

30 March 2022

Commissioner Romlie Mokak and Commissioner Malcolm Roberts
Housing and Homelessness Agreement
Productivity Commission
GPO Box 1428
Canberra City, ACT 2601
By email only: housing.agreement@pc.gov.au

Dear Commissioners,

Submission to the Productivity Commission's Housing and Homelessness Agreement Review

Darwin Community Legal Service ('DCLS') welcomes this opportunity to provide a submission to the Productivity Commission's review of the National Housing and Homelessness Agreement ('NHHA').

We also extend our thanks and appreciation to the North Australian Aboriginal Family Legal Service ('NAAFLS') for their contributions to this submission.

DCLS acknowledges the Larrakia people as the Traditional Owners of the Darwin region. We pay our respects to Larrakia elders past, present and emerging. We also acknowledge and pay our respects to the Traditional Owners of country throughout the NT and throughout Australia. We recognise their continuing connection to land, waters and culture. DCLS supports Voice – Treaty – Truth.

1. Darwin Community Legal Service

DCLS is a non-profit community-based effort committed to legal and social justice and the protection and expansion of rights, fairness, and wellbeing in the NT.

We especially work with people who are vulnerable or marginalised.

DCLS:

- Provides legal help, advocacy and support services,
- Collaborates to understand obstacles to justice and try to achieve reform, and
- Promotes understanding and acceptance of rights, justice and inclusion.

DCLS provides free services, applying a socio-legal approach. Issues about housing impact in multiple ways for many of our clients and give rise to problems and issues in different domains and areas of law.

DCLS provides a:

- **General Legal Service** - information, referral, legal advice and representation in areas of civil law affecting basic rights - Darwin, Palmerston & surrounds, and NT wide where appropriate resources available. Including *Volunteer Advice Sessions* - NT wide, and the new *Veterans Legal Service*.
- **Tenants' Advice Service** – information, referral, legal advice, legal help including representation for tenants - NT wide.

- **Seniors and Disability Rights Service** - support, advocacy and empowerment by, with and for seniors and people with a disability – especially Top End but NT wide.
- **Special projects including Older Person' Abuse and NDIS appeals**
- **Collaborative** community legal education, projects, organising and advocacy for rights, justice and inclusion.

2. Background to the Productivity Commission's Review

The NHHA is an inter-governmental agreement that “seeks to improve access to affordable, safe and sustainable housing”, and is the Commonwealth’s main funding avenue for addressing housing and homelessness issues.¹

The Productivity Commission is currently conducting a scheduled review of the NHHA to examine:

“how well the Australian, State and Territory Governments have achieved the objectives, outcomes and outputs as set out in the Agreement, and the suitability of the Agreement for the future... [as well as] the impact of social and economic factors, including the coronavirus pandemic, on housing and homelessness in Australia”.²

Our submission relates to ways the NHHA is falling short in the NT and not meeting its stated objectives of improving access to affordable, safe, and sustainable housing.

We highlight areas of concern – including the experience of people with disability and people experiencing domestic and family violence, as well as issues with access to justice and discrimination against tenants.



‘International Safe Space’ by Eva San Yen Keng, exhibited at DCLS’ Rights on Show: Art Awards and Exhibition (3 – 10 December 2021) held at the NT Supreme Court.

¹ Josh Frydenberg and Michael Sukkar, ‘Productivity Commission review of the National Housing and Homelessness Agreement’ (Media Release, 13 December 2021) <<https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/productivity-commission-review-national-housing>>

² Productivity Commission, ‘Housing and Homelessness Agreement Review’ *Current Inquiries* (Web Page) <<https://www.pc.gov.au/inquiries/current/housing-homelessness#report>>

3. Executive Summary

Housing and homelessness are in crisis in the NT, a fact which is not reflected in the national per capita distribution which is the central concept of the NHHA.

Despite having a homelessness rate twelve times that of the national average,³ the NT receives a woefully inadequate 1.3% of the total NHHA budget allocation.⁴

NT Shelter, the NT's peak housing body, provided the following overview of the issues in the NT in their 2020-21 Pre-Budget Submission to the NT Government:

- "Almost one half (48.4%) of people seeking help in the NT are unable to be assisted. This is twice as high as unmet requests nationally (23%).
- The per capita rate of demand for services is over three times that of other states and territories and growing (demand in the NT is 390 clients per 10,000 population compared to the national average of 116 per 10,000).
- Services are restricted to a limited number of urban centres, with many remote and very remote communities not having access to any services... There is therefore a substantial level of unknown demand, additional to the already large volume of unmet demand."⁵

The NHHA's per capita funding model assumes that disadvantage is equally distributed nationally on a per capita basis, which is clearly not the case.

The NHHA will fail in the NT for as long as the NT allocation remains grossly underfunded.

Changing to a needs-based funding model for the NT is the key to improving housing availability, suitability, and achieving appreciable improvement against indicators. It is central to addressing the other concerns raised in this submission, broadly relating to:

- The social and health impacts of inappropriate and unaffordable housing
- People with disability accessing affordable and appropriate accommodation
- People escaping domestic and family violence
- Access to justice and underservicing of tenant's legal needs
- Discrimination against tenants
- Fast tracking the growth of the community housing sector

Without a change to the per-capita funding model, the NHHA will continue to primarily reflect an accord between the Commonwealth and the most populous and influential jurisdictions, while failing to address how this plays out in the NT.

³ Australian Bureau of Statistics, *Census of Population and Housing: Estimating Homelessness* (Catalogue No 2049.0, 14 March 2018).

⁴ Commonwealth, *Budget 2021-22* (Budget Paper No. 3, 11 May 2021) 50.

⁵ NT Shelter, Submission to the Federal Government (4 February 2020) 2 ('NT Shelter NT Pre-Budget Submission').

4. Housing and homelessness in the Northern Territory

The statistics regarding housing and homelessness in the NT are a shameful indictment on the failures of consecutive Governments and their surface-level approach to addressing what are deeply entrenched structural issues.

4.1. NT Remote Context

Housing and homelessness inequities are exacerbated in remote areas of the NT. The majority (83%) of the NT's homeless population lives in 'severely overcrowded' dwellings and, of this group, the majority (71%) live in remote or very remote communities, outside of the main urban centres of Darwin and Alice Springs.⁶

The NT Government's modelling indicates that between 8,000 and 12,000 additional dwellings are needed across the NT by 2025 to address existing overcrowding and meet anticipated future demand for housing due to population growth.⁷

However, the NT Government's estimates of overcrowding, at 1.70 people per bedroom,⁸ are likely an underestimation as NAAFLS routinely observes an average of 5 people per bedroom in their visits to remote communities.

Despite the chronic and urgent need for more housing in remote communities, the most recent Auditor-General's report on the National Partnership for Remote Housing found that, as of 30 September 2021 (three years into the five-year agreement), only 19% of capital works (363 bedrooms, equivalent to 121 three-bedroom houses) have been completed.⁹

4.2. NT Urban Context

The most recent Rental Affordability Snapshot conducted by Anglicare NT concluded that the cost of private rent, when compared to the relatively unchanged rate of government income support and increasing cost of living, leaves many with little choice but to seek to live in social or public housing.¹⁰ The Snapshot found that, with the exception of a retired couple receiving the Age Pension, there were no affordable and appropriate homes for those relying on social security payments in the NT.¹¹

However, the alternative of public housing is not a viable option as the shortest waiting period is between 2-4 years and the longest wait times are between 8-10 years, see table below extracted from the NT Government's website with estimated waiting times as of 31 December 2021.¹²

Region	Estimated wait times for public housing (years)					
	General wait times			Priority wait times		
	1 bedroom	2 bedroom	≥3 bedroom	1 bedroom	2 bedroom	≥3 bedroom
Darwin/Casuarina	6-8	2-4	4-6	4-6	2-4	2-4
Palmerston	6-8	2-4	4-6	4-6	2-4	2-4
Katherine	6-8	4-6	6-8	4-6	4-6	2-4
Nhulunbuy	4-6	4-6	4-6	4-6	4-6	4-6
Tennant Creek	8-10	6-8	4-6	4-6	4-6	2-4
Alice Springs	6-8	6-8	6-8	6-8	6-8	6-8

⁶ Australian Bureau of Statistics, *Census of Population and Housing: Estimating Homelessness* (Catalogue No 2049.0, 14 March 2018).

⁷ Department of Local Government, Housing and Community Development, *Northern Territory Housing Strategy 2020-2025* (December 2019) 11.

⁸ Our Community. Our Future. Our Homes., 'Program progress overview' (Web Page, 31 January 2022)

<<https://ourfuture.nt.gov.au/accountability-and-reporting/program-progress>>

⁹ Auditor-General (n 7) 52.

¹⁰ Anglicare NT, *Rental Affordability Snapshot 2019* (Report, 29 April 2019) 6.

¹¹ Ibid 3, 6. The Snapshot found that only 2% of properties were suitable for one household type on income support payments (namely a couple on the Age Pension) and no properties were found to be suitable for all other household types living on income supports.

¹² Northern Territory Government, 'Public housing wait times' *Apply for public housing* (Web page, 11 February 2022)

<<https://nt.gov.au/property/public-housing/apply-for-housing/apply-for-public-housing/waiting-list>>

The rates of “rough sleepers” (people living in improvised dwellings, tents or sleeping out) in Darwin and Katherine – at 96 per 10,000 – far exceeds the national average of 3.5 per 10,000.¹³ Compounding these figures is the undersupply of affordable short-term visitor accommodation in urban areas. This is despite the well-recognised fact that Aboriginal people who have travelled into an urban area for medical, family, safety and other reasons make up a significant portion of the homelessness population in urban areas.¹⁴

The Aboriginal Medical Services Alliance Northern Territory (‘AMSANT’) has also observed that overcrowded and under-resourced remote communities are also leading to:

“... increasing urban drift... [which] further contributes to rates of homelessness as well as disconnection from country, family and culture, and increases associated mental and emotional ill-health”.¹⁵

The lack of short-term visitor accommodation options contributes to the high rates of homelessness, resulting in an otherwise avoidable strain on the homelessness service system in urban areas.¹⁶

5. Systemic Inequities in the NT

The extreme inequities experienced by Aboriginal people in the NT in relation to housing is bound up with the historical and contemporary impacts and legacies of colonisation. The Australian Institute of Health and Welfare summarises some of these impacts in their focus report on housing and homelessness:

“Historically, Aboriginal and Torres Strait Islander people have experienced much higher rates of homelessness and have been overrepresented among clients seeking homelessness and social housing services than non-Indigenous Australians. These higher rates of unstable housing relate to complex and interrelated factors including the lasting impacts of colonisation on Indigenous Australians, exposure to family violence, substance disorders, unemployment, low education levels and poor health—which are both contributors to, and outcomes of, insecure housing circumstances (Flatau et al. 2005; Keys Young 1998; Silburn et al. 2018).”¹⁷

Further, AMSANT has previously noted that current approaches to housing often fail to respect the cultural values and strengths of Aboriginal people:

“Current approaches to housing largely view the social and cultural context of Aboriginal communities as a barrier or problem to be overcome or circumvented, rather than working with Aboriginal communities in a way that respects cultural values and draws strength from Aboriginal knowledge systems and practices. The fabric of Aboriginal traditional land tenure has been altered and substantially replaced with a western model of private property. This model has been imposed on a group which traditionally have a much more communal understanding of space and place (Bailie and Wayte 2006).”¹⁸



DCLS SDRS Advocate Ramnik Walia helping a client during a community outreach visit

¹³ Northern Territory Government (n 11) 6

¹⁴ Ibid 11.

¹⁵ Aboriginal Medical Services Alliance NT, Submission No 434 to the Productivity Commission, *Mental Health Inquiry* (6 February 2020) 8 (‘AMSANT’).

¹⁶ Northern Territory Government (n 11) 11.

¹⁷ Australian Institute of Health and Welfare, *Aboriginal and Torres Strait Islander people: a focus report on housing and homelessness* (Catalogue No HOU 301, 29 March 2019) v

¹⁸ AMSANT (n 20) 8.

5.1. Remoteness as an Excuse

In responding to well-substantiated claims of slow-progress, both the NT and Commonwealth Government's invariably cite the *additional* and purportedly *near-insurmountable* challenges posed by the "remote" context. Rather than a lack of action, accountability, planning and adequate funding, Government's consider the central issue plaguing the delivery and maintenance of remote housing to be remoteness itself. Effectively, remoteness is treated as abnormal or aberrant, rather than a usual and included context of service provision in Australia. Geographical remoteness is used as an excuse by Governments for what is instead a failure to address substandard living conditions.

The understanding of "remoteness" in this context also reflects on how people living in these geographically 'remote' areas are perceived by Government policy makers, namely, as remote from their reality and (they claim) from their responsibilities.

This narrative of "remoteness" effectively claims that substantive change is impossible and consequently any attempt to address housing needs in remote communities is above and beyond what is rationally required. The 'remoteness excuse' needs to be exposed and countered to address how it is impeding accountability and intended progress.

5.2. Community Voice

While the National Partnership has emphasised the importance of community engagement and local decision-making, this is not reflected in the reality on the ground in communities in the NT. In their visits to remote communities, NAAFLS has observed a lack of community consultation, resulting in new houses being inappropriately designed and located for the community's needs. This is supported by the Auditor-General's Report, which notes that the "insufficient visibility on scheduled capital works has impacted on the ability of the Land Councils to effectively consult with and represent their communities with respect to the timing and location of houses scheduled for construction or extension".¹⁹

Further, the associated performance measures for the NT Government are entirely lacking in qualitative data and meaningful quantitative data consisting only of a desktop verification process and audits of NT Government recording systems.²⁰ This is a clearly inadequate and box-ticking process which is lacking in adherence to any of the principles identified in the Productivity Commission's Indigenous Evaluation Strategy.²¹

6. Health and human rights impacts – the need for appropriate housing

It is well-established that appropriate housing is crucial to overall wellbeing and is a key social determinant of health.²² There is a clear bi-directional relationship between housing and health, with difficulty accessing housing leading to increased health vulnerabilities, and vice versa.²³

Overcrowding, for example, reduces the functionality of housing infrastructure which subsequently impacts negatively upon the health of its occupants (e.g. overburdened and malfunctioning 'health hardware' facilities and appliances contributes to increased health vulnerabilities and high rates of hygiene-related infectious diseases in remote communities).²⁴

¹⁹Auditor-General (n 7) 54.

²⁰Ibid 56.

²¹Productivity Commission, *Indigenous Evaluation Strategy* (Strategy, October 2020) 9. The overarching principle (namely, centring Aboriginal and Torres Strait Islander people, perspectives, priorities and knowledges) is supported by the guiding principles of credibility, usefulness, ethics and transparency.

²²Elizabeth Grant et al, 'Lived experiences of housing and community infrastructure among Indigenous people with disability' (Final Report, No 283, Australian Housing and Urban Research Institute, June 2017) 6.

²³Emma Baker et al, 'Exploring the Bi-directional Relationship between Health and Housing in Australia' (2014) Vol 32(1) *Urban Policy and Research* 71-84, 49.

²⁴Nina Lansbury Hall et al, 'Pilyi Papulu Purrukaj-ji (Good housing to prevent sickness): A study of housing, crowding and hygiene-related infectious diseases in the Barkly Region, Northern Territory' (Research Paper, Anyinginyi Health Aboriginal Corporation and the University of Queensland, February 2020), 15-17, 43.

The health and social issues caused by overcrowding also creates additional stress, which may exacerbate existing tension and increase the risk of domestic and family violence.²⁵ Inadequate housing and overcrowding are also recognised as one of the structural drivers of child protection intervention.²⁶ NAAFLS has observed that in the NT, even where safety concerns have been addressed, children in remote communities are less likely to be returned to the care of their family because the available housing is inappropriate due to overcrowding concerns.

It is evident that inadequate housing is a central contributor to many of the chronic issues experienced in remote communities in the NT.

Further discussion on domestic and family violence can be found at paragraph 10 of this submission.



'Words Can Hurt' by the Top End School of Flexible Learning, exhibited at DCLS' Rights on Show: Art Awards and Exhibition (3 – 10 December 2021) held at the NT Supreme Court.

7. People with disability

People with disability are entitled to full and equal enjoyment of all human rights and fundamental freedoms, which includes the full and effective participation and inclusion in society.²⁷

Appropriate, secure and accessible housing is a fundamental condition which facilitates and actively contributes towards the social and economic participation and wellbeing of people with disability.²⁸

The undersupply of social and public housing in the NT means that people with disability are often living in inappropriate housing if they are housed at all. Again, this undersupply has a disproportionate impact on Aboriginal and Torres Strait Islander people who experience higher rates of disability and more complex disability while having greater difficulty in accessing appropriate housing and support services.²⁹

²⁵ Northern Territory Government (n 11) 14; AMSANT (n 20) 8.

²⁶ John Burton et al, 'The Family Matters Report 2018: Measuring trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care in Australia' (Final Report, 2018) 54-58.

²⁷ United Nations General Assembly, *Convention on the Rights of People with Disability*, GA Res 61/106, UN GAOR, 61st sess, 76th plen mtg, Agenda Item 67 (b), Supp No 49, UN DOC A/RES/61/106 (adopted 25 January 2007), Art 3.

²⁸ Grant et al (n 26) 5.

²⁹ NT Shelter, Submission to the Northern Territory Government, *NT Disability Strategy 2022-2032 Discussion Paper* (31 December 2021) 2-3 ('NT Shelter Disability Strategy Submission'); Grant et al (n 26) 30.

The Interim Report of the Disability Royal Commission noted that ABS data indicates that more than one-third (38%) of First Nations people have a disability. Almost half (48%) of all First Nations adults have a disability and one in five (22%) First Nations children have a disability.³⁰

Older people are also disproportionately affected due to their higher rates of disability, the prevalence of which increases with age (from 11.6% in people aged 0-64 years to 49.6% for people aged 65 years and over).³¹

People with disability in public and social housing in the NT are not a discrete cohort, they are the majority of tenants and this must be reflected in all approaches to addressing housing and homelessness issues in the NT. Failure to do this will result in exclusion from the community, the entrenching of poverty, adverse effects on health and wellbeing and a breach of the fundamental and unassailable human rights of people with disability.

7.1. Accessible housing

Accessibility is determined not only in terms of its physical space and ease of use, but also the geographical accessibility in its proximity to services, transport and facilities. Issues with accessing affordable housing are compounded by the hidden costs of disability (for example, extra power needs and transport costs) which are not reflected in the rates of payment or funding provided.

These factors combine to lock people with disability in financial disadvantage and force people to choose between necessities of life such as their health care, their housing and their social and economic participation.



DCLS SDRS Advocate Lachlan Rowe on his way to a community education session with Batchelor Institute

In the NT and generally, people with disability are at a higher risk of homelessness, housing insecurity, housing dissatisfaction, poorer quality housing, and housing unaffordability.³²

Further, the lack of appropriate housing means that people with disability are forced to live in undignified conditions. This is especially the case for people with personal hygiene needs beyond the mainstream, who may have to share utilities or live in a property with chronically over-burdened infrastructure and overcrowding.

The typical last resort options, such as emergency shelters, are often not appropriate for people with physical disability for these reasons.

In the NT it is also common for people with disability to fall through the gaps of the National Disability Insurance Scheme ('NDIS') in relation to housing, which is exclusively funded through Supported Independent Living ('SIL') or Specialist Disability Accommodation ('SDA'). Of the 4,587 NDIS participants in the NT, only 143 (3.1%) receive funding for SDA, and fewer still can use this funding due to a lack of available SDA properties. A further 402 participants (8.8%) receive funding for SIL.³³

³⁰ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Interim Report, 30 October 2020) 311.

³¹ Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Summary of Findings, 2018, Older people* (Catalogue No 4430, 24 October 2019).

³² NT Shelter Disability Strategy Submission (n 33) 5-8.

³³ National Disability Insurance Agency, *NDIS Quarterly Report to disability ministers for Q2 of Y9* (Full Report, 31 December 2021) 630.

For people with disability who don't meet the requirements for SIL or SDA funding, there is a significant gap in housing supports in the NT because the alternatives of public housing, social housing and the private rental market are often unable or unwilling to cater for the needs of people with disability.

7.2. Housing modifications

In DCLS' experience, people with a disability in the NT face considerable challenges in having their rental property modified. These modifications are either rejected because of the poor condition or unsuitability of the property or they are considered too costly or not worthwhile implementing given the fact that the property must be returned to its original state at the end of the tenancy.

This is compounded in remote communities where harsh environmental factors make temporary modifications all but pointless (e.g. a temporary ramp getting washed away during heavy seasonal rain).

Even where essential modifications are made, they are often limited to the immediate vicinity of the property, for example, the doorway but not the walkway or driveway. This has resulted in situations where modifications have been made that merely serve to highlight other accessibility issues (e.g. installing a ramp which leads to a potholed driveway that is prone to flooding).

Individual needs analysis are rarely undertaken, meaning that most requests for modifications are simplified into ramps and grabrails with other, more specific modifications being relatively uncommon.

The failure to differentiate between typical rental modifications and disability modifications is an ableist approach to tenancy management. It assumes that modifying buildings for greater accessibility does not carry any benefit or utility other than to the existing tenant. On the contrary, universal design and building standards aimed at improving accessibility is of benefit to everyone. Treating essential modifications as an inconvenience, rather than a necessity that must be accommodated, discriminates against people with disability both in the private rental market and public housing.

8. Rights and access to legal help should be reflected in the NHHA

The rights of individuals to access legal help should be reflected in commitments in the NHHA and in its implementation to help improve outcomes.

For example, DCLS is currently the only legal service that receives some funding to provide legal assistance to people experiencing tenancy-related issues in the NT. DCLS uses the funding to provide the Tenants' Advice Service ('TAS'), consisting of 4 staff positions and funds for limited travel.

TAS' client numbers increased from 430 clients in 2019 to 685 clients in 2021, reflecting factors such as increased rent stress, landlord practices in the context of chronic undersupply, social housing waiting lists and housing insecurity.

While some other non-profit legal services in the NT provide some assistance with tenancy-related issues, this work is severely limited due to lack of funding for this work.

The underservicing of tenants' legal needs in the NT is substantially exacerbated for:

- people living in remote communities,
- people escaping domestic or family violence,
- families with housing problems at risk of having children taken into care,
- people with a disability and
- older people.

8.1. Impact on remote housing tenancies

The lack of legal assistance for remote tenants exacerbates existing housing inequity and entrenches assumptions about public housing in remote communities.

The underservicing of legal need in remote areas has contributed to the disillusionment and apathy felt by tenants, as well as the disregard demonstrated by the Department, towards issues that would be viewed much more significantly were they to occur in an urban context (such as excessively long wait times for repairs).

It also further disincentivises tenants from proactively reporting repairs or other issues because they know that they won't be responded to. As a result, the original issue is exacerbated and ends up costing more to fix (e.g. further damage or increasing rent arrears).

Research by AHURI has found that the construction costs of dwellings in remote and very remote regions represents only a small amount of the total life-cycle cost of those dwellings over time. The majority (75%) of the life-cycle costs of dwellings in very remote regions are related to operating and maintenance costs, with the cost of emergency maintenance and repairs being 75% higher than planned activities.³⁴

Another issue more commonly experienced in remote communities is the absence of an interpreter when people are signing legally binding documents, such as a tenancy agreement. The experience of NAAFLS indicates that interpreters are infrequently used, even though their clients often do not understand the nature of a tenancy agreement and their obligations under it. This has resulted in clients who have moved out of a property still having rental payments deducted months later because the tenancy hasn't been terminated.

8.2. Types of legal help for tenants

Tenants, especially tenants in remote communities, need to be able to access culturally safe advocacy and legal help – which they can connect with and use routinely as required.

A diversity of help is needed, with multiple providers, offering support and help for the spectrum of needs, from practical help and tenant capacity building to help sustain tenancies, to understanding and exercising rights and empowering tenants - and groups of tenants – to self-advocate.

The Santa Teresa case, which is an action by about 60 tenants in the remote Central Australian community of Santa Teresa about chronic, ongoing, maintenance failures - is a clear demonstration of how remote social housing tenants in the NT have been denied their basic legal rights and the importance of different kinds of legal help including individual and collective legal help.³⁵

DCLS TAS Community
Lawyer Phil Andrews
working on a tenancy case



³⁴ Tess Lea et al, 'Sustainable Indigenous housing in regional and remote Australia' (Policy Evidence Summary, Australian Housing and Urban Research Institute, November 2021) 2.

³⁵ Australian Associated Press, 'Class action win opens door for remote communities to sue NT for housing neglect' *The Guardian* (Web Page, 28 February 2019) <<https://www.theguardian.com/australia-news/2019/feb/28/class-action-win-opens-door-for-remote-communities-to-sue-nt-for-housing-neglect>>

8.3. Treatment of social housing tenants

DCLS has also observed an increasing level of callousness in the treatment of NT public housing tenants by the Department.

The “red card policy” is the NT Government’s solution to managing antisocial behaviour.³⁶ If a tenant gets a demerit point due to substantiated antisocial behaviour, they must not incur any further demerit points for the next 12 months before the initial point is wiped. Once a tenant has received 6 demerit points, they may be at risk of having their tenancy terminated.

In TAS’ experience, demerit points have been incurred (typically originating from the complaint of a neighbour) for anything between ‘drinking and carrying on’ to listening to music while hanging out the washing. Neighbours are often demonstrably racist in their complaints.

In addition, TAS’ solicitors have experienced many situations where a tenant has received demerit points, where they were the victim of domestic violence, as the incident caused a ‘disturbance’ to the neighbours.

The Department’s visitor management policy is also culturally inappropriate and punitive towards tenants. Under the policy, tenants are responsible for the actions of their visitors and demerit points may be issued for their behaviour.³⁷ In TAS’ experience, tenants have received complaints for antisocial behaviour that did not actually occur at their property or when the tenant was out of town.

Further, the typical response of the Department to antisocial behaviour of visitors is to call the police or issue a trespass order against visitors who are often the family of the tenant, which compounds the difficulty faced by the tenant.

This callousness is amplified by the fact that this treatment is occurring in a context where no real alternatives to public housing exists, whether because of the lack of appropriate housing in the private rental market in urban areas or because public housing accounts for almost all homes in remote communities.³⁸

This is supported by statistics indicating that 64% of the people who sought assistance from specialist homelessness services in 2018-19 in the NT were considered at risk of homelessness while they were living in public or community housing.³⁹

8.4. Resolving tenancy disputes

This treatment occurs against the backdrop of a dispute resolution process that ostensibly provides for due process, but which in reality is intimidating, inaccessible, culturally inappropriate and consistently demeaning to Aboriginal and Torres Strait Islander people, people from CALD backgrounds and people with lived experience of mental illness. While the majority of proceedings in the NT Civil and Administrative Tribunal (NTCAT) are between self-represented parties, TAS solicitors’ often support clients to represent themselves or provide representation.

³⁶ Department of Territory Families, Housing and Communities, *Red Card Policy* (FS69, 19 February 2021).

³⁷ Department of Territory Families, Housing and Communities, *Urban Visitor Management* (v 4.0, 16 July 2021) 6-7.

³⁸ Northern Territory Government (n 11) 9; Anglicare NT (n 15).

³⁹ Northern Territory Government (n 11) 7.

9. Discrimination against tenants

Many TAS clients describe experiences of discrimination when interacting with the housing system in the NT (whether in public housing or the private rental market). Unfortunately, it is often difficult to establish that discrimination has occurred due to the lack of clear evidence and the wide discretion afforded to landlords and real estate agents.

Further, in many instances the power imbalance between tenant and landlord means that those who experience discrimination are discouraged from reporting for fear that it will have negative consequences on their future renting prospects (e.g. applying for rental properties in the future after having made a complaint to a real estate agent). Like most jurisdictions, the NT uses the TICA tenancy database (commonly referred to as the 'blacklist'). There are legislative provisions around when a tenant can be listed on the database and what information can be published.

However, DCLS is aware that this is not the only mechanism that real estate agents use to share information. There is a level of informal communication between real estate agents about desirable and undesirable tenants and other prejudicial information which can ruin a tenant's rental prospects. This correlates with a recent report on discrimination published by the Australian Housing and Urban Research Institute which notes:

"The power imbalance between landlords and renters in Australia amplifies the potential for discrimination across the entire rental system... The responsibilities of landlords and agents are often unclear and can be circumvented—particularly when tenants have few alternative options—and the distinction between discretion and discrimination can be ambiguous."⁴⁰



DCLS TAS team engaging with the community on International Tenants Day 2021

An example of the lack of alternative options for renters in the NT is the absence of an independent bond authority and the absence of a peak body for renters' advocacy, meaning that real estate agents and landlords effectively have a stranglehold over tenants in the NT.

10. Domestic and Family Violence

While clear funding distinctions between homelessness services and domestic and family violence services exist, this distinction is not evident in practice. NAAFLS have found that the current approach to housing in the NT does not prioritise the safety of people experiencing domestic and family violence and makes it incredibly difficult for people escaping violence to avoid homelessness.

⁴⁰ Sophia Maalsen et al, 'Understanding discrimination effects in private rental housing' (Executive Summary, Australian Housing and Urban Research Institute, September 2021) 7.

This is supported by the statistics which show that the most likely reason (46%) for someone seeking specialist homelessness service in the NT in 2018-19 was because of domestic and family violence.⁴¹ This is an under-representation of the actual levels of housing need arising from domestic and family violence as the figures only speak to those people who were able to seek support. This support is typically not available in remote communities.

10.1. Escaping violence in remote communities

In remote communities, where housing is at a premium, alternative accommodation options for people escaping violence are far and few between. While larger communities may have a safe house or a police station, smaller communities may not have either.

In the absence of short-term emergency accommodation options, many people are forced to come into the major urban centres of Darwin, Katherine and Alice Springs and contend with the wait times for public housing.

These wait times are exacerbated by the fact that their change in address prompts the cancellation of their existing application for remote public housing and the commencement of a new application for urban housing, placing them at the end of the wait list.

Further, in contrast to remote housing applications, urban housing applications need to be supported by two references. This is often more difficult to provide for people from remote areas due to the lack of their rental history, among other factors. While there is an exception to this requirement if the Department is satisfied that the applicant can adhere to the terms of the tenancy agreement, NAAFLS has expressed their concerns regarding the application of this exception and the likelihood for unconscious bias and racism to influence these decisions.



Everything a family could carry while escaping family violence to insecure accommodation.

10.2. Vicarious liability under the *Residential Tenancies Act*

DCLS has observed various issues regarding the application of provisions intended to assist tenants experiencing domestic and family violence in the NT. The *Residential Tenancies Act 1999* contains a vicarious liability provision which places liability for damage that occurs because of domestic and family violence on the person who committed the act, rather than the tenant themselves.⁴² Unfortunately, this provision is vaguely drafted and untested, with the NTCAT yet to make a decision as to how liability is apportioned in these circumstances.

10.3. Termination of tenancy under the *Domestic and Family Violence Act*

A tenancy agreement may be terminated outright or terminated, and a new agreement made for the benefit of the protected person or the defendant (if the protected person consents) as part of a Domestic Violence Order.⁴³ However, while domestic and family violence related matters are dealt with in the Local Court, tenancy-related matters are dealt with by the NTCAT. This overlap needlessly adds to the complexity

⁴¹ Australian Institute of Health and Welfare, *Specialist homelessness services 2018-19: Northern Territory* (Catalogue No HOU 318, 29 November 2019).

⁴² *Residential Tenancies Act 1999* (NT) s 12

⁴³ *Domestic and Family Violence Act 2007* (NT) s 23C

and confusion experienced by tenants who are experiencing domestic and family violence as they attempt to rely upon provisions drafted to assist them.

In addition, the tenant may face increased costs in going through the Local Court because it is a 'costs' jurisdiction, meaning that unsuccessful applicants may be ordered to bear the other parties costs. There is also an overall increased system cost as one person must navigate two forums to fully resolve their tenancy matter (for example, a tenant might go to the Local Court to terminate their tenancy and then to the NTCAT to have their bond resolved).

NAAFLS have also found this provision to be inaccessible, for reasons specific to housing issues within remote communities. In their experience, Judges are very reluctant to order that someone be removed from their home as they are concerned that this is effectively ordering them into homelessness. Even when an order is given, the Police can be reluctant to implement it for the same reason. There is clearly a tension between the objectives of the legislation and the obligations of decision-makers under the Act to prioritise the safety of the protected person and the reality in which these objectives are sought to be applied.

11. Community Housing Providers (CHPs)

DCLS echoes the previously expressed concerns of NT Shelter regarding the NT Government's "fast tracking" of the community housing sector which has the potential to come at the expense of existing housing stock and the sustainable development of Territory-based and Aboriginal housing providers, as well as the experience of tenants caught in the changes.⁴⁴ As NT Shelter advised in their submission to the NT Government's Community Housing Growth Strategy 2021-2030 Discussion Paper:

"A careful balance is needed between a desire to "fast track" growth and a manageable, staged approach that builds confidence and reduces exposure to financial, reputational and other risks for both NT Government and sector organisations alike."⁴⁵

DCLS also cautions against a fast-tracked approach in the absence of utilisation-focused evaluations, extensive modelling and sector engagement as to what the Community Housing sector should look like in the NT, with a specific focus on what the Aboriginal community-controlled housing sector wants out of this transition. This approach should dictate the pace of change within the community housing sector in the NT, rather than being driven by the desire of the NT Government to transfer its public housing stock.

Moreover, DCLS holds concerns regarding the variability in quality of existing CHPs and the legislatively grey area that they sit in under the *Residential Tenancies Act 1999* (NT). CPHs have sought to rely upon a carve out clause that provides that agreements which apply to premises 'provided for the use of homeless, unemployed or disadvantaged persons for charitable purposes or for the purposes of providing emergency shelter or accommodation' are not covered by the RTA.⁴⁶ As CHPs are eligible for charitable status, this clause could effectively exclude rental agreements entered into by CHPs from the operation of the RTA and the protections it gives to tenants and landlords alike. Further regulation or clarity regarding the status of CHPs and when they can claim the charitable status exemption is needed.

⁴⁴ NT Shelter, Submission to the Northern Territory Government, *NT Community Housing Growth Strategy 2021-2030 Discussion Paper* (14 May 2021) 5.

⁴⁵ *Ibid* 6.

⁴⁶ *Residential Tenancies Act 1999* (NT) s 6(1)(f)

12. Breaking the cycle – a Housing First approach

What is ultimately required in the NT is the implementation of a Housing First approach where appropriate and secure housing is a foundation upon which everything else in a person's life can be built upon.

Rather than a tenancy to be 'maintained', housing should be viewed as a fundamental pillar and treated as the necessary precondition for 'the provision of other health and social services, the rebuilding of community ties, stronger recovery outcomes, and enhanced social and economic participation'.⁴⁷

Efforts by specialist homelessness services to support tenants in the NT have been overwhelmingly successful, with 25% of clients who were homeless being assisted into housing through specialist homelessness support and 9 out of 10 tenants sustaining their tenancy when also receiving support from specialist homelessness providers.⁴⁸

12.1. Cost-Shifting

The NT Government has also acknowledged the cost-benefits in reducing the number of people cycling back into service systems, citing the reduced recidivism and prison expenditure that occurs when people receive housing support after leaving prison.⁴⁹

The connection between inadequate housing and increased interactions with other service systems, such as child protection and domestic and family violence, also supports the case for increased access to appropriate housing. Substantive change in these areas (accompanied by reduced cost to society, both fiscally and socially) cannot occur if underlying housing needs have not been met.

It is evident that significant social and economic benefits can be achieved when the typical and predictable trajectories or 'exits' into homelessness are disrupted by the availability and accessibility of affordable housing.



Community-made DCLS' banner, on display outside of our SDRS office in Darwin

⁴⁷ Cameron Duff et al, 'Leaving rehab: enhancing transitions into stable housing' (Final Report, No 359, Australian Housing and Urban Research Institute, July 2021) 10.

⁴⁸ NT Shelter NT Pre-Budget Submission (n 5) 2; Australian Institute of Health and Welfare (n 42).

⁴⁹ Northern Territory Government (n 11) 17.

13. Recommendations to the Commission

The Productivity Commission's review seeks to determine the extent to which the NHHA is meeting its objectives and its suitability for the future.

This submission has demonstrated that the NHHA is failing and will continue to do so until the predominant issue of per capita funding is addressed. Only then can work begin on the other issues identified by this submission.

In summary, the NHHA needs to deliver the following in to address housing issues and homelessness in the NT:

1. Change from per capita funding model to needs-based allocation to accurately reflect rates of affordable housing undersupply and homelessness in the NT
2. Extend the funding period of the NHHA from five to ten years to allow for stability and continuity for housing and homelessness services and their clients.
3. Centre the purpose and outcomes of the NHHA on the Housing First approach
4. Include people with disability as a priority policy area and priority cohort under the NHHA and focus on the unique experiences of people with disability facing housing issues and/or homelessness in this review
5. Include legal help for tenants under the NHHA
6. Underpin a new National Housing Strategy with principles to drive a whole-of-government response to housing issues and homelessness that reflects and seeks to address the drivers of housing issues and homelessness (e.g. inadequate social security rates, mental health issues, domestic and family violence, etc).
7. Emphasise the importance of Aboriginal community-controlled housing sector and support further capacity building and funding to ensure that the housing and homelessness sector is more culturally appropriate, responsive, and accountable to the communities they work with and for.
8. Incorporate the Productivity Commission's Indigenous Evaluation Strategy into this, and subsequent reviews, of the NHHA.

For any further information or inquiries regarding this submission, please contact Judy Harrison at info@dcls.org.au.

Yours sincerely,

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