WATAAS also a warm referral to Lifeline Financial Services.

WATAAS staff supported the tenant at an interview with Lifeline and explained that the tenant needed assistance with budgeting, and also sought assistance/information for the tenant on how to use the Centrelink app so she could report her income correctly. A budget was prepared with the tenant and was sent to DCJ Housing.

Further discussion then took place between the tenant, WATAAS and DCJ Housing and a preliminary agreement was reached pending certain conditions being met by the tenant.

After the tenant met the pre-conditions of receiving financial counselling and the production of a new subsidy documentations, the matter proceeded to NCAT where DCJ Housing agreed to no longer pursue termination of the tenancy and instead accept a specific performance order with a re-listing of the matter in 6 months.

This matter was finalised in February 2020 however is still being monitored till the end of July 2020.

Overall, the tenant has been able to maintain her budget and still is currently living in the DCJ property. The tenant is also still being assisted by the financial counselling service to give her a better understanding of reporting requirements and financial education and literacy. Therefore, the tenancy has been maintained and the tenant has remained housed avoiding becoming homeless.

Outcome: A senior Aboriginal woman retained safe and affordable social housing and is being supported to overcome the barriers that led to the rental arrears and possible eviction

Case study: GSATS, New south Wales

The tenant is an Aboriginal woman in her sixties who has been living in her social housing property for seven years. The tenant presents multiple complexities including:

- Mental health diagnosis including schizophrenia with paranoia.
- The tenant is a victim of the stolen generations and has never met her family and does not know where her family are located.
- The tenant's relationship with her son is fractured due to her episodes with mental health.
- The tenant reports feeling isolated and a lack of engagement with support services.

The social housing provider (Department of Communities and Justice – Housing “**DCJ Housing**”) issued an Antisocial Behaviour Strike (“**ABS**”) notice to the tenant which is the first step in a mandatory termination process. The ABS notice resulted from neighbourhood disputes.

The GSATS' Tenants' Advocate (the **Advocate**) successfully negotiated with DCJ Housing for the formal strike notice to be replaced with a warning. The Advocate successfully championed that the tenant has mental health issues and behaviours that reflect intergenerational trauma as she is a victim of the stolen generations and needs engagement with support services. The Advocate committed to facilitating 'warm referrals' to various support services.

With the permission of tenant, GSATS facilitated warm referrals to a number of agencies, including for example:

- Aboriginal Medical Service - mental health worker and to the Aboriginal Chronic Care Program
- LINK UP - support agency for stolen generations victims and help search for victims' families and support with the reunion of families.
- Baabayan Aboriginal Women's Group
- Aboriginal Specialist Client Service Officer within DCJ Housing
- Aboriginal Chronic Care Program – Peer support for Aboriginal community members with mental health working closely with the Aboriginal Medical Services

Outcome: Formal antisocial behaviour strike notice replaced with warning and tenant engaged with services for holistic support

Case study: GSATS, New south Wales

A mum and her children, victims of crime and survivors of family violence, obtained an urgent social housing transfer. The tenant is an Aboriginal woman with three children who has been living in DCJ Housing. The tenant's partner of ten years who was not the father of the children also lived at the property.

The tenant discovered that her partner was video-recording her and her children and their friends whilst they were getting dressed. The tenant was also the victim of family violence and made reports to Police. Following an investigation by Police, the tenant's partner was arrested.

As a result, the tenant and her children felt traumatised and very unsafe residing in the property as they were concerned there were more cameras that had not yet been found as the partner had involved other people in the recording of these videos. The tenant was also experiencing lateral violence from partner's family and his friends. The tenant became increasingly isolated and vulnerable.

GSATS' Tenants' Advocate advocated on behalf of the tenant with DCJ Housing and successfully negotiated an emergency transfer for the tenant and her children within 3 days. The GSATS Manager provided culturally safe support to the tenant to manage the lateral violence being perpetrated by tenant's partner and friends.

With the permission of tenant, GSATS facilitated warm referrals to a number of agencies, including for example:

- Wirringa Baiya Aboriginal Women's' Legal Resource Centre for legal advice, support women fleeing domestic violence with seeking Apprehended Domestic Violence Order
- Victim counselling and compensation support services
- Aboriginal Chronic Care Program – Peer support for Aboriginal community members with mental health working closely with the Aboriginal Medical Services
- 24 Hour Domestic Violence Phone Counselling Service
- School counsellor for the children

Case study: GSATS, New South Wales

An Aboriginal woman and survivor of family violence is receiving culturally safe support to deal with complex needs, rental arrears and the risk of eviction

The tenant, a 40-year-old Aboriginal woman had been living in a private property for about one year. The tenant presents multiple complexities including schizophrenia, paranoia, disassociation, as well as loss of family and disconnection from Aboriginal culture and family.

The tenant is a victim of extreme abuse after growing up with her mother. As a child, the tenant was locked in confined spaces for most of her childhood and was the victim of extreme mental and physical abuse.

Despite the tenant's Aboriginal father leaving when she was young, she remembers Aboriginal culture, language and protocols that her father taught her, and which helped her survive her traumatic life.

The tenant has a sister and a niece and nephew however reports she is not allowed to have contact with them. The tenant reports feeling isolated and a lack of engagement with support services.

The tenant moved into the current property with her carer, however, the carer left the tenant in April and moved back to Queensland. The tenant was left with \$10,000 rental arrears owing and explained she feels abandoned.

The tenant struggles to support the tenancy financially and does not have the physical or mental capacity to sustain the tenancy.

With the permission of tenant, GSATS facilitated warm referrals to a number of agencies, including for example:

- Medical appointment for a medical and mental health assessment
- Appointment to seek an Aboriginal disability advocate
- Representation at Tribunal NCAT regarding the rental arrears
- Completed a Housing application
- Brokerage of food
- Confirmation of Centrelink payment
- Guardianship referral to support tenant with her finances
- Referral to the Aboriginal Chronic Care Program
- Aboriginal Family engagement

Case study: WATAAS, New South Wales

An Aboriginal woman retained stable private housing and avoided possible eviction following a relationship breakdown and the accumulation of rental arrears

The tenant is an Aboriginal woman in her thirties who called GSATS upset and confused about a letter she had received from a local real estate agent stating she was over \$900 in arrears.

The tenant advised that approximately 3 weeks ago she and her partner had separated and he was no longer living with her. The tenant had attempted to seek support through a social housing provider (DCJ Housing) but as the real estate had not filed for a termination or issued a notice of termination she was unable to obtain assistance. The real estate agent was insisting on having a meeting with both the tenant and her former partner. Due to the personal relationship breakdown, the tenant was scared that if both parties were present in a meeting the situation would become worse.

The tenant was advised about the reasons for assistance not being granted from DCJ Housing and GSATS explored other options with the tenant. The tenant was advised that she was only 3 weeks in arrears and that the service could assist her to enter into a payment arrangement with the landlord.

The tenant gave instructions that she could only afford to pay arrears of \$50 per fortnight. Our service then contacted the managing agent, gave the agent an overview of what had occurred, advocated on her behalf and advised that our client would like to enter a payment plan.

The agent tentatively accepted.

An agreement was reached with the tenant entering into a written agreement to accept the payment of arrears at \$50 per fortnight.

The tenant and agent/landlord both appear to be content with the repayment arrangement. A tenancy and affordable repayment plan have been created and the landlord is seeking no further actions at this time. A potential homelessness situation has been avoided.

Case studies: Repairs to homes in remote communities

The following is a small selection of cases that represent the common sorts of repair issues NAAJA assists with. In all these cases, the tenants had reported the request to the Department of Housing numerous times without a response. Only after NAAJA pursued them formally were repairs addressed.

- A household of 15 people in Southern Arnhem Land who had no hot water for over 12 months.
- In 2012 a large family living in the Tanami Desert had raw sewage leaking into their backyard for many weeks.
- An elderly woman living in Arnhem Land who was advised by an electrician to keep her hot water service trip switch turned off because it was not safe. This remained for at least 4 weeks, leaving her without hot water for that time.
- A single mother with several children and grandchildren in her care had to live with a stove that had only one hotplate working for over 12 months before the stove was replaced. NAAJA reports that poor quality stoves are a problem throughout the Territory and in their experience, it is less common to speak to a person whose stove is completely working.
- A young father was forced to insert a paperclip into a light switch to use it because it did not work, leaving him and his family at constant risk of electrocution.
- NAAJA assisted a person who had been seeking emergency repairs to her public home in a remote community in East Arnhem Land for several years. The repairs included a serious roof leak that made portions of the house unusable, a broken toilet, which meant that she had to flush the toilet with a bucket for a two year period, broken shower taps, which meant that she needed to use a spanner to turn the water on, and broken locks on the laundry and front doors which meant that the premises could not be secured.

For a portion of this period, she was caring for her grandson with disability and her home caused her and her family considerable distress and inconvenience. She had advised the Shire Council on several occasions of the urgency of the repairs unsuccessfully.

NAAJA advised the Department of Housing of the repairs in September 2014 and made an application to the Northern Territory Commissioner of Tenancies for orders that the emergency repairs be completed for compensation. It took 6 months for the repairs to be completed. The Department ultimately paid the client compensation on confidential terms.

Source: NAAJA, Northern Territory Housing Issues Paper and Response to the Housing Strategy Consultation Draft (February 2016)

Overcrowding

Overcrowding in homes is a result of numerous interconnected factors. Systemic racism, the ongoing impacts of colonisation and land dispossession underpins many, if not all, of these factors.⁵⁴ Systemic racism blocks our people from accessing the private rental market and financial products like home loans. Racism and colonisation have also pushed many of us into low incomes which causes many of us to experience the worst social and health inequities in Australia.

This combination of factors means that many of our people rely on there being a ready availability of suitable public homes. To date the Commonwealth has a backlog of \$6 billion⁵⁵ in funding for Aboriginal and Torres Strait Islander housing causing many of our people to live in crowded unsuitable homes that are not fit for the dynamics of our families.

Overcrowding in homes is linked to poorer health outcomes: both in physical health, owing to inadequate infrastructure for proper hygiene practices, and in terms of mental wellness, owing to a loss of personal control and experience of stress. Our people live in families or groups which are on average larger than non-Indigenous families which contributes to the high prevalence of our people living in severely crowded dwellings.⁵⁶ This occurs more frequently in remote and very remote areas and is driven in part by the importance of our kinship ties and traits of sharing and looking after extended family members in the family home, for example kinship care.⁵⁷

Kinship care, the placement of children with that child's extended family members by child protection services, is vital to ensuring our children grow up connected to our culture. However, kinship care will not be facilitated if a home is deemed unsuitable or already overcrowded. Easing overcrowding in homes through the provision of more public and affordable homes would result in more of our children being placed with kinship carers.⁵⁸

Overcrowding can entrench our families further into impoverishment, as not all residents that live in a home may appear on the lease. This has the effect of rent being taken from income support payments, like JobSeeker or the Cashless Debit Card only from the leaseholder. This leaves them with less income at-hand until the remaining residents pay their required lease payment, usually in cash to the lease holder.⁵⁹

⁵⁴ The National Health Leadership Forum, *Submission House of Representatives Standing Committee on Indigenous Affairs - Homelessness in Australia June 2020* (Parliamentary Papers, 2020) House of Representatives Standing Committee on Indigenous Affairs Inquiry, Submission 149

⁵⁵ The National Health Leadership Forum, *Submission House of Representatives Standing Committee on Indigenous Affairs - Homelessness in Australia June 2020* (Parliamentary Papers, 2020) House of Representatives Standing Committee on Indigenous Affairs Inquiry, Submission 149

⁵⁶ AIHW, above n 8, 3.

⁵⁷ Paul Memmott et al, *Australian Indigenous house crowding* (AHURI Final Report No 194, October 2012).

⁵⁸ Central Australian Aboriginal Family Legal Unit, Submission to the house of Representatives Standing Committee on Social Policy and Legal Affairs Inquiry Into Homelessness in Australia (Parliamentary Paper, 2020) *Inquiry into Homelessness in Australia*, Submission 52, 19:38

⁵⁹ Central Australian Aboriginal Family Legal Unit, Submission to the house of Representatives Standing Committee on Social Policy and Legal Affairs Inquiry Into Homelessness in Australia (Parliamentary Paper, 2020) *Inquiry into Homelessness in Australia*, Submission 52

Overcrowding also has impacts on the health and wellbeing of residents. A recent study focused on the Tennant Creek area of the Northern Territory found a direct link between hygiene-related infectious diseases, overcrowded dwellings, and a lack of adequate housing, concluding that “...the fundamental cause of the high rates of preventable infections is crowding, that is in turn a result of insufficient housing supply, and a lack of maintenance of existing housing by authorities”.⁶⁰

Case study: North Australian Aboriginal Justice Agency (NAAJA)

In 2016, NAAJA assisted a 53-year-old Yolgnu woman who moved from a remote community in the Northern Territory to the Nhulunbuy area for work. She had been an employee of the Northern Territory Government for five years prior and as part of her employment she serves her local community by ensuring the efficient functioning of a number of Commonwealth and Territory government agencies.

Despite raising 5 children and also caring for a 9 year old foster child, she was told there was a 13 year waiting list for public homes in Nhulunbuy forcing her to live in a crowded home with her violent ex-partner who also makes her pay a significant share of the rent to live in the crowded home. Despite her paying the rent she often sleeps outside in a tent with her foster daughter. Because of her crowded and unsuitable living conditions she struggles to get a good night’s sleep which makes it difficult for her to perform her duties at work.

Source: NAAJA, Northern Territory Housing Issues Paper and Response to the Housing Strategy Consultation Draft (February 2016)

⁶⁰ Nina Lansbury Hall et al, *Pilyii Papulu Purrukaj-ji (Good housing to prevent sickness): a study of housing, crowding and hygiene-related infectious diseases in the Barkly Region, Northern Territory* (University of Queensland, February 2020).

Case study: Letter from residents of Milingimbi to the Prime Minister

Because there are not enough houses in Milingimbi, the houses are overcrowded with between 10-15 people living in each house. There are sometimes four adults plus their children living in one bedroom in a house. People sometimes live in the living room/ kitchen in tents because there are not enough bedrooms. Some people also sleep in tents at the side of a house because there is not enough room inside.

Living in overcrowded houses makes life hard for people. Because there are too many people in the house, they often get angry with each other and this can cause fights. It is hard to sleep because there is always someone cooking or talking through the night- this is especially hard for the people sleeping in the kitchen. Also, because there are so many children in the house they play together and stay up too late and it is harder for the parents to make them go to bed. Because people can't sleep, it means that the adults are tired for work and the children are tired for school.

There is only one shower and two toilets in many houses, which means that people have to wait a long time to use them. It also means that they break more easily; the toilets get clogged and the showers stop working. When this happens, people have to wait a long time for things to be fixed because there are no plumbers, builders or electricians in Milingimbi. Instead, people have to wait for someone to come from Nhulunbuy to fix it. Sometimes people wait 3 or 6 or 12 months for something to be fixed.

Source: Letter to the Prime Minister from residents of the Milingimbi Community in the Northern Territory. Quoted in NAAJA's: Northern Territory Housing Issues Paper and Response to the Housing Strategy Consultation Draft (February 2016)

The impacts of COVID-19

The ongoing COVID-19 pandemic underscores the significance of addressing the issue of overcrowded housing for our people, with clear challenges in maintaining social distancing in addition to the upkeep of proper hygiene practices. This is particularly so in remote communities, where overcrowding is more prevalent and where available housing is more likely to have major structural problems. For example, electrical or plumbing issues, major cracks in walls or floors, termites, or rot.⁶¹

In the Northern Territory, members of the Australian Defence Force (ADF) have been deployed to assist with COVID-19 related border restrictions and enforcement of the *Biosecurity Act*, in many cases intimidating and targeting people who are pushed into living in crowded accommodation. Our people that live in Tennant Creek have lodged complaints to Amnesty International, alleging bullying and intimidating policing.⁶²

⁶¹ Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Social Survey, 2014-15* (Catalogue No 4714.0, 28 April 2016).

⁶² Isabella Higgins and Penny Timms, Tensions in Tennant Creek test Indigenous community's relations with police during coronavirus crisis, Australian Broadcasting Corporation, 14 May 2020, <https://www.abc.net.au/news/2020-05-14/tennant-creek-coronavirus-nt-police-defence-force-adf-afp/12241766>

Case study: Tennant Creek

Aboriginal and Torres Strait Islander residents in Tennant Creek have reported that police have recently attended houses known to them as overcrowded and used Covid-19 regulations to order people to disperse. When household members failed to disperse, because they had nowhere else to go, they were issued fines.

Rodney Dillon, Amnesty International Indigenous Advisor said that this was “one of the only times in my career that I have had families too scared to speak up. I think it’s one of the first times I’ve seen people scared that if they complain they will face repercussions. “

Amnesty has also received reports that members of the community have been abandoning their houses and hiding from police because they are scared of being issued with fines for breaching gathering rules as a result of living in overcrowded housing or staying with family. S

Source: Change the Record, Critical Condition The impact of COVID-19 policies, policing, and prisons on First Nations communities, (Report) 2020

One complainant to Amnesty reported that the NT police service and the ADF raided a property and forced all residents outside for a headcount. Another complainant alleges that police stormed her house to pour out the resident’s alcohol while taking note of who was at the residence.⁶³

Tennant Creek accounts for 1 percent of the population of the Northern Territory but accounts for a disproportionate amount of all of the infringements issued for breaching social distancing orders.⁶⁴ A Traditional Owner of Tennant Creek, Mr Jimmy Frank told the Australian Broadcasting Corporation: ‘It just brings back the intervention, the Stolen Generations, the massacres, the colonisation, it’s still raw for us people here...Suddenly there’s all these officers on your front yard ... and it’s just intimidating.’⁶⁵

Overcrowding in public homes during COVID-19 is also manifesting in Victoria, noting that at the time of writing Victoria was experiencing a ‘second-wave’ of COVID-19 and the situation may not be resolved for some time. In Victoria, people living in public homes in the suburbs of Flemington, Kensington and North Melbourne were issued detention orders under the *Public Health and Wellbeing Act 2008* (Vic). These orders were imposed to: ‘limit [resident’s] interactions with others by restricting the circumstances in which they may leave the premises where they ordinarily

⁶³ *Ibid.*

⁶⁴ COVID Policing, Covid-19 Policing in Australia, (Website, Last accessed 22 May 2020) <https://covidpolicing.org.au/summary/2020-05-20/covidpolicing-weekly-roundup-6/>

⁶⁵ Isabella Higgins and Penny Timms, Tensions in Tennant Creek test Indigenous community's relations with police during coronavirus crisis, Australian Broadcasting Corporation, 14 May 2020, <https://www.abc.net.au/news/2020-05-14/tennant-creek-coronavirus-nt-police-defence-force-adf-afp/12241766>

reside.⁶⁶ These public housing estates are the homes of about 3,000 people in 1,345 small and crowded units and have shared laundry facilities and other communal spaces.⁶⁷

The initial detention period was 14 days, and people were not to leave their premises unless granted permission to do so for the purposes of attending a medical facility to receive medical care, where it was reasonably necessary for their physical or mental health, on compassionate grounds or in the event of an emergency. These orders were enforced by hundreds of Victorian police service officers, and Departmental staff often placed on every floor to ensure strict compliance, as residents were not allowed out of their own home. These orders were imposed with very little warning⁶⁸

Throughout the lockdown, NATSILS member the Victorian Aboriginal Legal Service (**VALS**) conducted welfare checks on detained Aboriginal and Torres Strait Islander people. However, this crucial work should have been complemented by robust, culturally competent detention oversight by an independent body, which is yet to be designated or established as per Australia's international obligations under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (**OPCAT**).

It would have fallen within the mandate of these detention oversight bodies, National Preventive Mechanisms (**NPMs**), to conduct inspections at the housing estates, with the objective of preventing treatment of residents or conditions that might amount to torture or cruel, inhuman or degrading treatment, such as elderly Aboriginal people not having access to the carers who assist them with food preparation and personal hygiene. The United Nations body under OPCAT, the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) has issued advice that 'any place where a person is held in quarantine and from which he or she is not free to leave is a place of deprivation of liberty for the purposes of [OPCAT] and so falls within the visiting mandate of a national preventive mechanism.'

In the absence of robust and independent NPMs, the Victorian Equal Opportunity & Human Rights Commission Victorian produced a Factsheet on residents' rights in full lockdown. The factsheets contained information on resident's rights to access disability services and receive healthcare, including pre- and postnatal care, mental health care, access to drug and alcohol services, access to medications, and treatment if they test positive for COVID-19.⁶⁹ The Victorian Ombudsman has also announced an investigation into the treatment of public housing residents at one of the housing estates that was subject to detention directions.⁷⁰

⁶⁶ Victorian Department of Health and Human Services, *Public Housing Restrictions*(Website, last accessed 22 July 2020) <<https://www.dhhs.vic.gov.au/information-and-supports-public-housing-restrictions-covid-19>>

⁶⁷ Australian Broadcasting Corporation, *Coronavirus forces lockdown of Melbourne public housing towers in 3051 and 3031 postcodes. This is what that means for the residents*, (Website, 4 July 2020) <<https://www.abc.net.au/news/2020-07-04/coronavirus-victoria-melbourne-public-housing-estates-lockdown/12423042>>

⁶⁸ *Ibid.*

⁶⁹ Victorian Equal opportunity and Human Rights Commission, *Factsheet: Your Rights in Full Lockdown*, (Website, 2020) <<https://www.humanrights.vic.gov.au/resources/factsheet-your-rights-in-full-lockdown/>>

⁷⁰ The Age, *Ombudsman investigating treatment of people in lockdown towers*, (Website, 17 July 2020) <<https://www.theage.com.au/politics/victoria/victorian-ombudsman-investigating-treatment-of-people-in-lockdown-towers-20200717-p55cy3.html>>

Recommendations

7. The Commonwealth Government, in partnership with the states and territories, urgently commits to building the 727,000 public homes that will be required to accommodate the current and projected backlog by 2036.
8. In partnership with Aboriginal Community Controlled Organisations, the Australian Government updates the National Indigenous Housing Guide so it mandates regulatory oversight for the proper construction of long lasting homes that are suitable for their environments and include appropriate penalties for breaches of the Guide.
9. All governments require public and social housing providers to develop public policies for timely housing maintenance, including public reporting on compliance.
10. All Australian governments urgently fund and resource all Aboriginal and Torres Strait Islander Legal Services to allow them to continue providing civil and tenancy legal services, particularly to people living in public and social homes, or those applying to live in public and social homes.
11. All housing service providers in regional, rural, and remote areas need to ensure that they provide accessible tenancy management services to all people living in their homes and, where possible, employ local people to provide tenancy management services.
12. Public and social housing service providers are required to provide automatic pecuniary compensation to people living in their homes for every day that maintenance and repair works are not carried out in accordance with their maintenance and repair timelines.
13. All Australian governments implement the recommendations of the Royal Commission into Aboriginal Deaths in Custody to urgently eliminate ill-treatment and violent and abusive police behaviour towards our people, particularly in light of the COVID-19 pandemic.
14. Police services implement receipting practises for stops and searches nationwide to prevent racial profiling and over targeting by police during the COVID-19 pandemic. Police services must make this disaggregated data publicly available by tabling it in their respective parliaments quarterly.
15. All governments designate and/or establish National Preventive Mechanisms (NPM) to oversee the conditions of detention and treatment of people in places of detention, which must, at a minimum, comply with international human rights standards. Governments.
16. NPMs need to ensure that their operations, policies, frameworks, and governance are always culturally appropriate and safe for our people. NPMs need to also ensure their findings are publicly available and published in different formats and languages, including our languages.

Homelessness & entry into the criminal legal system and child protection

Family violence and child protection

In many situations where there is violence in the home, Aboriginal and Torres Strait Islander women face difficult situations to protect themselves and their children. If they remain at home, they risk being notified to child protection services for emotional abuse, however if they leave, they struggle finding suitable and affordable housing.⁷¹

Some of our women fleeing domestic violence are sometimes double punished as their discrimination and their low incomes means that finding private rental accommodation is often not an option, crisis services and accommodation are often full, and waiting lists for public and social housing are very long.⁷² Many of our women also face delays in being added to priority housing waiting lists due to outstanding housing debts which are often a result of their partner's abuse.

The lack of accessible public homes and available crisis accommodation traps our women in a revolving door between crisis accommodation, homelessness which in turn forces them to return to unsafe homes.⁷³ Furthermore, any delays in securing stable, long-term accommodation sees women being separated from their children. Generally, child protection timelines allow only 12 months before a child removal becomes permanent. As of 30 June 2018, 40% of our children had spent over five years in out-of-home care with only a minority (fewer than 12%) spending 12 months in out-of-home care.⁷⁴

Providing homes and crisis accommodation and supported accommodation for women fleeing family violence is critical not only to their health and safety and that of their children but also in making sure that all of our children can grow up strong and connected to their families and cultures.

⁷¹ Kyllie Cripps and Daphne Habibis, 'Another stolen generation looms unless Indigenous women fleeing violence can find safe housing' (Website, 20 September 2019) < <https://theconversation.com/another-stolen-generation-looms-unless-indigenous-women-fleeing-violence-can-find-safe-housing-123526>>

⁷² Kyllie Cripps and Daphne Habibis, 'Another stolen generation looms unless Indigenous women fleeing violence can find safe housing' (Website, 20 September 2019) < <https://theconversation.com/another-stolen-generation-looms-unless-indigenous-women-fleeing-violence-can-find-safe-housing-123526>>

⁷³ Kyllie Cripps and Daphne Habibis, 'Another stolen generation looms unless Indigenous women fleeing violence can find safe housing' (Website, 20 September 2019) < <https://theconversation.com/another-stolen-generation-looms-unless-indigenous-women-fleeing-violence-can-find-safe-housing-123526>>

⁷⁴ Kyllie Cripps and Daphne Habibis, 'Another stolen generation looms unless Indigenous women fleeing violence can find safe housing' (Website, 20 September 2019) < <https://theconversation.com/another-stolen-generation-looms-unless-indigenous-women-fleeing-violence-can-find-safe-housing-123526>>

Case study: Tarah

Tarah's child had been taken into the care of the Northern Territory's Department of Children and Families care, as his multiple medical conditions meant that he was unable to receive adequate health treatment in his home community.

Tarah and family were living in severely overcrowded conditions and reunification with their child was dependent on the family having secure, stable housing. NAAJA assisted the family to make an application to transfer from the families' home community in West Arnhem Land to Darwin.

While Tarah and her family were waiting to be allocated housing, NAAJA referred the family to a supported accommodation provider. The provider interviewed Tarah and advised that their program was not suitable as Tarah needs to communicate with the assistance of interpreters as well as needing assistance to access medical treatment and other essential services.

Tarah waited another year before being allocated a place in another supported accommodation facility, further delaying her reunification with her young child.

Source: NAAJA, Northern Territory Housing Issues Paper and Response to the Housing Strategy Consultation Draft (February 2016)

Criminalising homelessness

A person experiencing homelessness will invariably face a greater level of public visibility than a person in stable conventional accommodation. This increases their likelihood of police interaction and exposes them to the enforcement of laws and policies which have the real effect of criminalising homelessness. This is more pronounced in our communities as our people are already being over targeted by police.

The incidence of homelessness itself directly carries the risk of falling afoul of laws or policies which prohibit certain activity in public places, such as sleeping in public, camping in public, loitering, or begging. The lack of a space in which a person experiencing homelessness may carry out private activities may also lead to the enforcement of laws or policies against acts such as drinking in public, nudity, or public urination. People experiencing homelessness may be pushed into committing "crimes of survival" to obtain adequate food, shelter, and transport. These include shoplifting, trespass, and fare evasion.

Our people have a long history of negative interaction with police in addition to facing regulated social exclusion. Incidents of racial bias in Aboriginal-police relations are far from uncommon, eventuating in "*a self-fulfilling prophecy by police, that Aboriginal people are all criminals*".⁷⁵ This leads to discriminatory or differential policing in enforcing the criminalisation of homelessness against our people, particularly as sometimes the mere presence of a group of our people in a public space being characterised as a "problem".⁷⁶

The use of punitive enforcement measures in response to homelessness, through "move on" orders, cautions, fines, infringement notices and court orders and sentences, does little to address the underlying individual and structural drivers of homelessness or home insecurity. Instead, over

⁷⁵ Jens Korff, 'Aboriginal-Police Relations', *Creative Spirits* (Web Page, 9 December 2016)

<<https://www.creativespirits.info/aboriginalculture/law/aboriginal-police-relations>>.

⁷⁶ Taylor, above n 7.

policing and over targeting of our people exacerbates the existing negative consequences of experiencing homelessness while impacting on someone's ability to secure a stable, affordable home.

Barriers in navigating and participating in the criminal legal system

People experiencing homelessness may also face barriers in navigating and participating in legal processes within the criminal legal system. For example, due to the cost and limited availability of legal representation, the lack of a stable address to receive court-related notifications, and the complexity of legal processes which may involve multiple agencies. The absence of adequate legal services for people experiencing homelessness may lead to increased risk of incarceration, and compounding of financial debt.

The barriers faced by our people experiencing homelessness in accessing justice are compounded. We are pushed into more systemic inequities which directly impacts on our ability to access and navigate the legal system. As discussed above, inadequate, and / or overcrowded housing also often leads to poor mental and physical health, which is also an underlying driver of our over incarceration. Further, in remote communities, access to justice has been described as "so inadequate that remote Indigenous people cannot be said to have full civil rights".⁷⁷

Case study: Justice Connect's Homeless Law

A 2013 submission paper of Justice Connect's Homeless Law project (formerly the Public Interest Law Clearing House's Homeless Persons' Legal Clinic) considered the links and impacts between fines, infringements, and homelessness. Participants in the project included:

- a woman experiencing homelessness after fleeing a violent relationship, and who received 53 infringements over an 18-month period for parking offences and for travelling on public transport without a ticket.
- a man experiencing homelessness who suffered from depression, anxiety, an acquired brain injury and chronic alcohol dependence, and who received six infringement warrants for being drunk in a public place.
- a woman experiencing homelessness who accrued approximately \$2,000 in fines for travelling on public transport without a ticket and failing to vote, and who stated that "... you don't have a spare \$200 to give to a fine and if you're homeless as well it's even more stressful because it's already stressful not having a place of your own"; and
- a man experiencing prolonged homelessness over several years who accrued approximately \$15,000 in fines, who stated that "*I'd cop another one and another one and it just got overwhelming. I was unable to pay due to the fact I was only on Newstart at that time and living in boarding houses which were pretty much a third of my payment.*"

Source: Public Interest Law Clearing House, *Fines, Infringements and Homelessness – Submission to the Sentencing Advisory Council Fines and Infringements Project* (October 2013).

⁷⁷ Top End Women's Legal Service, *Submission to Senate Legal and Constitutional References Committee Inquiry into Legal Aid and Access to Justice*, Parliament of Australia, Canberra, (2004); see also Chris Cunneen, Fiona Allison and Melanie Schwartz, 'Access to Justice for Aboriginal People in the Northern Territory' (2014) 49(2) *Australian Journal of Social Issues* 219.

Homelessness & recurring interaction with the criminal legal system

As noted by the Australian Institute of Health and Welfare, “homelessness is more common among those with a history of contact with the criminal legal system, it lasts for longer, and is more likely to reoccur than for other homeless people”.⁷⁸

A 2003 study by the Australian Housing and Urban Research Institute (**AHURI**) directly evidences this proposition, finding a significant association between re-incarceration and being homeless, having a lack of accommodation support or having a lack of stable, non-temporary accommodation.⁷⁹ Access to stable housing upon release is a significant aspect of allowing a person to improve education, maintain employment, and obtain a sense of social cohesion,⁸⁰ thereby reducing the likelihood of re-entry into the criminal legal system.

At the pre-sentencing stage, a lack of secure and stable accommodation may preclude the grant of bail,⁸¹ leading to remand in custody. Even short periods of custody have the potential to disrupt family and community ties, increase recidivism rates and increase the likelihood of criminal behaviour. After imprisonment, a lack of adequate post-release accommodation similarly increases the likelihood of recidivism and re-entry into the criminal legal system. Those exiting the criminal legal system are more likely to experience (or re-experience) homelessness, and in turn ex-prisoners experiencing homelessness are twice as likely to face re-incarceration than ex-prisoners who have access to secure accommodation.⁸²

Unpaid debts, such as those incurred through fines and infringement notices as part of enforcement responses to homelessness, also reduce the ability of ex-prisoners to successfully reintegrate after release. The relationship between pecuniary methods of enforcement against homelessness and increased risk of re-offending and incarceration has been described in the following terms:

‘Without conversion, an ongoing court fine or infringement penalty debt — combined with more general financial disadvantage among the prison population — may increase the risk of reoffending. Indebtedness and financial stress may lead to mental and physical health problems, unstable housing, and unemployment. In turn these factors make reintegration more difficult and increase the risk of reoffending.’⁸³

In 2015, 38% of our people in prison expected to be homeless upon release, compared to 28% of non-Indigenous prisoners upon release.⁸⁴ The social exclusion and isolation faced by our people in

⁷⁸ AIHW, *The Health of Australia’s Prisoners 2015* (Catalogue No PHE 207, 27 November 2015) 28.

⁷⁹ Dr Eileen Baldry et al, *Ex-prisoners and accommodation: what bearing do different forms of housing have on social reintegration?* (AHURI Final Report 46, August 2003).

⁸⁰ Dr Catherine Bridge et al, *How does housing assistance affect employment, health and social cohesion?* (AHURI Research & Policy Bulletin 87, March 2007).

⁸¹ See e.g. *Bail Act 2013* (NSW) s 28.

⁸² Dr Eileen Baldry et al, ‘Ex-Prisoners, Homelessness and the State in Australia’ (2006) 39(1) *The Australian and New Zealand Journal of Criminology* 24.

⁸³ Sentencing Advisory Council, *The Imposition and Enforcement of Court Fines and Infringement Penalties in Victoria — Report* (30 May 2014) 204.

⁸⁴ AIHW, above n 49.

prison also leads to a loss of connectedness to country and culture. Many of our people require repatriation back into their communities for successful reintegration, with those unable to return to their communities being at greater risk of homelessness, and consequently at greater risk of reoffending.⁸⁵

A 2017 report found that access to release services which are specific to our people is limited, with the delivery of culturally responsive programs within prisons inconsistent and intermittent.⁸⁶

Case study: VALS' Baggarrook Program

The Victorian Aboriginal Legal Service's (VALS) Community Justice Team runs the Baggarrook Women's Transitional Housing program, which provides post-release support and culturally safe homes for six Aboriginal women to support their transition back to the community. The program is a partnership between VALS, Aboriginal Housing Victoria and Corrections Victoria.

The Baggarrook program is designed to support highly vulnerable Aboriginal women as they transition from prison, simultaneously acknowledging and addressing the significant and complex needs of Aboriginal women post release. This integrated support model involves providing transitional housing and holistic support through the provision of care packages, ongoing engagement with justice workers as well as other allied professionals.

The Victorian Government *Aboriginal Affairs Report* highlights that the number of Aboriginal women (as unique alleged offenders) being processed by police from 2008-2018 has risen by 70%. In 2017 Corrections Victoria recorded that 17% of all Victorian women on remand were Aboriginal. This highlights that services such as Baggarrook are crucial, and need greater funding and support.

However, VALS has not received any extra funding for the Baggarrook through the Victorian Government's Aboriginal COVID-19 Response Fund, announced on 16 May 2020 despite that package of funding providing \$13 million over two years to meet an increase in Aboriginal Community Controlled service demand and support homelessness services and stable housing.

Source: Victorian Aboriginal Legal Service. See VALS' Submission to the Sentencing Act Reform Project: <https://vals.org.au/assets/2020/04/Sentencing-Act-Reform-Project-VALS-submission-2020.pdf>

⁸⁵ PWC, *Indigenous incarceration: Unlock the facts* (May 2017) 31.

⁸⁶ Ibid 32.

Recommendations:

18. All Australian governments immediately increase funding and resourcing for Aboriginal Community Controlled Organisations to provide crisis accommodation for Aboriginal and Torres Strait Islander women and children experiencing family violence.
19. The Commonwealth Government in partnership with the states and territories permanently ends the effective criminalisation of homelessness and poverty by:
 - a. Abolishing/repealing low level offences that disproportionately impact people experiencing homelessness, including begging alms and public drunkenness.
 - b. Transitioning away from enforcement-based responses for low level offences and any other offence that is a direct result of someone experiencing homelessness, including sleeping, or camping in public.
 - c. Implementing the Royal Commission into Aboriginal Deaths in Custody's full recommendations.
 - d. Ending the unsafe and inappropriate removal of our children and the full implementation of the Aboriginal Child Placement Principles in all states and territories, including taking a community-centred, family inclusive approach to child protection concerns to ensure our children are culturally, physically, and emotionally safe.
 - e. Increase funding and support for Aboriginal and Torres Strait Islander community-led prevention and early intervention efforts to reduce violence against our women and offending by our women
 - f. Increasing culturally safe diversion programs, including Aboriginal community-controlled programs for young people, and other alternatives to imprisonment.
20. The Commonwealth Government significantly increases funding and resourcing for Family Violence Prevention Legal Services including their peak body the National Family Violence Prevention Legal Services Forum.
21. All Australian Governments review sentencing practices and bail conditions, particularly short sentences for non-violent offences, including providing multi-agency support with effective integration of legal, social, healthcare, and other agencies to create pathways out of the criminal legal system.
22. All Australian governments commit to fully funding and resourcing the culturally safe throughcare programs and support services run by ATSILS so that our people are fully supported when they are transitioning from imprisonment into the community.

Conclusion

Homes are the foundations for all our lives. The persistent rates of homelessness experienced by our people over the years, and the persistent over-representation of our people in the criminal legal system, indicates that much more needs to be done to improve current policies and strategies that aim to reduce homelessness in Australia.

It is essential that any program or service to address homelessness, home insecurity, and maintenance for our people are based on our right to self-determination and have a strong human rights framework. All governments need to also prioritise the funding and allocation of resources to Aboriginal Community Controlled Organisations that provide housing and housing services to our people and to build these where they do not exist.

The recent COVID-19 pandemic has highlighted the fundamental importance of having a safe, secure, and affordable home in preserving one's physical and mental wellbeing and providing a stable base from which to pursue employment, education, and other self-development opportunities.

The deep relationship between homelessness and the criminal legal system effectively creates a recurring cycle of displacement and imprisonment. This vicious cycle disproportionately affects our people due to our sustained historical experiences of colonisation, land dispossession and attempts to destroy our cultures.

Urgent and considered action must be taken in line with the recommendations in this submission to break this cycle.