



# Homeward Bound – Social Security and Homelessness



**NATIONAL  
SOCIAL SECURITY**  
RIGHTS NETWORK

**CANBERRA  
COMMUNITY  
LAW**



Homeward Bound – Social Security and Homelessness is a collaboration between the National Social Security Rights Network and Canberra Community Law.

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## A. About the Project

This project is a collaboration between The National Social Security Rights Network (**NSSRN**) and Canberra Community Law (**CCL**) to examine the impacts of social security and public housing systems, and their intersection with homelessness.

*Homeward Bound: Social Security and Homelessness* (**research report**) makes recommendations for how the social security and public housing systems could be improved to reduce or prevent homelessness. This research report's findings rely on data collected by CCL, which demonstrates the impact of social security and public housing on residents in the Australian Capital Territory (**ACT**). These findings have broader application to other Australian jurisdictions, particularly given that social security is a responsibility of the Commonwealth Government.

This research report has been funded by the Administrative Institute of Administrative Law (Australian Capital Territory Chapter). The views expressed here are of CCL and NSSRN and are not necessarily those of the Australian Institute of Administrative Law.

This research project was undertaken by Sophie Trevitt with assistance from CCL staff and the NSSRN Secretariat who provided input on the research report's content and reviewed the draft research report. The research reports' recommendations have been informed by insights gained from CCL's homelessness practice experience including through its Street Law program.



References in the research report to domestic violence focus on women and the system difficulties women face. Whilst it is acknowledged that men can also experience domestic violence, women make up the great majority of victims of these violations.

Case studies in this research report are based on specific clients whose cases illustrate the issues raised. Names and certain identifying information have been changed to protect the identities of CCL's clients. We note that some people prefer to identify as victims of violence and others as survivors of violence. When the term 'victim' is used in this research report this is intended to mean both victims and survivors.

## I. ABOUT CANBERRA COMMUNITY LAW



CCL (formerly Welfare Rights and Legal Centre) is a not-for-profit community legal centre that has been providing free, independent legal services to people on low incomes or facing other disadvantage in the ACT for over 30 years.

CCL has substantial legal practice experience and expertise in homelessness and social security law, as well as tenancy and disability discrimination law. CCL has developed this expertise through the provision of specialist legal advice, assistance and representation services to people in the ACT on low incomes.

CCL operates the following specialist programs:

- Street Law – legal support for people experiencing or at risk of homelessness;
- Night-Time Legal Advice Service – a general one-off legal advice clinic;
- Dhurrawang Aboriginal Human Rights Program – culturally appropriate legal service in specialist areas of law – social security, public housing and race discrimination; and;
- Socio-Legal Practice Clinic - provides a holistic service combining both legal and social work support.

CCL also provides a duty lawyer service at the ACT Civil and Administrative Tribunal for the residential tenancy list.

## II. ABOUT THE NATIONAL SOCIAL SECURITY RIGHTS NETWORK



The NSSRN is the peak community organisation in the area of social security and family assistance law, policy and administration. It has a funded secretariat and its members are community legal services across the country which provide free and independent legal assistance services directly to current and former social security and family assistance claimants and recipients.

The NSSRN's research and policy positions are informed by its members' unique access to client-related experience. This allows NSSRN to make meaningful contributions to a range of policy and service delivery areas.

## III. ABOUT THE AUSTRALIAN INSTITUTE OF ADMINISTRATIVE LAW



This research report has been funded by the Australian Institute of Administrative Law (AIAL) as part of its administrative law grants program. The AIAL is a National Institute which promotes discussion about the law and practice of government actions and accountability. The views expressed in the report are of CCL and NSSRN and are not necessarily those of the AIAL.

## B. Executive Summary

Social security recipients experience the highest rates of poverty in Australia with over half of Newstart Allowance recipients living below the poverty line<sup>1</sup> and most priced out of the private rental market. For many social security recipients, public housing is the only viable housing option for them. However, this research found that high demand and long waiting lists leave many people with nowhere to turn.

The client experiences examined in this research include people sleeping rough, people unable to pay their rent, people sleeping on couches, in their cars and in the living rooms of friends and family. Clients frequently sought assistance from CCL after relationship breakdowns, family tensions or overcrowding, which made their informal living arrangements untenable. Those in private rental accommodation said they faced eviction but had not yet been allocated a public housing property. Even people in public housing were extremely vulnerable to any changes in their personal circumstances, including unexpectedly high bills or other expenses, or costs associated with repairs or damage, as their Centrelink payments left no room for emergency expenditure.

The ACT Housing Strategy aims to '*encourage and promote a housing market that meets the diverse and changing needs of the Canberra community and enables a sustainable supply of housing for individuals and families at all income levels.*'<sup>2</sup> Addressing homelessness requires a strong public housing system which is able to facilitate the provision of housing assistance to those unable to afford or access other forms of housing. Yet this research found that:

- there was insufficient public housing for people who were unable to afford or secure other forms of housing;
- restrictive housing rules and eligibility criteria often prolonged homelessness or placed people at risk of homelessness;
- there was a lack of culturally appropriate housing for Aboriginal and Torres Strait Islander peoples, housing that met the needs of people with disabilities and housing that could accommodate pets; and
- the way in which Housing ACT's rental rebate and property maintenance program was administered often contributed to housing stress and placed tenancies at risk.

This research also found whilst *Housing and Community Services' Domestic and Family Violence Policy Manual 2015 (Domestic Violence Policy Manual)* recognised the impacts of domestic violence and provided clear guidance for responding, in practice, there were numerous examples of where the policy manual had not been applied resulting in, for example, women being pursued for property damage caused by the perpetrator of domestic violence.

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1 Davidson, P., Saunders, P., Bradbury, B. and Wong, M. (2018), Poverty in Australia, 2018. ACOSS/UNSW Poverty and Inequality Partnership Report No. 2, Sydney: ACOSS, <[https://www.acoss.org.au/wp-content/uploads/2018/10/ACOSS\\_Poverty-in-Australia-Report\\_Web-Final.pdf](https://www.acoss.org.au/wp-content/uploads/2018/10/ACOSS_Poverty-in-Australia-Report_Web-Final.pdf)> at 6

2 ACT Government, ACT Housing Strategy 'Vision and Goals' (online) <<https://www.act.gov.au/homes-housing/act-housing-strategy/vision-and-goals>>



The social security system is meant to be a safety net that can support people when they are financially and socially vulnerable. It should reduce their risk of becoming homeless and help them transition to secure housing.

However, overwhelmingly this research found that aspects of the Australian social security system increases, rather than decreases, the risk of homelessness. These include the:

- extremely low rate of Centrelink payments;
- tightening of eligibility requirements for Centrelink payments and increasing waiting periods. This leaves people without income support, or receiving less than they need to survive;
- harsh, and in some cases unfounded, raising and recovery of Centrelink debts; and
- onerous and punitive system of mutual obligations leading to payment suspensions and penalties.

The client experiences captured in the project data reveal a direct link between homelessness and their reliance on social security.

For example, social security recipients receiving Newstart Allowance, a payment which amounts to less than \$40 a day, are, for the most part, completely locked out of the private rental market. Those fortunate enough to be allocated a place in public housing often faced significant challenges maintaining their tenancies. Clients reported that the Newstart Allowance is insufficient to cover both their day to day expenses and their rent. As a result, they fell into rental arrears and accrued debts - placing their public housing tenancies at risk.

The research identified, that the intersection of social security and homelessness was more pronounced for certain demographic groups including single parents, people with disabilities, Aboriginal and Torres Strait Islander peoples, newly arrived migrants, and victims of domestic violence.







For example, people with serious and multiple disabilities who did not meet the criteria for the Disability Support Pension struggled to survive on the lower rate of Newstart Allowance. People with disabilities were also more likely to struggle to comply with mutual obligations under Newstart Allowance and find the largely automated targeted compliance framework system difficult to navigate. This meant they were forced to survive without any income when their payments were suspended for breaches. Further, with limited disability-accessible public housing available, and virtually no disability friendly crisis accommodation in the ACT, the inadequate and precarious nature of income support for people with disabilities on Newstart Allowance left them even more vulnerable to homelessness.

This report examines these areas of intersection and makes recommendations for both Centrelink and Housing ACT to better support all members of our community to maintain a decent standard of living, secure a safe and stable place to live, and reduce the risk of homelessness.

## C. Recommendations

**Recommendations 1 – 5** pertain predominately to Housing ACT and **Recommendations 6 – 9** to the Federal Government

### 1.1 Lengthy housing wait times

**Recommendation 1.1.** That Housing ACT accept applications for housing notwithstanding missing information. This is essential to enable Housing ACT to have accurate data regarding the number of people seeking public housing, to give an accurate indication of the length of time people are waiting to be housed and reduce the risk of people in need of housing not applying.

**Recommendation 1.1.2.** That Housing ACT works proactively with applicants to obtain the necessary documentation and correct any deficiencies in their application in recognition of the vulnerability of people seeking housing from Housing ACT.

**Recommendation 1.1.3** In line with the ACT Government Housing Strategy, that the ACT Government commits to increasing total available public housing stock (by creating new dwellings).

### 1.2 Prohibitive criteria to be placed on the Priority Housing wait list

**Recommendation 1.2.** That the Housing Needs Category Determination be amended to include 'at serious risk of homelessness' in the Priority Housing criteria and remove the supplementary requirement that an applicant must be able to sustain a tenancy.

### 1.3 Requirement to have been a resident of the ACT for six months

**Recommendation 1.3.** That Clause 9(1)(c) of the Housing Assistance Public Rental Housing Assistance Program 2013 be amended to state that each applicant is resident in the Territory and has been a resident for a period of six months immediately before the assessment date, or otherwise has a strong connection to the Territory community.

**Recommendation 1.4:** That the Domestic Violence Policy Manual be amended to explicitly state the six-month residency requirement will be automatically waived for interstate applicants who have moved to the ACT as a result of domestic violence.

### 2.1 Rental arrears due to incorrectly calculated rental rebate

**Recommendation 2.1.1** That Housing ACT accepts a tenant's statutory declaration as prima facie evidence of household composition in recognition of the difficulties tenants will often face in obtaining documentary evidence from ex partners and other people no longer living at the property.

**Recommendation 2.1.2.** That Housing ACT, on being notified of a reduction in household income, initiates a reassessment of the tenant's rebate.

**Recommendation 2.1.3.** That Housing ACT's Rent Rebate Policy be amended to state that where a tenant or household member does not receive a Centrelink payment or receives a reduced Centrelink payment due to failure to comply with their mutual obligations the rent rebate will be reassessed based on the reduced Centrelink payment. In the case of no Centrelink income, the tenant should be charged only the minimum rent (\$5 per week) during the penalty period.

## **2.2.Domestic violence and the rental rebate**

**Recommendation 2.2.1.** That a new section is inserted in the Rental Rebate Policy that Housing ACT should accept a tenant's statutory declaration as prima facie evidence of household composition. This would be consistent with Housing ACT's policy of accepting "a woman's personal account of domestic and family violence, including her understanding of its impact and associated safety risks".

**Recommendation 2.2.2.** That Centrelink adopts a more flexible approach to accepting information based on the individual circumstances of the social security claimant or recipient in response to the evidence from numerous inquiries that its online systems fail regularly and cause hardship to clients in remote or regional areas, or who are otherwise unable to access the online service.

## **2.3.Failing to renew rental rebate application**

**Recommendation 2.3.** That Housing ACT adopts a policy of proactively contacting tenants prior to their rebate expiry and assisting them to complete the rental rebate application.

## **2.4.Rental arrears and financial hardship due to unrectified rental repairs**

**Recommendation 2.4.1.** That Housing ACT prioritises and adequately resources the strict adherence to its legal obligations to make standard repairs within four weeks of notification and make urgent repairs as soon as necessary.

**Recommendation 2.4.2.** That Housing ACT commits to ensuring all its properties (existing and future) meet minimum energy efficiency standards to reduce the financial burden on already vulnerable tenants in accordance with a reasonable timeline which it makes publicly available.

**Recommendation 2.4.3.** That Housing ACT implements a policy of proactive compensation if it fails to comply with its legal obligations. For example, if a non-urgent repair is not completed within 30 days; Housing ACT is obliged to make an automatic rental credit of a set sum to the tenant per day. The policy rationale behind this reform would be to prevent the externalising of costs to the tenant (who is expending money to deal with the defect) and to build the cost of inaction into Housing ACT's model of operation.

## **3.1 Domestic violence and debt**

**Recommendation 3.1.1** That Housing ACT undertakes internal training on its Domestic Violence Policy with a view to ensuring the policy is applied consistently and a woman's account of the domestic violence she has experienced is accepted.

**Recommendation 3.1.2:** That Housing ACT prioritises ensuring that victims of domestic violence have safe and secure housing, providing tenants with assistance to obtain supportive documents, or additional evidence, where necessary but ensuring this is not a barrier to accessing housing in the first instance.

### 3.2 Domestic violence, children, and housing allocation

**Recommendation 3.2.** That the ACT Community Services Directorate should make the following changes to the Property Size Guidelines and the Domestic Violence Policy Manual:

- a. Amend the Property Size Guidelines to add new documents to the list of documents which may be relied upon to prove child contact arrangements. These documents could include correspondence from a solicitor or the Federal Circuit Court or Family Court confirming that an individual is in the process of seeking parenting orders that, if made, would result in a child or children spending time overnight with the individual.
- b. Insert a sub-section under “section 3: procedures” in the Domestic Violence Policy Manual requiring that, in circumstances of family and domestic violence and where Housing ACT is presented with the aforementioned document, the Commissioner should exercise discretion and allocate additional bedrooms for children to account for children not currently in a woman’s care.

### 4.1 Lack of culturally appropriate housing

**Recommendation 4.1.** That Housing ACT commits to increasing its available housing stock in light of the number of Aboriginal and Torres Strait Islander families seeking public housing and ACT’s status as a ‘Refugee Welcome Zone’

**Recommendation 4.1.2.** That Housing ACT conducts an urgent review of its standard, high needs and priority waiting lists for families requiring larger dwellings, and the length of time these families have been waiting for a dwelling to be allocated and increase available stock accordingly.

### 4.2 Universal, accessible housing

**Recommendation 4.2.1.** That Housing ACT considers that ensuring properties are suitable and accessible for people with disabilities is the highest priority when weighing up policy considerations (such as number of bedrooms etc.)

**Recommendation 4.2.2.** That Housing ACT recognises as a fundamental principle that every tenant is entitled to the full use and enjoyment of their home regardless of their disability.

**Recommendation 4.2.3.** That Housing ACT undertakes spot purchases where there are known deficiencies in public housing stock in order to ensure that people with disabilities are housed in appropriate dwellings in a timely manner.



## 4.3 Pets

**Recommendation 4.3.** *That Housing ACT in recognition of the important role that pets play in tenants' lives, considers the requirements of a tenant's pets when determining whether a housing offer is 'valid.'*

## 5. Incarceration and Homelessness

**Recommendation 5.1.** *That Housing ACT reviews its policy and practice of interacting with incarcerated tenants to ensure that tenants are not pressured to surrender their tenancies, and to require that Housing ACT staff advise tenants of their right to obtain legal advice before deciding whether to relinquish their tenancy. Moreover, should a tenant elect to obtain legal advice, Housing ACT should proactively refer them to CCL for independent legal advice.*

**Recommendation 5.2.** *That the Housing ACT policy be amended as follows:*

- a. *To allow tenants to be absent from their property for a twelve-month period during which Housing ACT maintains the property and ensures that it is secure.*
- b. *To enable an extension of the twelve-month period to be considered on a case by case basis.*
- c. *Where an extension cannot be granted, and the tenant loses their tenancy (through relinquishment or eviction proceedings) Housing ACT is required to move their name onto a special register and commence identifying suitable Housing ACT properties between three and six months prior to expected release, with the view of an offer of accommodation being made three months prior to release.*
- d. *The accommodation offered is suitable to the needs of the tenant and consideration is given to the impact of high density and high crime areas on those seeking to rehabilitate.*

## 6.1 Newstart Allowance is too low

**Recommendation 6.1.** *That the following reforms be implemented:*

- a. *An immediate raise Newstart Allowance by at least \$75;*
- b. *An increase to Rent Assistance payments by 30%;*
- c. *That Newstart Allowance be indexed twice per year to wage levels and the consumer price index;*
- d. *The Family Tax Benefit should be increased for single parents with older children; and*
- e. *Single parents on Newstart Allowance should receive the same minimum \$75 increase as single people without children.*

## 6.2 Newstart is too onerous

**Recommendation 6.2** That the following reforms be implemented:

**Recommendation 6.2.1.** Amend section 3.2.8.50 of the Social Security Guide to include that any family violence must be considered when designing an appropriate job plan (as it is when considering exemptions).

**Recommendation 6.2.2.** Amend 3.2.11.40 of the Social Security Guide to clarify that ongoing homelessness should be considered as a special circumstance for the purposes of granting an exemption (i.e. even if the circumstances are not 'unforeseen and unavoidable').

**Recommendation 6.2.3.** Abolish the Targeted Compliance Framework and punitive compliance mechanisms and replace with tailored support services to assess the strengths and barriers faced by an individual to finding work. At a minimum, decisions about compliance, demerits, penalties and exemptions should rest with Centrelink (not Employment Service Providers) and be subject to administrative review.

**Recommendation 6.2.4.** Adequately resource Centrelink staff to provide oversight to Employment Service Providers and ensure that they are acting in accordance with the Social Security Guide and exercising their discretion fairly and transparently when making decisions that affect social security recipients.

**Recommendation 6.2.5.** Update training to Centrelink customer-facing staff in light of any changes made in response to the above recommendation.

## 7.1 Centrelink debts

**Recommendation 7.1** That the following reforms be implemented:

**Recommendation 7.1.1** That section 6.7.3.40 of the Social Security Guide, which outlines the conditions under which special circumstance provisions allow for the waiver of a debt, be amended to include homelessness as a specific factor to be considered.

**Recommendation 7.1.2.** That section 6.7.3.40 of the Guide to Social Security Law be amended to clarify that a history of family and domestic violence must be considered in relation to debt waiver, particularly where a person has accrued a debt under duress or coercion, and consequently statements or representations may not constitute 'knowledge' by the debtor.

**Recommendation 7.1.3.** That Centrelink amend its policy to allow for the reduced debt withholding arrangement to continue uninterrupted where the person states there has been no change in their financial circumstances.

## 7.2 Robodebts

**Recommendation 7.2.** *That the system of averaging ATO reported annual income across 26 fortnights immediately ceases. However, while Robodebt system continues to operate, we recommend the following:*

- a. *individuals who receive Centrelink debt notices are given more information about the basis of the debt, including copies of their debt schedule setting out their alleged overpayments across each fortnightly payment period;*
- b. *if there is insufficient evidence to prove the debt, that the Department refrains from raising a debt or taking any debt recovery action until such evidence is obtained by the Department using its power to request information directly from financial institutions;*
- c. *The recovery of old debts should not be pursued especially where these debts allegedly accrued more than 6 years ago, particularly in cases where it is obvious that the person is of old age, suffering from ill health, living with disabilities or in an obvious state of hardship;*
- d. *The Robodebt system should not be used for people Centrelink has flagged as vulnerability indicated; and*
- e. *Compliance officers and external debt collection agencies chasing recovery of social security debts, should be trained in communicating with vulnerable people so they can demonstrate greater understanding and compassion when pursuing debts from vulnerable people.*

## 8.1 Income Maintenance Periods and Compensation Preclusion Periods

**Recommendation 8.1.1** *That the following reforms be implemented:*

- i. *Improve awareness of Income Maintenance Periods by requiring employers to report all cases of redundancy to Centrelink (or at least those which might involve a large lump sum and longer than average Income Maintenance Periods);*
- ii. *Explore options of flagging high risk Compensation Preclusion Period matters (e.g. those involving individuals where there is knowledge of pre-existing gambling or drug/alcohol addiction) and facilitate proactive outreach;*
- iii. *Re-examine the role of employers and lawyers in intervening early and raising awareness around the purpose and responsibilities of managing a lump sum, and its relationship with the income support system;*
- iv. *Improve information and financial guidance for people with lump sum payments, perhaps through the development of tailored information products (for use by existing outlets of financial information e.g. the Financial Information Service and MoneySmart); and*
- v. *Reconsider Centrelink's communications strategy in relation to Income Maintenance Periods and Compensation Preclusion Periods to include more regular and informative communications, Easy English and using wording and framing that applies behavioural insights.*

**Recommendation 8.1.2.** Amend the 'Straitened (sic) financial services' section 4.13.4.20 of the Social Security Guide to include under 'general principles' that in circumstances where the lump sum payment is used to pay off debts/arrears or immediate, unavoidable bills this should not count against an applicant seeking a full or partial waiver of their Income Maintenance Period or Compensation Preclusion Period as failure to pay off debts/arrears further entrenches poverty and increases the risk of homelessness.

**Recommendation 8.1.3.** Amend the 'Compensation Part of Lump Sum 50% Rule' section 4.13.2.30 of the Social Security Guide to exclude any debts/arrears raised against the applicant from the calculation of preclusion periods in order to avoid entrenching the applicant's hardship.





**Recommendation 8.1.4.** Insert into section 4.13.2.30 of the Social Security Guide that consideration be given to full or partial waivers of the Compensation Preclusion Period in circumstances where the injury attracting compensation is not the sole basis on which the claim for social security is made.

## 8.2 Newly Arrived Residents Waiting Period

**Recommendation 8.2.** That the Newly Arrived Residents Waiting Period, especially for Special Benefit which is designed to be a payment of last resort, be removed or at least reduced.

## 8.3 Unemployment Non-payment Periods

**Recommendation 8.3** That the Social Security (Administration) (Ending Unemployment Non-Payment Periods – Classes of Persons) (DEEWR) Specification 2009 (No. 1) be amended to include individuals experiencing domestic and family violence as a specific class of persons for whom unemployment non-payment periods can be terminated.

## 9. New Zealand Residents

**Recommendation 9.** That the Federal Government review the particularly harsh treatment of New Zealand permanent residents living in Australia who experience a substantial change of circumstances and find themselves in extreme financial hardship, enabling them to access Special Benefit where there has been a 'substantial change of circumstances beyond their control' so they are treated equitably with newly arrived migrants.

## D. Project Background, Aims and Methodology

### I. PROJECT BACKGROUND

In August 2018, NSSRN published its research report, *'How well does Australia's social security support victims of domestic violence'* (**domestic violence research report**).<sup>3</sup> This report resulted in changes being made to the Social Security Guide<sup>4</sup> in January and March 2019 to improve access to support for people experiencing family and domestic violence. One of the most striking observations from the domestic violence research report was the high proportion of cases that involved clients experiencing or at risk of homelessness.<sup>5</sup>

The domestic violence research report also made recommendations which, if implemented, would contribute to a reduction in homelessness. It recommended reviewing the Newly Arrived Residents Waiting Period and increasing the Crisis Payment. It further recommended that Centrelink put in place proactive strategies to identify people not receiving the Family Tax Benefit payments and to assess their eligibility for the Child Support exemption.

This research report builds upon the work of NSSRN's domestic violence research report. It examines the link between social security measures and homelessness in depth and across all client demographics.

### II. PROJECT AIMS

The two central aims of this research report are to:

1. Contribute to the existing body of research about the ways in which the social security and public housing systems may prolong or contribute to homelessness; and
2. Develop a set of recommendations to reform the legislation, policies, rules and processes of both Housing ACT and Centrelink to reduce the risk of homelessness amongst vulnerable people.

### III. PROJECT METHODOLOGY

The primary research for this project involved an analysis of all client advice files produced by CCL's Social Security and Tenancy program (**SS&T program**)<sup>6</sup> between 1 July 2018 to 30 June 2019 (**the project period**). During the project period the SS&T program assisted 567 unique clients. Lawyers frequently assisted these clients on multiple occasions with multiple different legal issues. The information reviewed included legal advices, task assistance services (the completion of a one off and discrete piece of work) and casework.

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3 Cameron, Sally, National Social Security Network 'How well does Australia's social security support victims of domestic violence', (NSSRN Domestic Violence Report) August 26 2018 <<http://www.nssrn.org.au/briefing-paper/family-violence-research/#media>>

4 Social Security Guide, Australian Government, released 20 September 2019 <<https://guides.dss.gov.au/guide-social-security-law>>

5 NSSRN Domestic Violence Report, above n2. This was the case in over 60% of cases examined.

6 The SS&T program includes Housing Law, Social Security Law, Socio-Legal Practice Clinic, Dhurrawang Aboriginal Human Rights Program and the ACT Civil and Administrative Duty Lawyer services.

Client experiences during the project period were categorised according to whether they involved an active Housing ACT tenancy, an application for public housing or neither (in which case they were considered outside of the scope of the research). They were further categorised according to whether they were in receipt of a Centrelink payment, had applied for a Centrelink payment, or needed assistance with a debt or appeal regarding a Centrelink payment. Finally, demographic information such as age, ethnicity, parenting status, gender and homelessness status was collected.

Primary research was supported by a forum discussion with CCL staff members and individual interviews with CCL lawyers working in the SS&T program. Feedback was collected from six solicitors working in the areas of housing, homelessness, social security and disability discrimination. This feedback has been integrated into the report.

Primary research was supported by a literature review of recent Australian research, a review of Centrelink and Department of Human Services' resources, a review of Housing ACT policies and other data (such as statistics) relating to homelessness, domestic and family violence, poverty and social security. Information identified during those reviews is included in the body of this report.

For ease of communication, the report has broadly been divided into two sections – the first focusing on issues pertaining to Housing ACT, and the second to Centrelink. NSSRN hope to expand this research in the future, leveraging the experience of its members organisations to examine the impacts of the social security and public housings, and their intersection with homelessness, nationwide.



## E. Who is at Risk of Homelessness?

This research examined the experiences of 567 CCL clients who sought legal help about public housing, social security and homelessness.

An analysis of the demographics of those 567 clients revealed that:

Demographic	
Aboriginal or Torres Strait Islander	81 = 14.3%
Survivor of Domestic Violence	69 = 12.2%
Single Parent	168 = 29.6%
Incarcerated	19 = 3.4%
Mental Health or Disability	115 = 20.3%
Female	351 = 61.9%
Refugee or recent arrival	14 = 2.5%

Each of these categories represents an overrepresentation of that demographic in the broader ACT community.

Particularly significant is the overrepresentation of Aboriginal and Torres Strait Islander peoples who make up only 1.9% of the general ACT population but 14.3% of the client base seeking advice about public housing, homelessness and Centrelink. The overrepresentation of people who have been recently incarcerated was also pronounced, with advice being given to 19 individuals during the project period (from a total prison population at the Alexander Maconochie Centre of approximately 490 people).

There is also an overrepresentation of women, single parents and survivors of domestic violence. This is unsurprising considering extensive research which has found that domestic violence is the leading cause of homelessness for women in Australia,<sup>7</sup> and NSSRN's recent domestic violence research report.

The prevalence of mental health conditions and other disabilities was also marked amongst the sample. One in five of the clients who sought legal assistance from CCL during the project period identified as having a disability or a mental health condition. This is consistent with research that identifies a two-way causal relationship between poor mental health and housing insecurity or homelessness.<sup>8</sup> Anecdotally, many of the advice and case notes reviewed in writing this research report included instructions from clients that their housing situation exacerbated their mental health conditions.

These demographic statistics are useful in highlighting some broad trends but should be treated with caution due to the limited, self-selected sample of individuals who sought the assistance of CCL.

7 Australian Institute of Health and Welfare, Domestic & family violence & homelessness 2011–12 to 2013–14. Web Report (3 February 2016) Australian Institute of Health and Welfare; NSW Women Refuge Movement and the UWS Urban Research Centre, 'The impact of housing on the lives of women and children post domestic violence crisis accommodation' (Report, the NSW Women Refuge Movement and the UWS Urban Research Centre February 2009) <[http://www.uws.edu.au/\\_data/assets/pdf\\_file/0011/69590/Microsoft\\_Word\\_-\\_Finalreport.pdf](http://www.uws.edu.au/_data/assets/pdf_file/0011/69590/Microsoft_Word_-_Finalreport.pdf)>

8 The Australian Housing and Urban Research Institute (AHURI), 'Journeys Home Survey' 8 July 2019, Web Report <<https://www.ahuri.edu.au/policy/ahuri-briefs/understanding-links-between-mental-health-housing-homelessness>>



# 1. Housing ACT, Centrelink and Homelessness

Data extracted from CCL client files showed a strong correlation between the receipt of social security payments and residence in public housing and/or homelessness. An examination of the 567 clients' matters who sought legal assistance from CCL's programs between 1 July 2018 and 31 June 2019 showed:

Currently homeless	93 (does not include people who have secured ongoing, though temporary, accommodation in refuges or crisis accommodation although arguably these clients are also homeless)
Currently living in public housing	331
Not currently on a public housing waiting list but seeking to be	62
Reliant on Centrelink or seeking assistance to obtain Centrelink	394

Clients who relied on social security payments as their primary source of income consistently reported being unable to enter the private rental market due to their financial insecurity. This left them with limited options - crisis accommodation, informal living arrangements with family or friends, or securing a place in public or community housing.

Clients seeking access to public housing faced numerous barriers to securing and maintaining tenancies with those frequently arising in the client matters over the project period including: Lengthy wait times for public housing allocation, barriers to entry for some of the most vulnerable members of the community, Housing ACT properties being kept in poor condition and issues regarding the rental rebate and rental arrears. Further it was clear that the demand for housing is far greater than available stock at any given time. This, and other policy settings, has contributed to the significant barriers that people face when trying to access public housing in the ACT.

## 1.1 LENGTHY WAIT TIMES

The *Housing Assistance Public Rental Housing Assistance Program 2013 (the Program)*<sup>9</sup> sets out the administrative processes governing Housing ACT tenancies and applications for housing in the ACT. This is a Disallowable Instrument made under the *Housing Assistance Act 2007*. In the ACT public housing is provided and managed by Housing and Community Services ACT (**Housing ACT**) a branch of the Community Services Directorate which is responsible for a wide range of service delivery and policy functions in the ACT.

<sup>9</sup> *Housing Assistance Public Rental Housing Assistance Program 2013 (No 1) (ACT)* < <https://www.legislation.act.gov.au/View/di/2013-52/current/PDF/2013-52.PDF>>

The Needs categories and the criteria for allocating an application to a category are set out in the *Housing Assistance Public Rental Housing Assistance Program (Housing Needs Categories) Determination 2011 (No 2)* (Housing Needs Category Determination).

There are three public housing waiting list categories: Standard, High Needs and Priority. An approved application will be placed on the waiting list in the Standard Category, unless the applicant is able to demonstrate a more urgent need.

To be placed on the High Needs list an applicant must demonstrate '*significant needs that cannot be resolved by any reasonable means other than the provision of public housing within a reasonable time frame.*'

To be placed on the most urgent list, Priority, an applicant must demonstrate '*exceptional, urgent and critical needs that cannot be resolved by any reasonable means other than the early provision of social housing.*'

For those on the Priority list, an offer of housing is made on a needs basis (rather than in the chronological order of the assessment date which is used for the other two categories). Initially a time frame of 90 days was set for allocating applicants in the Priority category, but Housing ACT no longer offer any time frame because economic conditions have led to a large increase in Priority applications without a corresponding increase in housing stock.

The table below sets out the ACT Government's record<sup>10</sup> of current average waiting times.

Application Category	Average Waiting Times (days) <sup>11</sup>
Priority Housing	151
High Needs Housing	625
Standard Housing	1079

The table shows that, except for the Priority Housing wait list, it can take years for an individual to be housed in the ACT even after their public housing application is accepted. There are refuges and crisis accommodation options offering placements from 2 weeks in duration to 3 months, but numbers are extremely limited. In some cases, individuals or families are offered rolling 3-month occupancy agreements while they wait allocation of public housing, however, this is not always the case.

There are also strict limits on eligibility. For example, most women's refuges will not accept boys over the age of 12. Moreover, single men with children can only access crisis accommodation from a limited number of family accommodation services; and the caravan park is prohibitively expensive for stays of any substantial length.

10 ACT Government Community Services (online) Accessed 23 October 2019 <[https://www.communityservices.act.gov.au/hcs/services/social\\_housing/waiting\\_lists](https://www.communityservices.act.gov.au/hcs/services/social_housing/waiting_lists)>

11 CCL lawyers expressed the view that the waiting times are substantially longer than the ACT Government estimates. They believe this is because people are 'falling off' the waiting lists before being housed. On 4 July 2018, the Canberra Times reported that 3000 ACT public housing applicants had been removed from the waiting lists in four years see Daniel Burton, 'More than 3000 public housing applications removed in three years' *Canberra Times* (online) 4 July 2018 <<https://www.canberratimes.com.au/story/6015287/more-than-3000-act-public-housing-applications-removed-in-four-years/>>

The Priority Housing list is the only wait list that offers a possible short-term housing option for a person facing imminent homelessness and yet the criteria is strict, and the process is lengthy and onerous. This often results in vulnerable people waiting on the High Needs list for prolonged periods increasing their risk of homelessness. Take the example of **Rodney** outlined below.

**Rodney** is a single male with complex and ongoing mental health issues which make it impossible for him to work. He relies on the Disability Support Pension to buy groceries, access public transport and meet his day to day needs, and cannot access the private rental market. Rodney has been living with his brother for the last 2 years. Due to increased tensions between the siblings, his brother has asked him to leave. Rodney has been classified as 'High Needs' by Housing ACT but has not yet been allocated a house. Rodney faces imminent homelessness, however, at the time of the publication of this report the average wait time on the High Needs waiting list is over 600 days.

Another client group that persistently presented to CCL for advice were single mothers who were surviving on a single Centrelink income after domestic violence and relationship breakdown. The experience of **Sally**, below, is indicative of the multiple financial pressures faced by women fleeing domestic violence and the lack of real housing options available to them beyond temporary, crisis accommodation which doesn't offer security or stability for a victim of domestic violence or her children.

**Sally** is the single mother of three children. Sally had been renting privately with the combined income of herself and her ex-partner. The relationship ended after Sally became the victim of domestic violence. Sally remained in the property post the relationship breakdown but has been unable to cope financially and now owes over \$9000 worth of rental arrears as well as several other debts. Sally has been issued with a Notice to Remedy and faces eviction.

Housing ACT placed Sally on the High Needs list, but due to long waiting times Sally is concerned that she has no way to pay rent, repay her substantial rental arrears and faces eviction. Sally is enduring significant financial hardship and has limited capacity to afford short term accommodation for herself and her children if evicted. Sally sought help from CCL because she did not know where to turn.

Sally's story of domestic violence, relationship breakdown, financial hardship and homelessness was a familiar one amongst the sample examined in the completion of this research report.

Anecdotal evidence provided by CCL lawyers was that, in practice, wait times do not reflect the complete picture. In CCL's experience, Housing ACT refuses on occasion to accept housing applications if they are not completed correctly, and applicants are handed back their applications without a formal decision being made. This can lead to months of delay as applicants try to gather more information, obtain bank statements and/or correct any deficiencies in the application without assistance. Questions were also raised by CCL lawyers about how tenants who 'drop off' the wait lists (but were not housed) were recorded.

**Recommendation 1.1.1** *That Housing ACT accepts applications for housing, notwithstanding missing information. This is essential to enable Housing ACT to have accurate data regarding the number of people seeking public housing, to give an accurate indication of the length of time people are waiting to be housed and reduce the risk of people in need of housing not applying.*

**Recommendation 1.1.2.** *That Housing ACT works proactively with applicants to obtain the necessary documentation and correct any deficiencies in their application in recognition of the vulnerability of people seeking housing from Housing ACT.*

**Recommendation 1.1.3** *In line with the ACT Government Housing Strategy, the ACT Government commit to increasing total available public housing stock (by creating new dwellings).*

## 1.2 PROHIBITIVE CRITERIA TO BE PLACED ON THE PRIORITY HOUSING WAIT LIST

'Housing First' is an approach to social housing policy which recognises that 'everyone deserves a home of their own, regardless of personal circumstances.'<sup>12</sup> It acknowledges that it is almost impossible to engage with support services and overcome challenges without a fixed address. Without basic needs of food, shelter and water, an individual cannot address their functional problems, including obtaining employment.<sup>13</sup> There is overwhelming evidence that stable housing provides the basis for 'consistent daily routines, privacy and identity construction, a stable platform for a less stigmatised and more normal life.'<sup>14</sup>

Yet, Housing ACT requires applicants for Priority Housing to demonstrate exceptional need coupled with a proven capacity to sustain a tenancy. In CCL's experience this presents a two-fold hurdle for the very vulnerable.

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<sup>12</sup> Chelseanette, Waagemakers, Schiff and Rebecca A.L. Schiff, 'Housing First: Paradigm or Program?' (2014) 23 (2) *Journal of Social Distress and the Homeless* 80, 80

<sup>13</sup> Ibid, 81

<sup>14</sup> Volker Busch-Geertsema, 'Housing First Europe' (Final Report, European Union Programme For Employment and Social Security, 2013), 8



Firstly, it is CCL's experience that in most cases the applicant needs to be actually homeless, rather than at risk of homelessness, in order to meet the threshold. In practical terms this often requires the applicant to be living in crisis accommodation when their application is being assessed for the Priority waiting list. This is inconsistent with principles of Housing First and a preventative approach to homelessness which recognises the inherent harm, stress and trauma that homelessness can cause. The example of **Emma** below highlights the lack of support offered to those who need assistance to *prevent* homelessness from occurring.

**Emma** is a single mother of six children. She relies solely on Centrelink payments to support herself and her children. She is paying private rent of \$1120 per fortnight and is making regular repayments to gas, electricity and water debts. Emma cannot afford to buy adequate food for her family and pay these costs. She has sought help from Onelink, the homelessness support service in the ACT, but has been advised that, as she is not presently homeless, they cannot help. Emma is at risk of becoming homeless because of her low Centrelink income and high expenses but she has been unable to access assistance from the ACT Government to safeguard her tenancy or be rehomed in an affordable public housing property.

Secondly, the requirement to demonstrate that the applicant can sustain a housing tenancy is a barrier to some of the most vulnerable applicants such as chronically homeless Canberrans, very young applicants without established rental histories, applicants who have spent large periods of time institutionalised in prison or mental health facilities and new migrants or refugees.

**Laura** is a seventeen-year-old mother of a two-year-old child. She became homeless after her relationship broke down with her mother who she was living in an overcrowded Housing ACT property. Laura sought assistance before she moved out of her mother's property from OneLink. However, OneLink advised they could not assist her with a referral to a refuge as she was not presently homeless. Laura was assisted by a family member to secure temporary accommodation through EveryMan.

Laura attempted to secure a place on the priority housing list but faced significant hurdles demonstrating her ability to sustain and manage a tenancy. As a seventeen-year-old, Laura does not have a rental history and EveryMan instructed they were unable to provide her with supporting documents until she had been at the refuge for a three-month period.

Whilst the need to triage applicants according to need is understood, the requirement to demonstrate actual homelessness and an ability to sustain a tenancy results in some of the most vulnerable housing applicants falling through the cracks. It also places an additional, and unnecessary, burden on emergency and crisis accommodation. Accordingly, it is recommended that the legislative guidelines and policy settings be changed.

**Recommendation 1.2.** *That the Housing Needs Category Determination<sup>15</sup> be amended to include 'at serious risk of homelessness' in the Priority Housing criteria and remove the supplementary requirement that an applicant must be able to sustain a tenancy.*

In practice, this would require Housing ACT to allocate a tenancy and, where needed, contract support services to assist the tenant for the initial period of their tenancy. This model would remove the need, and expense, of temporary crisis accommodation routinely being required prior to being allocated a dwelling and is more closely aligned with Housing First principles.

### 1.3 REQUIREMENT TO HAVE BEEN A RESIDENT OF THE ACT FOR SIX MONTHS

Clause 9 of the Program<sup>16</sup> sets out the eligibility criteria which includes a requirement that each applicant has lived in the ACT for the six months immediately prior to submitting their public housing application. While this requirement can be waived in cases of severe hardship, it is CCL's experience that it presents an unnecessary barrier to people accessing housing who have established connections within the ACT community and are experiencing, or at risk of, homelessness.

Several applicants sought advice from CCL during the project period about overcoming the six-month residency requirement. Undoubtedly there would be others who faced the same barriers but did not seek legal advice under the misapprehension that the requirement could not be waived.

**Tina** is a single mother of a twenty-month year old infant and school aged daughter. She moved to Canberra from regional NSW three months prior to approaching CCL. She made the move after struggling with a lack of familial and social supports in NSW. Tina relies solely on the Parenting Payment (Single) and Family Tax Payment benefit to support herself and her children. Tina and her children are living in temporary accommodation in the caravan park. However, the overcrowded conditions (no separate bedrooms), lack of cooking facilities and lack of space for her children to play is harming their mental health.

Although Tina has only been in the ACT for three months, she has extensive social networks in Canberra. Her daughter is studying at a Canberra High School and her son is at family day care in the ACT. Tina has friends who live in Canberra who babysit her children and provide her with emotional support. Tina's GP is also in Canberra. Tina approached CCL for assistance to obtain a waiver of the six-month residency waiting period because her current housing arrangement is harming her children, she cannot afford a private rental and she does not want to leave the ACT where all her social supports are located.

<sup>15</sup> Housing Assistance Public Rental Housing Assistance Program (Housing Needs Categories) Determination 2011 (No 2)

<sup>16</sup> above n8

Broadening the residency requirement to enable a person's connection to the ACT to be considered if they have not otherwise met the six-month residency criteria would reduce the risk of vulnerable people becoming homeless.

Over the project period there were also several women who approached CCL for advice having fled to the ACT from another jurisdiction to escape domestic violence. These women found themselves unable to access public housing due to the six-month residency requirement.

**Clare** is a young, Aboriginal, single mother of three. She fled Queanbeyan after her ex-partner (but not the father of her children) perpetrated violence against her. Clare is in a shared custody arrangement with her children's father who lives in the ACT. She requires the consent of their father if they were to move away from Canberra. Clare is supportive of her children maintaining a relationship with their father and seeing him regularly. As such, she is trying to establish herself in Canberra and provide a home for her children here. Clare and her children are currently homeless and are couch surfing between the houses of her father and a friend. Clare spent her childhood and some of her adolescence in Canberra. She has a strong connection to the community, the support of her father and the support of her children's father in the ACT.



**Recommendation 1.3.** *That Clause 9(1)(c) of the Housing Assistance Public Rental Housing Assistance Program 2013<sup>17</sup> be amended to state that each applicant is resident in the Territory and has been a resident for a period of six months immediately before the assessment date, or otherwise has a strong connection to the Territory community.*

**Recommendation 1.4:** *That the Domestic Violence Policy Manual<sup>18</sup> be amended to explicitly state the six-month residency requirement will be automatically waived for interstate applicants who have moved to the ACT as a result of domestic violence.*

This would be consistent with the ACT Government's broader commitment to tackling domestic violence.

The current residency requirement also has the (presumably unintended) effect of imposing a six-month waiting period on long-term residents of the ACT before they can apply for public housing if they spend more than six months away from the ACT on a temporary basis. For example: to visit family overseas, temporarily relocate to Queanbeyan in the event of homelessness or to access cheaper housing due to financial hardship or perform caring duties interstate.

Implementing recommendation 1.3 will also benefit former and returning ACT residents.

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<sup>17</sup> above n8

<sup>18</sup> ACT Government Housing and Community Services, Domestic Violence Policy Manual (online) < [https://www.communityservices.act.gov.au/\\_\\_data/assets/pdf\\_file/0006/798513/Domestic-and-Family-Violence-Policy-Manual-2015-Designer-Version.pdf](https://www.communityservices.act.gov.au/__data/assets/pdf_file/0006/798513/Domestic-and-Family-Violence-Policy-Manual-2015-Designer-Version.pdf) >



## 2. Rental Arrears and Homelessness

Low Centrelink payments contributed to the overall financial vulnerability of the majority of clients CCL saw during the project period. Compounding factors included the presence of domestic violence, contact with the criminal justice system, and issues arising from automated Centrelink processes.

When people are subsisting on meagre incomes, they often do not have discretionary funds to accommodate a change in their circumstances, errors on the part of Housing ACT or Centrelink, costs associated with defective properties/repairs, or the repayment of debts.

Not being allocated the rental rebate, or it being calculated at the wrong rate, can lead to tenants falling into rental arrears which places tenants at risk of eviction.

### 2.1 RENTAL ARREARS DUE TO INCORRECTLY CALCULATED RENTAL REBATE

Thirty-one public housing tenants sought CCL's advice about their rental rebate during the project period. Many of them fell into rental arrears as a result.

Rent rebates are ACT Government subsidies based on weekly income that assist public housing tenants to meet the market rent of their property. Rent rebates ensure eligible tenants pay no more than 25% of their gross household income towards rent. Housing ACT tenants are required to apply to renew their rent rebate every six or twelve months to avoid a lapse in coverage.

A qualitative review of these cases has revealed that rent rebate errors often arose from Housing ACT incorrectly assessing income or household composition. Tenants also fell into rental arrears as a result of a lapse in rebate.

#### 2.1.1 MISCALCULATION OF RENTAL REBATE BY HOUSING ACT

In many of the cases reviewed, rental rebate issues were created or exacerbated by a failure of communication between Housing ACT and the client, or Centrelink and the client.

For example, the two case studies below highlight instances where the client had proactively communicated with Housing ACT about their circumstances, but Housing ACT had either refused to accept the tenant's notification or had failed to update the information provided. In both instances this resulted in tenants being charged the incorrect rent rebate and accruing rental arrears as a result.

**Sarina** was working part time at a community centre and was in receipt of the Age Pension. She notified Housing ACT in writing when she retired and stopped working at the community centre. She sent the notification to Housing ACT together with other documentation.

Housing ACT acted on the other documentation but failed to reassess her rebate. As a result, Sarina continued to be charged the higher rate of rent despite receiving only the Age Pension. Sarina appealed this decision on two occasions and was eventually successful in having the rebate reassessed and backdated. Housing ACT's failure to reassess Sarina's rebate meant Sarina had to navigate two appeal processes which created additional, unnecessary financial and emotional stress and had the capacity to place her tenancy at risk.

In the second example below, Housing ACT acknowledged the information provided by the client but decided not to accept the veracity of the information. This resulted in extreme financial hardship for Sarah and placed her tenancy at risk.

**Sarah** is a single, Aboriginal mother of six children. She has never lived with the father of her children / ex-partner. Based on the report of a neighbour, Housing ACT decided that Sarah's ex-partner was living with her in her home and calculated the rental rebate accordingly. This resulted in almost the entirety of Sarah's Centrelink payment being paid to Housing ACT, leaving Sarah unable to purchase groceries or essential items for her children. This issue persisted for over a year despite Sarah providing Housing ACT with a statutory declaration and evidence of her Parenting Payment (Single) benefit she was receiving from Centrelink. Sarah was eventually granted the correct rental rebate but not until after substantial intervention from CCL and over a year of back and forth with Housing ACT.

**Recommendation 2.1.1** *That Housing ACT accepts a tenant's statutory declaration as prima facie evidence of household composition in recognition of the difficulties tenants will often face in obtaining documentary evidence from ex partners and other people no longer living at the property.*

**Recommendation 2.1.2.** *That Housing ACT, on being notified of a reduction in household income, initiates a reassessment of the tenant's rebate.*

Tenants also faced significant difficulties maintaining their rent payments when their Centrelink payments were reduced or stopped as a result of failing to comply with their mutual obligations. In CCL's experience, many of the clients falling foul of Centrelink requirements are also struggling with complex mental illness, disability and other factors that substantially affect their ability to manage day to day tasks. Loss or reduction of Centrelink benefits due to difficulties meeting their mutual obligations placed tenants at significant risk of eviction. This risk was compounded when Housing ACT continued to assess their rent based on their payment amount prior to the imposition of the penalty, even though in reality they were not receiving any income for that period.

**Recommendation 2.1.3.** *That Housing ACT's Rent Rebate Policy<sup>19</sup> be amended to state that where a tenant or household member does not receive a Centrelink payment or receives a reduced Centrelink payment due to failure to comply with their mutual obligations the rent rebate will be reassessed based on the reduced Centrelink payment. In the case of no Centrelink income, the tenant should be charged only the minimum rent (\$5 per week) during the penalty period.*

## 2.2 DOMESTIC VIOLENCE AND THE RENTAL REBATE

A recurring theme, as flagged earlier in this research report, is the multifaceted difficulties faced by women fleeing domestic violence. In conducting this research, several case files were examined which involved women ending relationships with their violent ex-partners and subsequently being unable to provide Housing ACT with their ex-partners' new address or contact details as it was too dangerous for them to make contact. As a result, Housing ACT would not accept their notification of changed circumstances and the women continued to be charged rent as if her ex-partner was still living in the Housing ACT property with her.

**Yasmin** is the single mother of seven children. She is currently living in a four-bedroom Housing ACT property. She fled her violent husband and has had no contact with him since. After the relationship ended, Yasmin attempted to apply for Parenting Payment Single. Initially, she was unable to submit the application online because she could not fill in the section about where her ex-husband was living as she did not have that information and it was a mandatory field. Eventually Yasmin was able to submit the form in person and the Parenting Payment Single was granted.

Prior to being granted Parenting Payment Single, Housing ACT had cancelled Yasmin's rebate because she was not able to provide evidence of details of her ex-husband's address. Housing ACT also required evidence that Centrelink had granted her Parenting Payment Single claim to prove that her husband was no longer living with her. In this way, the interaction between Housing and Centrelink served to compound Yasmin's difficulties.

CCL assisted Yasmin to complete another rent rebate application and submit it to Housing ACT. In the meantime, Yasmin had accrued over \$1700 in rental arrears placing her tenancy at risk and causing her financial stress.

**Recommendation 2.2.1.** *That a new section be inserted in the Rental Rebate Policy that Housing ACT should accept a tenant's statutory declaration as prima facie evidence of household composition. This would be consistent with Housing ACT's policy principle of accepting "a woman's personal account of domestic and family violence, including her understanding of its impact and associated safety risks".*

19 ACT Government, Community Services, Rental Rebate Policy (online) <communityservices.act.gov.au/hcs/policies/rental\_rebate\_policy>

**Recommendation 2.2.2.** *That Centrelink adopts a more flexible approach to accepting information based on the individual circumstances of the social security claimant or recipient, in response to the evidence from numerous inquiries that its online systems fail regularly and cause hardship to clients in remote or regional areas, or who are otherwise unable to access the online service.*

## 2.3. FAILING TO RENEW RENTAL REBATE APPLICATION

Finally, tenants frequently sought CCL's assistance after their rebate lapsed. Clients reported not being notified by Housing ACT that they were required to apply to renew their rebate and finding themselves being charged market rent and accruing rental arrears due to their inability to pay.

**Andrew** contacted CCL from prison after receiving a 26 week No Cause Notice to Vacate. He had been paying his rebated rent of \$10 every fortnight through his Alexander Maconochie Centre account. Andrew was advised by CCL to stay in contact with Housing ACT and regularly request his rental statements to ensure he did not accrue any arrears. Through this process, CCL was advised that Andrew's rent rebate had lapsed (as it had not been renewed) and as a result, he was charged full market rent. Andrew had no capacity to pay full market rent while in the Alexander Maconochie Centre. Housing ACT were aware of his circumstances.

Andrew's case is a clear example where Housing ACT was aware that he was in prison and was entitled to the rebated rent of \$5 per week yet did not work with him to ensure he renewed his rebate and did not fall into arrears. This is inconsistent with Housing ACT's purported aim of preventing homelessness and assisting people to secure and maintain stable housing.

**Recommendation 2.3.** *That Housing ACT adopts a policy of proactively contacting tenants prior to their rebate expiry and assisting them to complete the rental rebate application.*

## 2.4 RENTAL ARREARS AND FINANCIAL HARDSHIP DUE TO UNRECTIFIED RENTAL REPAIRS

Client experiences examined during the project period demonstrated three key ways in which Housing ACT's failure to perform rental repairs in an adequate and timely fashion contributed to the accumulation of rental arrears.

- i. The first is when a tenant believes they have no other option but to spend their own money to complete rental repairs that are the responsibility of their landlord, Housing ACT. As a result of this expenditure they are left with insufficient funds to pay rent and so fall into arrears.
- ii. The second is when the failure to repair causes direct expense to the tenant. For example, a failure by Housing ACT to repair a hole in the wall may end up costing the tenant more to heat the house in winter.
- iii. The third arises when a tenant withholds rent to try to exercise leverage over Housing ACT when they feel they have exhausted all other avenues to compel Housing ACT to perform the repairs.



As well as the financial and tenancy implications outlined above, many tenants also reported health and safety issues as a result of unrectified repair requests. Frequently this involved mould, flooding, lack of heating and security concerns.

Over the project period 57 public housing tenants sought CCL's advice on how to expedite their rental repair requests after attempting unsuccessfully, and often over lengthy periods, to get Housing ACT to do the repairs.

One example of Housing ACT's failure to complete repairs indirectly leading to rental arrears, and threatening a family's tenancy, is the experience of a mother of two children who felt forced to take matters into her own hands when Housing ACT failed to fix the property's broken heating and lack of insulation. **Melissa's** experience appears to involve two issues – the failure of Housing ACT to complete repairs, and an underlying issue with the quality of Housing ACT dwellings and ensuring they meet minimum energy and efficiency standards so that tenants can affordably heat and cool their dwellings.

**Melissa** is the mother of two children living in a Housing ACT property. Over twelve months prior to seeking advice from CCL, Melissa notified Housing ACT of rotting window panes, broken heating and insulation issues which had resulted in her children's bedrooms being unbearably cold. CCL contacted Housing ACT several times during this period. Melissa was assured by her housing manager that Housing ACT was aware of the issues and was intending to rectify the defects and improve the insulation. When no action was taken Melissa purchased roller blinds herself and installed them to make the house habitable in winter. This was a significant financial outlay for Melissa and resulted in her being unable to pay rent on several occasions and accruing rental arrears.

Tenants relying on Centrelink payments as their primary source of income do not have discretionary funds for excessive heating or cooling bills, or outlays on blinds/curtains in cases like **Melissa's**. This results in tenants choosing between essential items such as paying rent, staying warm or having enough to eat.

Failure to repair can also result in tenants paying costs such as paying excessive bills due to gas leaks or excessive water bills for faulty pipes that have not been fixed. When tenants are relying on Centrelink payments and/or on extremely low incomes to meet their day to day needs, these additional costs can compromise a tenant's ability to pay rent and maintain their tenancy.



**Michael** is a 55-year-old man who relies on Newstart Allowance and lives in public housing. For over a year he has been requesting the gas heating in his property be repaired as he suffers from emphysema which is exacerbated by the cold in winter. Michael is also concerned that it is costing him a considerable amount of money to have the gas connected to a heater that does not work. Housing ACT has repeatedly acknowledged these issues but failed to resolve them. Michael is experiencing further financial stress as a result of having to use other methods to try and heat his house. CCL provided Michael with advice and referred him to Emergency Relief pantries in Woden and Tuggeranong as he has been having difficulties affording food.

Overwhelmingly, clients reported feeling frustrated and powerless when Housing ACT failed to complete repairs. For many tenants the prospect of taking Housing ACT to the ACT Civil and Administrative Tribunal is intimidating and stressful. As such, tenants tend to avoid taking this step (if indeed they are aware of it) and instead spend many months in dwellings that are in various degrees of disrepair and in some instances accrue rental arrears and other expenses due to damage or disrepair.

**Recommendation 2.4.1.** *That Housing ACT prioritises and adequately resources the strict adherence to its legal obligations to make standard repairs within four weeks of notification and make urgent repairs as soon as necessary.*

**Recommendation 2.4.2.** *That Housing ACT commits to ensuring all of its properties (existing and future) meet minimum energy efficiency standards to reduce the financial burden on already vulnerable tenants, in accordance with a reasonable timeline which is makes publicly available.*

**Recommendation 2.4.3.** *That Housing ACT implement a policy of proactive compensation if it fails to comply with its legal obligations. For example, if a non-urgent repair is not completed within 30 days; Housing ACT is obliged to make an automatic rental credit of a set sum to the tenant per day. The policy rationale behind this reform would be to prevent the externalising of costs to the tenant (who is expending money to deal with the defect) and to build the cost of inaction into Housing ACT's model of operation.*

### 3. Domestic Violence, debt, children and safety

Housing ACT's Domestic Violence Policy<sup>20</sup> recognises that women bear the burden of domestic violence related harm, and that domestic violence can lead to acute financial stress and homelessness for women and their children. Housing ACT's policy recognises that domestic violence is a '*whole of community*' problem that requires a '*whole of government*' response and that this should be reflected in all interactions with Housing ACT.

However, in practice, information provided by CCL and a review of the social security and housing matters revealed that women who experienced domestic violence and were at risk of homelessness sought assistance from CCL on a range of matters related to securing safe and appropriate accommodation. For example, rejection of public housing applications due to failure to meet the six-month residency requirement, refusal of priority housing allocation, not being able to get urgent transfers to Housing ACT properties which were unknown to the perpetrators of domestic violence and allocation of housing with insufficient bedrooms to have their children restored to care. Assistance was also sought following Housing ACT decisions which resulted in women who had experienced domestic violence ending up in greater financial hardship. For example, debts raised due to damage caused by domestic violence and rental debt due to Housing ACT not accepting the woman's notification of a change in household composition.

The vast majority of women who sought assistance from CCL over the project period also relied on Centrelink income to meet their needs and those of their children. A review of case files involving women fleeing domestic violence found that women consistently faced barriers when trying to access Centrelink payments and when negotiating with Housing ACT. These barriers compounded the financial and emotional stress already experienced by survivors of domestic violence.



<sup>20</sup> Domestic Violence Policy Manual, above n17

### 3.1 DOMESTIC VIOLENCE AND DEBT

Housing ACT's Domestic Violence Policy stipulates that Housing Managers will “accept the woman's description of her experience of domestic and family violence in the first instance”<sup>21</sup> and the Manager of Accounts Receivable will earmark all ‘Tenant Responsible Maintenance’ that can be attributed to domestic and family violence and remove them from the woman's account.

However, in CCL's experience there is often a disconnect between policy and practice, resulting in numerous instances where the policy has not been applied and the woman who has escaped domestic violence is then pursued for the cost of repairing the damage to the property caused by the perpetrator of domestic violence.

**Rachael** is an Aboriginal single mother of three children. She has significant debts to Housing ACT for rental arrears accrued when she fled her violent ex-partner, and for rental repairs owing after her ex-partner caused significant damage to the property. Rachael's ex-partner is currently in prison. Housing ACT has told Rachael that they will not accept a new housing application from her until she begins repaying the debts. Rachael faces imminent homelessness as she has been staying with her mother who is no longer able to house her. Rachael cannot afford private rent on her Centrelink income.

Another extreme example is the case of **Danni** who has a large debt raised against her for damage caused by a third party who she believes was her ex-partner.

**Danni** has a large Housing ACT debt of over \$20,000 due to fire damage to her Housing ACT property. Danni advised Housing ACT and the police that she believes the fire was set by her ex-partner who had attended the property earlier that day threatening her, and who has attended the property without permission on numerous occasions prompting Danni to call the police. Danni was in Sydney at the time of the fire and associated damage.

Danni is currently homeless. She sought CCL's advice to be placed on the priority waiting list because she cannot afford a private rental on her Centrelink income. She sought assistance to have the debt associated with the fire cancelled on the ground that she did not cause it, her ex-partner did not have her permission to be on the property, and she believes it was caused by her ex-partner in the context of his ongoing domestic violence towards her.

21 Domestic Violence Policy Manual, above n17 at 18



Housing ACT's Domestic Violence Policy would suggest that in both these cases the woman's account of the damage would be accepted in the first instance, and she would be supported to obtain any additional information required. The treatment of Rachael who was told her application would not be accepted until she commenced repaying the debt, is directly contrary to Housing ACT's own policy.

**Recommendation 3.1.1.** *That Housing ACT undertakes internal training on its Domestic Violence Policy with a view to ensuring the policy is applied consistently and a woman's account of the domestic violence she has experienced is accepted.*

**Recommendation 3.1.2** *Housing ACT prioritises ensuring that victims of domestic violence have safe and secure housing, providing tenants with assistance to obtain supportive documents, or additional evidence, where necessary, but ensuring that this is not a barrier to accessing housing in the first instance.*

## DOMESTIC VIOLENCE, CHILDREN, AND HOUSING ALLOCATION

Property allocation to Housing ACT tenants is governed by the Property Size Guidelines (**Guidelines**).<sup>22</sup> The Guidelines provide for the distribution of property based on allocating the minimum number of bedrooms necessary for a tenant and the number, age and sex of their children.

Importantly, the Guidelines restrict the allocation of additional bedrooms to children who are not currently in a tenant's care. Under the Guidelines, a tenant must provide evidence of finalised child contact arrangements (such as a Parenting Order or Parenting Plan) to secure a property with additional bedrooms for children.

This evidentiary requirement has a disproportionate, adverse impact on victims of domestic violence who apply for public housing. In situations of domestic violence, the children may not be in the victim's care by reason of intervention by Child and Youth Protection Services or as a result of care arrangements being contested in ongoing Family Court proceedings. For the Family Court to return children to a tenant victim's care, the Family Court is generally required to form the view that suitable living arrangements are in place to accommodate the children. However, where a tenant victim has not been allocated a property with bedrooms for children (because no final orders have been made), the Family Court is unlikely to be satisfied that such suitable arrangements exist. As a result, victims of domestic violence who are applying for public housing, and who do not have legally finalised child care arrangements, are caught in an endless loop.

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<sup>22</sup> ACT Government, Housing and Community Services, Property Size Guidelines (online) < [https://www.communityservices.act.gov.au/\\_\\_data/assets/pdf\\_file/0006/520458/Size-of-Property-Allocation.pdf](https://www.communityservices.act.gov.au/__data/assets/pdf_file/0006/520458/Size-of-Property-Allocation.pdf) >



**Tamara** is the mother to four Aboriginal children. She was told by Child and Youth Protection Services that if her children continued to be exposed to the violence of her ex-partner in their home, they would be removed. As a result, Tamara fled the home and sought priority housing in order to retain her children in her care and provide them with safe accommodation.

The father of the children remained in the house with the children. Child and Youth Protection Services will not allow for Tamara to have care of her children while she is homeless. Housing ACT has approved her for the High Needs waiting list for a one-bedroom property but will not place her on the priority waiting list for an appropriately sized house because her children are not in her care. Tamara cannot get care of her children until she is housed. Tamara is stuck in a catch 22 situation.

**Recommendation 3.2.** *The ACT Community Services Directorate make the following changes to the Property Size Guidelines and the Domestic Violence Policy Manual:*

- a. *Amend the Property Size Guidelines to add new documents to the list of documents which may be relied upon to prove child contact arrangements. These documents could include correspondence from a solicitor or the Federal Circuit Court or Family Court confirming that an individual is in the process of seeking parenting orders that, if made, would result in a child or children spending time overnight with the individual.*
- b. *Insert a sub-section under “section 3: procedures” in the Domestic Violence Policy Manual<sup>23</sup> requiring that, in circumstances of family and domestic violence and where Housing ACT is presented with the aforementioned document, the Commissioner should exercise discretion and allocate additional bedrooms for children to account for children not currently in a woman’s care.*

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23 Domestic Violence Policy Manual, above n17, p 14 -16

## 4. Unsuitable housing, overcrowding and homelessness

Housing ACT stock is limited, and demand is great. Aboriginal and Torres Strait Islander peoples who require culturally appropriate housing, people with disabilities and people with pets are particularly impacted by the limited diversity of Housing ACT dwellings available.

### 4.1 LACK OF CULTURALLY APPROPRIATE HOUSING

14.4% of the people who sought CCL's advice about public housing, Centrelink and homelessness issues identified as Aboriginal or Torres Strait Islander. Many raised concerns about the lack of available five- or six-bedroom houses that would enable them to fulfill cultural obligations and look after family.

A lack of culturally appropriate housing can result in any number of negative consequences for Aboriginal and Torres Strait Islander peoples – living in overcrowded conditions, not being housed and waiting for extensive periods of time on wait lists and/or concerns being raised with Child and Youth Protection Services as a result of either of these scenarios.

**Sharon** is an Aboriginal woman with 6 children in her care. She also takes care of another child a couple of days per week.. Sharon and these children are currently housed in a four-bedroom town house. One child needs his own bedroom due to a disability. Sharon attended CCL seeking advice to transfer to a larger property.

Child and Youth Protection Services had offered her a larger property in the form of a private rental but withdrew this offer after deciding that it might prejudice Sharon's prospects of obtaining a place on the Priority Housing list. CCL understood thirty families were already waiting on the Priority List for five- or six-bedroom properties.

Sharon's case highlights both the shortage of larger properties and the sometimes-perverse effects of the Priority Housing eligibility criteria which in this case served as a disincentive to other government agencies providing Sharon with appropriate housing.

As well as acutely affecting Aboriginal and Torres Strait Islander families who have cultural obligations to look after and house family members; refugee families were disproportionately represented in the client base seen by CCL who were living in overcrowded conditions and seeking larger Housing ACT properties.

**Mohammad** and his family were granted Global Special Humanitarian visas and arrived in Australia from Eritrea. They are currently living in extremely overcrowded conditions in a three-bedroom private rental property with Mohammad his wife, his mother and five children. Mohammad and his family have been accepted onto the public housing waiting list. They have been referred to CCL because their application to be placed on the Priority transfer list was rejected. The family cannot be separated for cultural reasons and caring obligations.

The family relies solely on Centrelink income support and cannot afford a larger private rental. They are suffering from severe financial stress and the overcrowding is causing considerable emotional stress for the family. Mohammad currently has a large electricity debt. Mohammad and his family are at risk of falling into rental arrears as their expenses are greater than their income. This places them at risk of homelessness if an appropriately sized Housing property cannot be located and if they are not granted a place on the Priority transfer list.

**Recommendation 4.1.** *That Housing ACT commits to increasing its available housing stock in light of the number of Aboriginal and Torres Strait Islander families seeking public housing and ACT's status as a 'Refugee Welcome Zone'*

**Recommendation 4.1.2.** *That Housing ACT conducts an urgent review of its standard, high needs and priority waiting lists for families requiring larger dwellings, and the length of time these families have been waiting for a dwelling to be allocated and increase available stock accordingly.*

## 4.2 UNIVERSAL, ACCESSIBLE HOUSING

Housing ACT recognises that a key group of people who require public housing are those living with disabilities.<sup>24</sup> As such, Housing ACT has committed itself to ensuring the adequate provision of housing to people with disabilities. However, a review of CCL's matters over the project period show several people sought CCL's assistance because:

Housing ACT did not modify the property to make it suitable for their disabilities;

- i. Housing ACT did not transfer the tenant to a disability compliant public housing property despite evidence this was necessary; or
- ii. There were extremely long delays in modifying properties or transferring tenants once approval was given by Housing ACT.

In some cases, the failure to modify the property, or transfer a tenant to a new dwelling, effectively rendered the property uninhabitable for the tenant. For example, CCL assisted two tenants who required the use of wheelchairs. In both cases, the tenants' wheel chairs could not fit through the doorframes or corridors of their homes. Neither of these clients had the financial means to rent privately, meaning that Housing ACT's failure to accommodate their disability effectively risked rendering them homeless.

<sup>24</sup> ACT Government, Housing and Community Services (January 2012) Public Housing Asset Strategy<[https://www.communityservices.act.gov.au/\\_\\_data/assets/pdf\\_file/0005/273551/Public\\_Housing\\_Asset\\_Management\\_Strategy.pdf](https://www.communityservices.act.gov.au/__data/assets/pdf_file/0005/273551/Public_Housing_Asset_Management_Strategy.pdf)> p3 and 13

**Sonia** has been living in public housing for several years. Approximately five years ago she had an accident and injured her back. As a result, she now requires the periodic use of a wheelchair. Approximately one year ago the Housing ACT Occupational Therapist assessed the property as unsuitable for Sonia because her wheelchair does not fit through the doorways.

In the past, Sonia would stay at hospital or at a friend's house during the periods of time when she required a wheelchair. She is now pregnant and will require the wheelchair throughout her pregnancy. Housing ACT has not assessed her for a priority transfer despite the fact that her Housing ACT property is inaccessible to Sonia when she is using her wheelchair and she has no alternative accommodation for the next nine months.

Another significant challenge faced by tenants with disabilities is the extremely long wait times to be transferred to a disability modified property due to extremely limited supply. If a tenant is requesting a transfer because they are unable to live in their current property, a failure to process the transfer application in a timely way can leave a tenant effectively homeless. One example of this is outlined in the case study below. In this case, Housing ACT was aware of the man's disability and need for an additional bathroom and assured the family that they would be transferred. However, further investigation by CCL revealed that it was in fact highly unlikely that a three-bedroom house with an additional bathroom would become available as there are very few three-bedroom disability modified properties. Housing ACT had not communicated this to the tenant or his family.

Eddy is an elderly man with a range of disabilities including incontinence, which requires him to have easy access to a bathroom. Eddy uses a wheelchair. Eddy lives with his wife and three adult children. They have one bathroom between them. The hallways are too small for Eddy's wheelchair and he is unable to fit it into the bathroom, so he must leave it blocking the hallway when he uses the bathroom. Housing ACT have repeatedly assured the family they will be transferred to a disability modified property with an additional bathroom. Eddy has been waiting on the priority transfer list for about two years however CCL obtained advice that a suitable property is unlikely to come up for a number of years.

In Eddy's case, CCL was advised by Housing ACT that he would have better prospects of being transferred if he medically required an extra bedroom as more four-bedroom properties have second bathrooms. This approach is demonstrative of Housing ACT's failure to prioritise the needs and rights of tenants with disabilities who require housing which accommodate their needs.

**Recommendation 4.2.1.** *That Housing ACT considers that ensuring properties are suitable and accessible for people with disabilities is the highest priority when weighing up policy considerations (such as number of bedrooms etc).*

**Recommendation 4.2.2.** *That Housing ACT recognises as a fundamental principle that every tenant is entitled to the full use and enjoyment of their home regardless of their disability.*



**Recommendation 4.2.3.** *That Housing ACT undertakes spot purchases where there are known deficiencies in public housing stock in order to ensure that people with disabilities are housed in appropriate dwellings in a timely manner.*

The ACT Government is to be commended on its commitment to the construction of 100% LHA Gold Level accessible housing in its housing renewal programme, and the inclusion of 10% or more Class C adaptable units. We reiterate earlier recommendations with respect to the need to urgently increase the amount of available housing stock.

## 4.3 PETS

It is recognised that under Housing ACT's existing policies tenants do not require approval to keep pets or animals. However, in practice, people with pets continue to face barriers to being allocated appropriate housing, and people in crisis situations struggle to access refuges and emergency accommodation with their pets. Further, there are often barriers in unit complexes due to body corporate rules.

For example, CCL has given advice to clients who have been placed on Housing ACT's Priority waiting list and own large dogs. Housing ACT has been aware of this, and yet has made offers which are demonstrably unsuitable for a tenant who owns a dog. Housing ACT has then proceeded to count this as a 'valid offer' even though the property is unsuitable. This risks the client's place on the waiting list.



**Brian** has been homeless for several years and has spent much of that time sleeping rough. This year Brian was placed on the Priority waiting list. Brian told Housing ACT that he had two large dogs which he needs for his mental health. Housing ACT made him two offers of properties – both were apartment blocks, not on the ground floor, and with no yard or external area. Brian came to CCL seeking help to have these offers withdrawn as they were not suitable to his needs. After obtaining supportive medical documentation, and extensive advocacy, these offers were withdrawn, and Brian was eventually made a suitable offer.

**Recommendation 4.3.** *That Housing ACT, in recognition of the important role that pets play in tenants' lives, Housing ACT consider the requirements of a tenant's pets when determining whether a housing offer is 'valid.'*

## 5. Incarceration and homelessness

There is substantial research from Australia, and around the globe, that homelessness is a key driver of incarceration, and incarceration is a key driver of homelessness.<sup>25</sup> Housing ACT recognises *“the need of a Housing ACT tenant to return to their home, or at least be accommodated, after a period of incarceration”*<sup>26</sup> as a key policy consideration that is to be weighed up against other interests - such as the need to manage the security and maintenance of properties, and the desire to avoid vacant dwellings in an environment of long wait lists and public need.

There is current evidence which suggests that Housing ACT is pursuing a misguided approach to recovering public housing properties from tenants who have been incarcerated. Over the project period there appears to have been a consistent practice of Housing ACT staff entering Alexander Maconochie Centre to hand tenants 26 week no cause notices. These notices require tenants to vacate the property within 26 weeks. Clients have instructed CCL solicitors that Housing ACT staff would encourage them to surrender their properties without giving advice on alternative options or suggesting they seek legal advice. This is of significant concern.

Evicting tenants from their homes whilst in prison has serious and far reaching impacts. It is self-evident (and the subject of extensive research) that housing is critical to rehabilitation and reducing recidivism. Evicting tenants whilst in the Alexander Maconochie Centre also has extremely serious immediate consequences for individuals and their families – it can limit their ability to get parole, and it can delay or reduce the likelihood of reunification of an incarcerated parent with children who are under the protection of Child and Youth Protection Services.

**Veronica** is the single mother of two children. She is currently incarcerated at the Alexander Maconochie Centre. She has been served a 26 week no cause notice and felt pressured by Housing ACT to surrender her property. Veronica had appointed her neighbour as caretaker of the property while she was incarcerated. She has been regularly paying rent.

Veronica has an agreement in place to pay off an outstanding debt incurred prior to her incarceration and has been paying it off regularly. Veronica is in the middle of proceedings with Child and Youth Protection Services regarding the care of her youngest child. It is likely that they will be reunified upon Veronica’s release. Veronica is worried that if Housing ACT evict her and only provide her with temporary accommodation on release, she will not be reunified with her son.

25 Australian Institute of Health and Welfare 2019. The health of Australia’s prisoners 2018. Cat. no. PHE 246. Canberra: AIHW at viii (online) <<https://www.aihw.gov.au/getmedia/2e92f007-453d-48a1-9c6b-4c9531cf0371/aihw-phe-246.pdf.aspx?inline=true>>

26 ACT Government, Housing and Community Services, Incarceration of Tenants Policy (online) <[https://www.communityservices.act.gov.au/hcs/policies/incarceration\\_of\\_tenants](https://www.communityservices.act.gov.au/hcs/policies/incarceration_of_tenants)>

**Recommendation 5.1.** *That Housing ACT reviews its policy and practice of interacting with incarcerated tenants to ensure that tenants are not pressured to surrender their tenancies, and to require that Housing ACT staff advise tenants of their right to obtain legal advice before deciding whether to relinquish their tenancy. Moreover, should a tenant elect to obtain legal advice, Housing ACT should proactively refer them to CCL for independent legal advice.*

**Recommendation 5.2.** *That the Housing ACT policy be amended as follows:*

- a. *To allow tenants to be absent from their property for a twelve-month period during which Housing ACT maintains the property and ensures that it is secure.*
- b. *To enable an extension of the twelve-month period to be considered on a case by case basis.*
- c. *Where an extension cannot be granted, and the tenant loses their tenancy (through relinquishment or eviction proceedings) Housing ACT is required to move their name onto a special register and commence identifying suitable properties between three and six months prior to expected release, with the view of an offer of accommodation being made three months prior to release.*
- d. *The accommodation offered is suitable to the needs of the tenant and consideration is given to the impact of high density and high crime areas on those seeking to rehabilitate.*

The ACT Government's policy is not to discharge prisoners into homelessness. However, we submit that the provision of temporary accommodation in refuges, hotels or crisis accommodation does not satisfy this policy objective – it merely delays the onset of homelessness.



## 6. Centrelink and financial hardship

The first section of this research report has focused on the barriers and challenges faced by people in the ACT living in, or seeking access to, public housing.

This research report has also found that there are numerous links between homelessness and the accessibility and adequacy of Centrelink payments - including the ways in which they are administered by Centrelink.

The vast majority of Housing ACT tenants who sought CCL's assistance during the project period also relied on Centrelink to make ends meet. Many of them experienced the cyclic disadvantage caused by precariously low Centrelink payments. A common experience described by clients during the project period involved low Centrelink payments leading to financial hardship, tenants finding themselves unable to make ends meet and falling into rental arrears, and subsequently facing eviction and potential homelessness.

Sections 7 – 10 of this research report focus on the ways in which the social security system contributes to financial hardship and places vulnerable tenants at risk of homelessness.

The unaffordability of renting in the private rent market for those in receipt of Centrelink payments has long been recognised by the Commonwealth Administrative Appeals Tribunal<sup>27</sup> to justify why lump sum payments spent on modest houses be excluded from the calculation of Compensation Preclusion Periods. This research report provides further evidence of this view, with CCL's clients who rely solely on Centrelink income, like Terri below, being almost entirely excluded from the private rental market.

**Terri** and her partner both rely on Newstart Allowance. They have been renting privately but the financial pressure is too great, and they are looking for alternatives. They have applied for public housing. Terri has been actively looking for cheaper, smaller rental properties. Terri has received fifteen rejection letters from private rentals due to her low income. Terri's experience is indicative of the financial difficulties faced by people who rely on Centrelink to meet their day to day needs. With the private rental market inaccessible to many, these social security recipients face long waiting periods to receive a public housing allocation, and potential homelessness.

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27 For example, Re SDSS and Turner (1993), Re Dean and SDEWR (2006) and SDFHCSIA and Balaj (2012)



## 6.1 Newstart Allowance: too low and too onerous

The ACT Government's submission dated 7 August 2019 to the Federal Parliament's Senate Standing Committee on Community Affairs Inquiry into the *'Adequacy of Newstart and related and alternative mechanisms to determine the level of income support payments in Australia'*<sup>28</sup> highlighted the experiences of many Newstart Allowance recipients living in the ACT.

Its submission noted that:

- Despite having the lowest unemployment rate in Australia, 3,740 job seekers in the ACT received either Newstart Allowance or Youth Allowance in May 2019, including 2,413 people who had been looking for work for 12 months or more.
- During 2017-2018 approximately 6,350 households in the ACT included a Newstart Allowance recipient and were considered for housing assistance.
- Despite Commonwealth Rent Assistance providing an estimated 27% of Newstart Allowance households in the ACT with rent support, in 2017-18 two thirds of these households were experiencing rental stress with tenants spending 30% or more of their combined household incomes on rent.
- 13% of ACT households in public housing relied on Newstart Allowance as their main source of income and 20% of these households fell into four or more weeks of rental debt in 2017–2018.
- In 2017-2018, 25% of all ACT households which relied on Newstart Allowance and contained children, were in rental debt of four or more weeks.

The housing stress and risk of homelessness arising from inadequate Centrelink payments which was identified in the ACT Government's submission, was also evident in this research.

### 6.1 TOO LOW

As at June 2019, 686,785 people were receiving Newstart Allowance.<sup>29</sup>

The maximum rate of Newstart Allowance for a single adult is currently \$279.50 (adult - changes with dependent children etc) per week which is less than 40 per cent of the current minimum weekly wage. The University of New South Wales calculated a conservative minimum healthy budget for a single adult without children to be \$434 per week. That comes to \$96 more than the single rate of Newstart Allowance, Commonwealth Rent Assistance, and the Energy Supplement combined in July 2017.<sup>30</sup>

28 ACT Government, Submission 2 to Senate Standing Committee on Community Affairs, *Inquiry into the adequacy of Newstart and related payments and alternative mechanisms to determine the level of income support payments in Australia*, 7 August 2019 (online) <[https://www.apf.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Newstartrelatedpayments/Submissions](https://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Newstartrelatedpayments/Submissions)>

29 <https://data.gov.au/dataset/ds-dga-cff2ae8a-55e4-47db-a66d-e177fe0ac6a0/details?q=>

30 Saunders, P., & Bedford, M. (2017). New Minimum Income for Healthy Living Budget Standards for Low-Paid and Unemployed Australians. (SPRC Report 11/17). Sydney: Social Policy Research Centre, UNSW Sydney <<http://doi.org/10.4225/53/5994e0ca804a4>> at 103

Clients seeking assistance from CCL during the project period, who were receiving Newstart Allowance or a related payment, persistently identified that they experienced housing stress due to low payment rates. This is consistent with the national trend which has seen a 75% increase in people on Newstart Allowance seeking assistance from homelessness services over the last six years which has far outstripped the growth of 28% in the number of people receiving Newstart Allowance over the same period.<sup>31</sup>

Changes which have tightened the eligibility and assessment criteria for Disability Support Pension over the last two decades have resulted in greater numbers of people with disability relying on Newstart Allowance. The data for this report shows that Newstart Allowance recipients with disabilities disproportionately sought legal advice from CCL about financial stress, housing and homelessness and assistance to try to obtain the Disability Support Pension.. At the same time as struggling to make ends meet on a lower rate of payment, they had greater difficulty meeting their housing expenses due to the additional costs they incur as a result of their disabilities. A NATSEM report published in September 2019 found that households with at least one person with disability needed an additional \$107 to cover expenses when compared to households that did not have any people with disabilities.<sup>32</sup>

**Loretta** is a 59-year-old woman with several disabilities. Her mobility is extremely limited, and she cannot leave the house without assistance. She has a hearing impairment, a speech impediment and a heart condition all of which require medical interventions which cause Loretta to incur out of pocket expenses. She was initially placed on Sickness Allowance but that was cancelled after Centrelink determined that her condition was permanent. However, she has been found ineligible for Disability Support Pension. This has left Loretta without any income as she cannot work and cannot fulfil her mutual obligations on Newstart Allowance. She is now in rental arrears and fears losing her house.

Over the project period, CCL saw a significant number of clients with disabilities who were unable to meet their mutual obligations with their employment service provider. These clients were at risk of having their Newstart Allowance payments reduced, suspended or cancelled and falling into financial hardship which compromised their ability to pay their rent and maintain their tenancies.

Single parents (and particularly female single parents) experience higher levels of poverty due to lower employment levels and low social security allowances.<sup>33</sup> This is consistent with the findings of our data sample that showed single mothers in particular disproportionately sought assistance for Centrelink and housing issues. Single parents face additional financial stress when their youngest child turns eight and they are moved from the more generous Parenting Payment Single to Newstart Allowance.

31 Council to Homeless Persons, 'Clear connection between homelessness and inadequate Newstart payments, says Homelessness Australia' (Media Release, 29 August 2019) (online) < <https://chp.org.au/media-releases/clear-connection-between-homelessness-and-inadequate-newstart-payments-says-homelessness-australia/> >

32 Li, J., Brown, L., La. H.N., Miranti, R., and Vidyattama, Y. (2019). Inequalities In Standards of Living: Evidence for Improved Income Support for People with Disability. NATSEM, Institute for Governance and Policy Analysis, University of Canberra. Report commissioned by the Australia Federation of Disability Organisations. September 2019 at xiv

33 Davidson, P., Saunders, P., Bradbury, B. and Wong, M. (2018), Poverty in Australia, 2018. ACOSS/UNSW Poverty and Inequality Partnership Report No. 2, Sydney: ACOSS, p 40

This equates to a drop-in payment of \$89 per week, despite overwhelming evidence that the costs of raising a young child increases as they grow older.

**Clodagh** is a single parent with three children over the age of eight. They live in a tiny two-bedroom apartment and Clodagh shares a bedroom with her youngest child. The apartment is damaged, but the landlord has threatened to evict her if she requests repairs and Clodagh cannot afford to pay for them herself.

Since being forced onto Newstart Allowance, Clodagh has struggled to meet the costs of essentials for her and her children. She is frequently forced to rely on emergency aid and food vouchers to ensure her kids are properly fed – often going without food herself to make sure she can pay the rent.

Her children often miss out on social activities because she cannot afford them. Her children feel the social stress of not being able to do the things that the other kids can do. Her eldest child is beginning to feel socially isolated, complaining that she can't have friends over because their apartment is too small and is so badly damaged.

Despite the apartment being too small and in poor repair, no public housing has become available and Clodagh has been unable to find any affordable accommodation for her family despite extensive searches.

The data collected through a review of CCL's client files is consistent with existing research into the inadequacy of Newstart Allowance and related payments. This report provides further evidence of the need to implement the recommendations made in the NSSRN's submission to the Senate Legal and Constitutional Affairs Committee's inquiry into the adequacy of Newstart and related payments, which are as follows:

**Recommendation 6.1.** *That the following reforms be implemented:*

- a. *An immediate raise Newstart Allowance by at least \$75;*
- b. *An increase to Rent Assistance payments by 30%;*
- c. *That Newstart Allowance be indexed twice per year to wage levels and the consumer price index;*
- d. *The Family Tax Benefit should be increased for single parents with older children; and*
- e. *Single parents on Newstart should receive the same minimum \$75 increase as single people without children.*<sup>34</sup>

34 National Social Security Rights Network, Submission 114 to Senate Standing Committee on Community Affairs, *Inquiry into the adequacy of Newstart and related payments and alternative mechanisms to determine the level of income support payments in Australia*, 7 August 2019 (online) <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Newstartrelatedpayments/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Newstartrelatedpayments/Submissions)>

## 6.2 TOO ONEROUS

Of the 71 people who presented to CCL who received Newstart Allowance or a related payment, almost 20% struggled to remain engaged with the required mutual obligations and lost access to income despite their vulnerabilities.

The Targeted Compliance Framework raises several key concerns about decision making, accountability and the reviewability of decisions that affect the lives of social security recipients. It involves mutual obligation requirements and a demerit point system which has now been outsourced to employment service providers. Demerits are applied if the social security recipient does not fulfill their obligations to look for jobs, attend appointments or attend activities. Any demerit points issued are not reviewable (as they are an action by the employment service provider and not a final decision of Centrelink) or subject to any external oversight.<sup>35</sup> This leaves vulnerable job seekers with limited options for review.

People often seek assistance from Centrelink when things go wrong in their lives. Many of CCL's clients had experienced family breakdown, trauma and family violence. This was often on top of other hardship such as extreme poverty, inadequate housing, poor health, chronic health conditions, low levels of literacy (including digital literacy) and disability. The rigid nature of the mutual obligation system, lack of control over scheduling appointments and the inability to customise employment pathway plans to accommodate the complexity of people's lives and their circumstances often meant that Centrelink recipients had their payments reduced or cancelled.

Disruptions to Centrelink payments can have catastrophic impacts for social security recipients and their families. It can leave people unable to pay their rent, cause the accrual of rental areas and lead to eviction and homelessness. The review of client files revealed that many CCL clients sought repeated advice regarding demerit points, exemptions, suspensions and penalties and had corresponding difficulties making rental payments. This reveals a tension between using mutual obligations to encourage participation in the job market and the competing policy objective of ensuring social security recipients can live with dignity by accessing secure and ongoing housing. Given the serious impact the demerit decisions can have on peoples' lives, it is of concern that these decisions have been outsourced to employment service providers.

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<sup>35</sup> Dr Simone Casey, National Social Security Rights Network, 'The Targeted Compliance Framework – Implications for Job Seekers' 25 July 2019 (online) < <http://www.nssrn.org.au/social-security-rights-review/the-targeted-compliance-framework-implications-for-job-seekers/> >

**Harry** has been seeking advice from CCL over the last couple of years about his Newstart Allowance. Harry is an Aboriginal man who has spent considerable periods of time homeless. Whilst homeless and trying to access public housing, he applied for an exemption from his mutual obligations as he was unable to fulfil them while he lacked stable accommodation. Centrelink disputed Harry's claim that he was homeless and refused the application for exemption. Harry was eventually allocated a public housing property.

Harry was later cut off from his Newstart Allowance payments (again) due to a breach in his mutual obligations. Harry maintains that he had advised his employment service provider of his inability to attend a meeting in advance. As a result of the alleged breach, Harry only received \$9 in Centrelink payments that fortnight which is not enough to live on.

Earlier this year Harry was again cut off his Newstart Allowance payments due to a breach in mutual obligations for a failure to attend an appointment. Harry maintains he did not know about the appointment. Harry was unable to pay rent due that week and fell into arrears.

While 3.2.11.40 of the Social Security Guide<sup>36</sup> sets out special circumstance exemptions (including homelessness) it stipulates that these exemptions only apply when the circumstances are "UNFORESEEN or UNAVOIDABLE and cause major disruption for the job seeker"<sup>37</sup> (emphasis in original). In practice these criteria result in some people who are experiencing protracted hardship being denied exemptions. For example, CCL has advised several clients who had been homeless and without income support for prolonged periods who have nonetheless been denied the exemption. It is CCL's experience that the application of exemptions at times appeared arbitrary with some clients being granted exemptions in some circumstances and others not.

The case study of Lucy below illustrates the housing stress caused by mutual obligations and inconsistencies in Centrelink's application of exemptions.

**Lucy** is the victim of serious and sustained domestic violence including a recent incident. As a result, she is suffering from depression and anxiety. Due to her recent trauma, and her mental illness, she was unable to attend several appointments with her employment service provider. As a result, her Newstart Allowance was cut off. Lucy cannot afford to pay rent without her payment. Centrelink refused to accept her medical certificate and exempt her from mutual obligations. Lucy is concerned she will not be able to meet the requirements and will continue to be cut off Newstart Allowance placing her tenancy at risk.

36 Australian Government, Guides to Social Security Law, Social Security Guide Version 1.258 - Released 20 September 2019 (online) <<https://guides.dss.gov.au/guide-social-security-law>>

37 Ibid at 3.2.11.40 Mutual Obligation Requirements for NSA/YA Job Seekers - Exemptions - Special Circumstances



Anecdotal evidence from CCL staff indicates that there is a low level of awareness amongst CCL clients of the availability of exemptions. This may lead to social security recipients failing to fulfill their mutual obligations and suffering penalties in circumstances that would warrant an exemption being granted.

**Recommendation 6.2** *That the following reforms be implemented:*

**Recommendation 6.2.1.** *Amend section 3.2.8.50 of the Social Security Guide to include that any family violence must be considered when designing an appropriate job plan (as it is when considering exemptions).<sup>38</sup>*

**Recommendation 6.2.2.** *Amend 3.2.11.40 of the Social Security Guide to clarify that ongoing homelessness should be considered as a special circumstance for the purposes of granting an exemption (i.e. even if the circumstances are not 'unforeseen and unavoidable').*

**Recommendation 6.2.3.** *Abolish the Targeted Compliance Framework and punitive compliance mechanisms and replace with tailored support services to assess the strengths and barriers faced by an individual to finding work. At a minimum, decisions about compliance, demerits, penalties and exemptions should rest with Centrelink (not employment service providers) and be subject to administrative review.*

**Recommendation 6.2.4.** *Adequately resource Centrelink staff to provide oversight to Employment Service Providers and ensure that they are acting in accordance with the Social Security Guide and exercising their discretion fairly and transparently when making decisions that affect social security recipients.*

**Recommendation 6.2.5.** *Update training to Centrelink customer-facing staff in light of any changes made in response to the above recommendation.*

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<sup>38</sup> Ibid, at 3.2.8.50 What Can be Included in a Job Plan

## 7. Centrelink debts

The data collected throughout the course of this research revealed that a high incidence of CCL clients who were homeless or at risk of homelessness also had debts raised against them by Centrelink. In some cases, these clients owed several debts to Centrelink. CCL clients reported that Centrelink debts caused them high levels of anxiety and placed them under considerable financial pressure as they juggled debt repayments on top of other living expenses. The debts often arose due to issues with communicating and navigating Centrelink's systems, changing personal circumstances or errors by Centrelink.

People experiencing homelessness frequently face multiple challenges, and the lack of stability in their lives places them at increased risk of incurring debts and leaves them with a diminished ability to seek out information, respond to correspondence or appeal decisions. This disadvantage is highlighted by **Sophea's** case.

**Sophea** came to Australia as a refugee. She had three young children, was isolated and had limited English. After surviving many years of family violence, she fled the family home after her ex-husband threatened to kill her in front of their three children. She left her three children in his care fleeing interstate where she couch surfed before securing a place in the refuge. She was traumatised by the family violence and being forced to leave her children with her ex-husband. Several months later when a refuge worker took her into Centrelink to advise of her change in circumstances, she was told that a debt would be raised against her as she had lost care of her children.

Clients experiencing homelessness frequently reported difficulties maintaining lower debt repayment arrangements which currently require re-negotiation with Centrelink every three months. Not having stable and secure accommodation makes keeping track of appointments, paperwork and time sensitive obligations incredibly difficult for many people experiencing homelessness.

Nevertheless, clients reported that when they called Centrelink to advise of their circumstances had not changed and requested the continuation of their lower debt repayment arrangements, they would be asked detailed questions about their expenditure. They frequently reported feeling that a presumption was being made that they were spending their money unreasonably. In contrast, CCL lawyers reported that when they called Centrelink on a client's behalf, Centrelink would generally accept the lawyer's advice that the client's financial circumstances had not changed.

CCL solicitors reported that this process frequently caused clients significant anxiety about negotiating lower debt repayment arrangements by themselves. As a result, many contacted CCL for assistance every three months to undertake negotiations on their behalf. Reapplying for the lower debt repayment arrangement every three months is stressful for clients and a significant impost on Centrelink's resources particularly given that in CCL's experience reduced repayment arrangements are often continued as there has been no change in a person's financial circumstances.

**Recommendation 7.** *That the following reforms be implemented:*

**Recommendation 7.1.1** *That section 6.7.3.40 of the Social Security Guide, which outlines the conditions under which special circumstance provisions allow for the waiver of a debt, be amended to include homelessness as a specific factor to be considered.*

**Recommendation 7.1.2.** *That section 6.7.3.40 of the Social Security Guide be amended to clarify that a history of family and domestic violence must be considered in relation to debt waiver, particularly where a person has accrued a debt under duress or coercion, and consequently statements or representations may not constitute 'knowledge' by the debtor.<sup>39</sup>*

**Recommendation 7.1.3.** *That Centrelink amend its policy to allow for the reduced debt withholding arrangement to continue uninterrupted where the person states there have been no change in their financial circumstances.*

## 7.1 ROBODEBTS

While some vulnerable cohorts are exempted from Centrelink's automated debt recovery scheme (**Robodebt**), the client files reviewed during the project period found that people with extremely low incomes and precarious housing were affected by the scheme.

Robodebt compares income declaration data from the Australian Taxation Office (ATO) against income reported by people in receipt of social security payments. Where a discrepancy is identified, people are requested to verify their income. Where there are gaps in the information provided, the system will average out the ATO reported annual income across the 26 fortnightly Centrelink employment reporting periods. In other words, the system assumes that people worked consistent, regular hours over the course of the year. This is not the case for many people who work multiple jobs, variable hours and casual shifts. As a result, incorrect debts are raised against them.

The client experiences examined in this research are consistent with the view that people in unstable housing situations are more likely to incur incorrect Robodebts because they are more likely to work irregular hours / shifts and have less capacity to store or collect the documentation (fortnightly pay slips or bank statements) required to prove their earnings and ensure that the calculation is based on actual fortnightly income rather than the averaged income. These debts can go back across several financial years.

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<sup>39</sup> NSSRN Domestic Violence Report, above n2 at 34

**Anil** is a recent migrant from Tibet. He speaks limited English and has been struggling to find work since he arrived in Australia. He was placed on the Newstart Allowance. Through his employment service provider he was able to find a manual laboring job. His employment service provider assisted him by providing him with clothing and shoes for his new job. He worked for approximately six weeks before his contract was terminated. He was placed back on Newstart Allowance. Two years later he received a Robodebt notification alleging that he owed almost \$2000. Anil sought legal advice from CCL. He was extremely distressed that Centrelink thought he had been lying to them. He had only worked for 6 weeks in a three-year period and did not receive Newstart Allowance during that time.

His former employer will not provide him with pay slips and Anil does not have any bank records. For the 6-week period, Anil was paid by cheque which he then cashed immediately at the bank to pay rent. Anil has begun paying back the debt in fortnightly installments. This has placed Anil under further emotional and financial stress.

Anecdotally, it is the experience of CCL's Street Law program (which works with people who are experiencing or at risk of homelessness) that it is common for people entering or experiencing homelessness to have lost important documents that could assist if compliance issues are raised. This may be for several reasons. For those escaping domestic or other violence, or who are summarily evicted from their homes, they may not have had the opportunity to gather important documents prior to leaving. Those sleeping rough or couch surfing are more vulnerable to having their personal belongings stolen. For others, they simply discard all but the most essential personal items as, without a home, they do not have anywhere to store documents. Those who have lost documents during periods of homelessness are likely to face significant difficulties challenging Robodebts.

Individuals who are experiencing homelessness or unstable housing are less likely to be aware of their rights or have confidence in their ability to effect change. They are also less likely to have the stability to maintain regular contact with Centrelink or other services.

Since the scheme's inception, hundreds of thousands of Robodebts have been raised against people and 70,000 have been wiped, reduced or written off.<sup>40</sup> There has been persistent criticism of the emotional toll and financial stress that Robodebts placed upon individuals creating very real hardship – including placing housing at risk. Further, Robodebts undermine the confidence of social security recipients Centrelink as a trusted institution and can have the perverse effect of making individuals reluctant to engage.

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40 Luke Henriques-Gome, 'Robodebt faces landmark legal challenge over crude income calculations' *The Guardian* (online) 6 February 2019 <<https://www.theguardian.com/australia-news/2019/feb/06/robodebt-faces-landmark-legal-challenge-over-crude-income-calculations>>

**Marjorie** has an intellectual disability and is in receipt of Newstart Allowance. She was evicted from her private rental after being unable to sustain regular rental repayments. Marjorie believes that she would be eligible for Disability Support Pension, however, she advised CCL that after Centrelink raised a Robodebt against her a couple of years ago she no longer trusts them with her personal information. Marjorie believes the Robodebt was unjust and incorrect but due to her disability she didn't feel able to challenge the debt.

Marjorie told CCL that after her Robodebt experience there is now no way she would provide her private medical information to Centrelink in order to make an application for Disability Support Pension as she has lost confidence in them dealing with her information appropriately.

This research provides further evidence of the need to implement the recommendations made in relation to Robodebt by the NSSRN, most recently in its submission to the Senate Legal and Constitutional Affairs Committee inquiry, *'The impact of changes to service delivery models on the administration and running of Government programs.'*<sup>41</sup>



41 National Social Security Rights Network, Submission 27 to Senate Standing Committee on Community Affairs, *Inquiry into Centrelink Compliance Program*, 27 September 2019 (online) < <http://www.nssrn.org.au/policy-submission/submission-to-centrelink-compliance-program-inquiry/> >



**Recommendation 7.2.** *That the system of averaging ATO reported annual income across 26 fortnights immediately ceases. However, while Robodebt system continues to operate, we recommend the following:*

- a. individuals who receive Centrelink debt notices are given more information about the basis of the debt, including copies of their debt schedule setting out their alleged overpayments across each fortnightly payment period;*
- b. if there is insufficient evidence to prove the debt, that the Department refrains from raising a debt or taking any debt recovery action until such evidence is obtained by the Department using its power to request information directly from financial institutions;*
- c. The recovery of old debts should not be pursued especially where these debts allegedly accrued more than 6 years ago, particularly in cases where it is obvious that the person is of old age, suffering from ill health, living with disabilities or in an obvious state of hardship;*
- d. The Robodebt system should not be used for people Centrelink has flagged as vulnerability indicated; and*
- e. Compliance officers and external debt collection agencies chasing recovery of social security debts, should be trained in communicating with vulnerable people so they can demonstrate greater understanding and compassion when pursuing debts from vulnerable people.*

## 8. Waiting Periods

There are a range of waiting periods which apply to different Centrelink payments, and different social security recipients depending on their circumstances. Prospective social security recipients will often have no other source of income during the waiting period. It has been CCL's experience that there is a low level of understanding about waiting periods and when they apply. This results in clients being unable to manage their finances and falling into financial hardship. In turn, this can lead to rental arrears, housing insecurity and homelessness.

Waiting periods which were experienced by clients during the project period included income maintenance periods, newly arrived residents waiting periods and unemployment non-payment periods.

### 8.1 INCOME MAINTENANCE PERIODS AND COMPENSATION PRECLUSION PERIODS

If an individual takes a redundancy or is paid out their unused leave when they leave a job, this often attracts what Centrelink calls an 'Income Maintenance Period'. An Income Maintenance Period is a period of time when the social security recipient's Centrelink payments may be reduced (often to zero) for a period of time when they are expected to rely on their redundancy or other payment to support themselves. Once the Income Maintenance Period has been served, usually the social security recipient will again be eligible for Centrelink payments.

The client experiences examined in this research found that a lack of understanding about how redundancy payments are assessed had led to people falling into rental arrears and in the case example below the consequences were catastrophic, ending in homelessness for the client and his family.

**Michael** was made redundant and received a payment. He had care of his three children as a single parent. One of his children had a significant intellectual disability. He used a significant proportion of the redundancy payment to pay back debts. After Michael used up his redundancy payment he applied for Newstart Allowance and was told that an Income Maintenance Period applied. Michael was not aware that the redundancy payment would restrict his ability to access Centrelink payments. Michael contacted CCL after becoming homeless due to not being able to pay the rent. He told CCL that he could sleep in his car, but his three children needed somewhere safe to live.

This is consistent with prior research conducted by the NSSRN which found that a lack of understanding about the role of redundancy payments and that they attract an Income Maintenance Period contributed to recipients falling into financial hardship after using their redundancy payments to pay off debts and other pressing expenses, and subsequently finding themselves ineligible for Centrelink payments.<sup>42</sup>

Similarly, if a social security recipient receives a compensation payment (for example, as a result of a workplace injury) they may be subjected to a Compensation Preclusion Period. Compensation Preclusion Periods apply to almost all social security payments. Most of the time a Compensation Preclusion Period is applied after a lump sum compensation payment is made. The length of the Compensation Preclusion Period for settlements reached is calculated by taking half of the total lump sum quantum and dividing it by a number called the “income cut-out amount”, which changes over time.<sup>43</sup>

As with the Income Maintenance Period, substantial difficulties arise for people when they run out of compensation before the Compensation Preclusion Period expires. They are then effectively left with no income and sometimes ongoing complications, and costs, associated with the injury that formed the basis of their compensation payment. This is further complicated in cases where, as was the experience of some CCL clients, Centrelink makes errors with respect to the length of the Compensation Preclusion Period and clients are left without income for protracted periods of time.

**Douglas** is a 64-year-old man who was awarded compensation after a workplace injury. After his injury he quit his job and applied for the Age Pension as he was unlikely to be able to engage in physically demanding work again. He was advised that there was a Compensation Preclusion Period in place until October the following year. Douglas appealed this decision because he believed the Compensation Preclusion Period had been calculated incorrectly, and that he should be eligible to receive the Age Pension in January. Douglas continued to appeal the decision until finally the Administrative Appeals Tribunal found that Douglas was right, and he would have been eligible for the Age Pension from January that year.

Douglas experienced a high level of stress and financial hardship as a result of being cut off from any Centrelink payments for over a year.

*This research provides further evidence of the need to implement the recommendations made in NSSRN’s research report, Measures to address poverty traps caused by Income Maintenance Periods and Compensation Preclusion Periods.*<sup>44</sup>

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42 Sue Regan and Peter Whiteford, National Social Security Rights Network, ‘Measures to address poverty traps caused by Income Maintenance Periods and Compensation Preclusion Periods’ (December 2016) online < <http://www.nssrn.org.au/wp/wp-content/uploads/2017/01/NWRN-waiting-periods-and-poverty-traps-research-Dec-2016.pdf>>, 13

43 Ibid.

44 Sue Regan and Peter Whiteford, National Social Security Rights Network, ‘Measures to address poverty traps caused by Income Maintenance Periods and Compensation Preclusion Periods’ (December 2016) online < <http://www.nssrn.org.au/wp/wp-content/uploads/2017/01/NWRN-waiting-periods-and-poverty-traps-research-Dec-2016.pdf>>, 13.

**Recommendation 8.1.1** *That the following reforms be implemented:*

- i. *Improve awareness of Income Maintenance Periods by requiring employers to report all cases of redundancy to Centrelink (or at least those which might involve a large lump sum and longer than average Income Maintenance Period).*
- ii. *Explore options of flagging high risk Compensation Preclusion Period matters (e.g. those involving individuals where there is knowledge of pre-existing gambling or drug/alcohol addiction) and facilitate proactive outreach.*
- iii. *Re-examine the role of employers and lawyers in intervening early and raising awareness around the purpose and responsibilities of managing a lump sum, and its relationship with the income support system.*
- iv. *Improve information and financial guidance for people with lump sum payments, perhaps through the development of tailored information products (for use by existing outlets of financial information e.g. the Financial Information Service and MoneySmart).*
- v. *Reconsider the Centrelink communications strategy in relation to Income Maintenance Periods and Compensation Preclusion Periods to include more regular and informative communications, Easy English and using wording and framing that applies behavioural insights.*

Further, given the extreme hardship that many recipients of compensation payments find themselves in, we recommend amending the Social Security Guide to allow for partial or full waivers of preclusion periods to be applied in a wider range of circumstances.

**Recommendation 8.1.2.** *Amend the ‘Straitened (sic) financial services’ section 4.13.4.20 of the Social Security Guide to include under ‘general principles’<sup>45</sup> that in circumstances where the lump sum payment is used to pay off debts/rental arrears or immediate, unavoidable bills this should not count against an applicant seeking a full or partial waiver of their Income Maintenance Period or Compensation Preclusion Period as failure to pay off debts/arrears further entrenches poverty and increases the risk of homelessness.*

**Recommendation 8.1.3.** *Amend the ‘Compensation Part of Lump Sum 50% Rule’ section 4.13.2.30 of the Social Security Guide to exclude any debts/arrears raised against the applicant from the calculation of preclusion periods in order to avoid entrenching the applicant’s hardship.<sup>46</sup>*

**Recommendation 8.1.4.** *Insert into section 4.13.2.30 of Social Security Guide that consideration be given to full or partial waivers of the Compensation Preclusion Period in circumstances where the injury attracting compensation is not the sole basis on which the claim for social security is made.<sup>47</sup>*

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<sup>45</sup> Guides to Social Security Law at 4.13.4.20 Factors to Consider When Determining Special Circumstance <<https://guides.dss.gov.au/guide-social-security-law/3/1/13/80>>

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

## 8.2 NEWLY ARRIVED RESIDENTS WAITING PERIOD

This research found that the Newly Arrived Residents Waiting Period, which requires newly arrived residents to serve a waiting period before they are eligible to receive various Centrelink payments and concession cards, increased housing insecurity and further entrenched disadvantage and poverty. On 1 January 2019 the Newly Arrived Residents Waiting Period was extended from 104 weeks to 208 weeks for various working age payments and concession cards, and new waiting periods were introduced for a range of other payments.

NSSRN opposed the extension of the Newly Arrived Residents Waiting Period in its submission to Senate Inquiry into *Social Services Legislation Amendment (Encouraging Self-Sufficiency for Newly Arrived Migrants) Bill 2018*<sup>48</sup> on the basis that the amendments:

- Were based on a flawed assumption that the reason migrants need income support is that they choose not to work.
- Ignored the evidence that a lack of coordination between Australia's migration system and employment policies has made it difficult for some migrants to secure ongoing well-paid employment, even where they have qualifications and experience to match skills shortages.
- Further disadvantaged migrants, increasing the inequality between them and the rest of the community and increasing their vulnerability to exploitation.
- Did not adequately take into account the effect these measures will have on children, or those who require care and assistance to manage day-to-day living.
- Disadvantaged individuals who have already taken steps to migrate to Australia, or those who have indicated a willingness to provide an Assurance of Support.
- Failed to recognise the lifetime contribution of migrants to Australia's economy and community.

The Government claims that extending the Newly Arrived Residents Waiting Period will “encourage self-sufficiency” for newly arrived migrants. However, it has been reported that migrants who are encouraged to come to Australia under the skilled migration program are frequently *overqualified* for available jobs and struggle to secure ongoing well-paid employment.<sup>49</sup> Far from not wanting to work, migrants are being let down by a lack of coordination between Australia's migration system and employment policies. The experiences of CCL clients studied for this research aligns with this view. Migrants who are eligible to receive social security payments have already been assessed by the Department of Human Services as needing financial assistance. This makes it harder for individuals and families to access social security payments with a long waiting period, which only increases financial hardship and the risk of homelessness. It also shifts the burden of providing support onto community organisations, charity groups, and homelessness services.

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48 Ibid.

49 Massimiliano Tani, 'Australia is not making the best use of skilled migrants', UNSW Sydney Newsroom, 8 February 2018, (online) <<https://newsroom.unsw.edu.au/news/business-law/australia-not-making-best-use-skilled-migrants>>



The Newly Arrived Residents Waiting Period leaves new migrants without support or security for a protracted period when they are trying to establish their lives in a new country and are vulnerable to poverty. Existing exploitation of migrant workers in Australia is well documented.<sup>50</sup> Subjecting migrants to longer periods without income support when they are in financial hardship will only make them more vulnerable to exploitation.

Newly arrived residents experience poverty and homelessness at elevated rates compared to the general population. A 2018 Australian Bureau of Statistics study found that migrants were disproportionately affected by homelessness. While 28.2% of Australians were born overseas, they comprised 46% of the homeless.<sup>51</sup> The Newly Arrived Residents Waiting Period leaves new migrants without support or security for a protracted period when they are trying to establish their lives in a new country and are vulnerable to poverty.

**Anusha** is a young Sri Lankan migrant who first arrived in Australia in 2015. Over subsequent years she has spent time in Australia completing her Masters and returned to Sri Lanka several times to visit family and her husband. As a result, she has not completed the Newly Arrived Residents Waiting Period. Anusha is also actively looking for work in Australia whilst completing her Masters. She currently has no employment and is struggling to pay the rent on her public housing property.

**Recommendation 8.2.** *That the Newly Arrived Residents Waiting Period, especially for Special Benefit which is designed to be the payment of last resort be removed or at least reduced.*

### 8.3 UNEMPLOYMENT NON-PAYMENT PERIODS

This research found that unemployment non-payment periods caused financial hardship and resulted in people falling into rental arrears.

Individuals can be subject to unemployment non-payment period in circumstances where they are considered to be voluntarily unemployed or became unemployed because of misconduct.<sup>52</sup> While individuals are able to challenge the basis of a non-payment period, these challenges can take time. Individuals can also seek review of the unemployment non-payment period if they fit certain criteria – including if they are homeless or at risk of homelessness, or do not have access to safe, secure and adequate housing. These are important protections; however, it is CCL's experience that individuals may nevertheless be subjected to non-payment periods while they await the outcome of an appeal. In situations where individuals are experiencing domestic violence, like Talia below, non-payment periods can leave them with little choice but to remain in abusive situations as they do not have the financial means to leave.

50 Senate Education and Employment Reference Committee, 'A National Disgrace: The Exploitation of Temporary Work Visa Holders', 17 *ibid* p23

51 National Social Security Rights Network, Submission 15 to Senate Standing Committee on Community Affairs, *Social Services Legislation Amendment (Encouraging Self-sufficiency for Newly Arrived Migrants) Bill 2018*, 16 April 2018 (online) <<http://www.nssrn.org.au/policy-submission/nssrn-submission-on-the-proposed-extension-to-the-newly-arrived-residents-waiting-period>>

52 Guides to Social Security Law, above n31 at 3.1.13.80 Unemployment Non-payment Periods <<https://guides.dss.gov.au/guide-social-security-law/3/1/13/80>>

**Talia** is a young woman who has experienced several periods of homelessness. She was subject to an unemployment non-payment period after she was dismissed from her job due to unauthorised absences. Talia had explained to her employment service provider that she had been absent from work after experiencing a period of depression around the anniversary of the death of a close family member. Talia's employment service provider said she was just 'making up excuses' and applied an unemployment non-payment period. Talia appealed the decision and her payment was subsequently reinstated. However, Talia still experienced a non-payment period of over three weeks before the reinstatement occurred.

Prior to the non-payment period being applied Talia had been couch surfing with friends and contributing to the cost of household expenses. However, during the unemployment waiting period, Talia was no longer able to do this. Talia was forced to live with a family member who was emotionally abusive towards her, refused her food or other assistance. As a consequence of the unemployment non-payment period Talia was subjected to 3 weeks of emotional abuse while she waited for her Newstart Allowance payments to commence.

Centrelink can end a person's unemployment non-payment period if it would cause the person to be in severe financial hardship or if the person is in a class of persons specified by legislative instrument. These classes of persons include individuals who do not have access to safe and secure accommodation. However, this safety is described as housing 'which damages or is likely to damage the person's health or threatens of is likely to threaten the person's safety.'<sup>53</sup> This description may not be interpreted to include situations of emotional abuse that can occur in the context of domestic or family violence.

**Recommendation 8.3** *That the Social Security (Administration) (Ending Unemployment Non-payment Periods – Classes of Persons) (DEEWR) Specification 2009 (No. 1) be amended to include individuals experiencing domestic and family violence as a specific class of persons for whom unemployment non-payment periods can be terminated.*

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53 Social Security (Administration) (Ending Unemployment Non-payment Periods – Classes of Persons) (DEEWR) Specification 2009 (No.1)

## 9. New Zealand Citizens

New Zealand citizens generally receive a 'special category visa' on arrival in Australia and are not required to take out permanent residence to be able to live, work and pay taxes in Australia. As a result, many New Zealanders living in Australia do not become permanent residents. These New Zealand citizens are not eligible for Centrelink payments unless they become permanent residents. This means that increasing numbers of New Zealanders who have been living and working in Australia for many years are being denied Centrelink payments in the event of dramatic changes in circumstances such as accident, illness, unemployment or domestic violence.

While there are some safety nets in place for New Zealanders who have not been permanent residents in Australia (i.e. the ability to access one-off crisis payments, or up to six months of NSA after ten years of continuous residency) this is often insufficient to protect people suffering serious hardship from falling into poverty. For example, we are aware of cases where women fleeing domestic violence have had to leave Australia and return to New Zealand because they were not eligible for Centrelink assistance here.<sup>54</sup>

In CCL's experience the absence of a safety net for New Zealanders directly places them at risk of becoming homeless.

**Olivia and Greg** were public housing tenants. They had teenage children. Greg had a significant injury at work and was unable to return to any form of work. After his compensation payment ran out, the family fell into significant rental arrears. Greg was unable to access a social security payment because he was a New Zealander and not an Australian permanent resident. Olivia was working in a low paid job in a nursing home. Housing ACT took eviction proceedings against the family. CCL represented the family in the Tribunal proceedings. The matter was hard fought, and the family only just avoided eviction.

As noted in NSSRN's domestic violence research report, commentary on the severe treatment of New Zealanders who find themselves in crisis is not new. For example, the 2012 AAT decision of *Filipovski and Secretary, Department of Family and Community Services* notes that it is harsh and hard to understand why New Zealanders are precluded from obtaining Special Benefit even if there has been a '*substantial change of circumstances beyond their control*' when social security law provides relief to other newly arrived residents in the same circumstances.

This research report provides further evidence of the need to implement the recommendation made in NSSRN's domestic violence research report.<sup>55</sup>

54 Gina Masterton, 'Fleeing family violence to another country and taking your child is not 'abduction', but that's how the law sees it' *The Conversation* (online) 21 January 2019 <<https://theconversation.com/fleeing-family-violence-to-another-country-and-taking-your-child-is-not-abduction-but-thats-how-the-law-sees-it-109664>>

55 NSSRN Domestic Violence Report, above n2.

**Recommendation 9.** *That the Federal Government review the particularly harsh treatment of New Zealand permanent residents living in Australia who experience a substantial change of circumstances and find themselves in extreme financial hardship, enabling them to access Special Benefit where there has been a 'substantial change of circumstances beyond their control' so they are treated equitably with newly arrived migrants.*

## 10. Conclusion

Key policy decisions at both a Federal and a Territory level have resulted in vulnerable members of our community becoming homeless, experiencing prolonged homelessness or finding themselves at risk of homelessness. This research found that key demographics were at particular risk of homelessness – women, single mothers, victims of domestic violence, people who had been incarcerated, Aboriginal and Torres Strait Islander people and newly arrived migrants and refugees.

Preventing and reducing homelessness is essential for an inclusive, prosperous and productive society. There is extensive research which shows homelessness is a key driver of criminal behaviour, unemployment, poor mental health and drug and alcohol issues and increases the risk of families coming into contact with child protection services.

Our whole community benefits when everyone has somewhere safe and secure to live and sufficient funds to meet their day to day needs. Implementing the recommendations of this research report will assist in contributing to a fairer and more inclusive community.











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