



## **Submission to ACT Law Reform Advisory Council's Issues Paper: Canberra – becoming a restorative city**

By Dhurrawang Aboriginal Human Rights Program for Canberra Community Law,  
September 2017

### **Introduction**

Canberra Community Law (CCL) is a community legal centre providing free legal advice, assistance and representation to people in the ACT on low incomes for matters relating to tenancy, public housing, social security and disability discrimination law.

CCL also operates:

- Dhurrawang Aboriginal Human Rights Program which provides services in housing, social security and race discrimination law to Aboriginal and Torres Strait Islander communities in Canberra through a human rights framework;
- the Socio-Legal Practice Clinic that combines legal assistance with intensive social work support to maximise the prospect of a successful outcome;
- the Street Law outreach program which provides legal advice, assistance and representation on relevant areas of law to people who are or at risk of experiencing homelessness;
- the Night Time Legal Advice Service (NTLAS) which provides legal advice to any member of the public on most areas of law from 6 to 8pm on Tuesday nights;
- The Disability Discrimination Legal Service (DDLS) provides legal advice and representation on Disability Discrimination.

CCL's Housing law practice is the only specialist legal service in relation to public housing in the ACT. CCL also runs a duty lawyer scheme at the ACT Civil and Administrative Tribunal (ACAT) in relation to the Thursday public housing list and regularly appears before ACAT.

Fifty percent of CCL's 860 clients in 2015/16 were either experiencing homelessness or at risk of homelessness.

We thank the ACT Law Reform Advisory Council for the invitation to make a submission to the Restorative Practices' Issues Paper and commend the Council for focusing on public housing as one of two key areas.

## Executive Summary

Housing & Community Services ACT (Housing ACT) is a social housing provider that identifies its role as providing “support for people who are disadvantaged or experiencing crisis”<sup>1</sup>. Social housing has at its heart a recognition that access to adequate housing is imperative to ensuring that all individuals can lead a dignified existence. Without adequate housing other rights such as health, education and employment cannot be realised.

Because Housing ACT has the role of providing adequate housing to those most in need, it must recognise that making this right accessible and the processes whereby this right can be realised, transparent and accountable are significant aspects of its role as a government agency and administrative decision maker. A transparent and accountable decision-making process will enable applicants to be active participants in the processes that impact them thereby ensuring that the relationship between applicants/tenants and their landlord are not fractured and fraught and that individuals most in need can access the basic human right to adequate housing. Such an approach is in line with ACT government obligations under the *Human Rights Act 2004*.

Our submission to the Law Reform Advisory Council on restorative practices will focus on the assessment and review processes at Housing ACT and our interactions, observations and recommendations in relation to these.

Housing ACT have some mechanisms whereby they can adopt a restorative approach to their assessment processes. Unfortunately, in our experience, these mechanisms are only triggered through persistent and strong advocacy. Decision makers appear unaware about their obligations to administer procedural-fairness rendering the decision-making process arbitrary and opaque.

Through our persistent advocacy the Housing ACT policies and procedures which have been developed to protect and assist clients in crisis are sometimes implemented. It is our hope that these mechanisms are championed by senior staff at Housing ACT and implemented automatically and without the need for our persistent involvement in order that the trauma that is currently associated with navigating the Housing ACT

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<sup>1</sup> About Us, ACT Government Community Services, accessed at [http://www.communityservices.act.gov.au/hcs/about\\_us](http://www.communityservices.act.gov.au/hcs/about_us) on 20 Sept 2017.

process may be avoided in favour of a restorative approach that corresponds with the social landlord's objectives to provide "support for people who are disadvantaged or experiencing crisis".

Moreover, there is a significant gap in the agency's cultural competence on Aboriginal and Torres Strait Islander issues. There is currently no Aboriginal liaison officer at Housing ACT. There is no cultural support team that can assist Aboriginal clients in crisis. We recommend that Housing ACT follow the path that other State and Territory governments have paved to develop and implement policies and procedures that deal specifically with Aboriginal and Torres Strait Islander communities.

We believe that it is imperative that Housing ACT recognise that our role as advocates is to facilitate respectful re-engagement between our clients and their landlord in order to protect their tenancy and mitigate the risk of homelessness. To this end we enforce our clients' rights as social housing tenants to be treated with fairness and dignity. When this approach is utilised by Housing ACT it is illustrative of how powerful a tool it can be in restoring justice and rebuilding relationships.

## Recommendations

- A Housing First approach should be adopted to enable individuals in chronic need to access housing and in turn support services to help facilitate their recovery from crisis,
- Ensure that all staff at Housing ACT are familiar with the Domestic Violence policies and apply them wherever required,
- Service delivery and communication modes should be culturally appropriate and accessible, with specialised strategies for communicating and processing cases involving Aboriginal and Torres Strait Islander clients,<sup>2</sup>
  - Social housing policies should recognize and respect the special status of Aboriginal and Torres Strait Islander Australians and acknowledge the extent of their disadvantage in urban areas,<sup>3</sup>
  - Appoint an Indigenous advisory group to assist the Minister for Housing with issues pertaining to Aboriginal and Torres Strait Islander customers,
  - Recruit Aboriginal and Torres Strait Islander assessment and review officers,
  - Recruit Aboriginal and Torres Strait Islander Housing Managers ,

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<sup>2</sup> Vivienne Milligan, et al, *Urban Social Housing for Aboriginal People and Torres Strait Islanders: Respecting Culture and Adapting Services*, AHURI Final Report No. 172, August 2011, [https://www.ahuri.edu.au/\\_data/assets/pdf\\_file/0014/2075/AHURI\\_Final\\_Report\\_No172\\_Urban\\_social\\_housing\\_for\\_Aboriginal\\_people\\_and\\_Torres\\_Strait\\_Islanders\\_respecting\\_culture\\_and\\_adapting\\_services.pdf](https://www.ahuri.edu.au/_data/assets/pdf_file/0014/2075/AHURI_Final_Report_No172_Urban_social_housing_for_Aboriginal_people_and_Torres_Strait_Islanders_respecting_culture_and_adapting_services.pdf), p 105.

<sup>3</sup> Ibid, p 103.

- Implement a model similar to the Victorian model of having adverse decisions in relation to Aboriginal applicants reviewed by an Aboriginal decision-making panel,
  - Cultural practices of Aboriginal Australians in providing their kin with shelter during homelessness acknowledged and applied in the context of individuals who are unwilling or unable to partake in the shelter system and the policy requirement to engage with shelters applied sparingly and in consideration of cultural practices,
  - The eligibility requirement of ‘ability to maintain a tenancy’ to be applied with care to ensure that Indigenous households with past adverse tenancy management problems are given an opportunity to access mainstream public housing in the future,<sup>4</sup>
- Service delivery and communication should be appropriate and accessible to clients with disabilities,
  - Trauma informed practice must be adopted across all sections of Housing ACT to ensure that clients are not re-traumatised as a result of their interactions with these agencies,
  - Evidentiary burdens should be lowered to reflect the disadvantage and crisis that impact applicants for social housing,
  - Housing ACT should provide all applicants in crisis with wrap around case management and coordinate the Housing ACT response across all divisions during the assessment and review processes,
  - Provide training to Housing ACT staff on restorative practices and encourage a process that moves away from the current adversarial process.

## Background

Our clients’ experience of the Housing ACT assessment and review processes is often disempowering and traumatic. Clients contacting CCL are often in a state of crisis which is exacerbated by significant disadvantage. The crisis includes chronic homelessness, domestic violence, severe mental illness and chronic health issues, substance abuse, inadequate and unsafe housing which are exacerbated by disadvantage such as historical oppression, poverty, cultural and language barriers, illiteracy, absence of community safety net or old age. Our clients face significant challenges in navigating a system which is often lacking in its response to individuals and families in crisis.

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<sup>4</sup> Paul Flatau, et al, *Indigenous Housing Need and Mainstream Public Housing Access and Sustainability Responses*, paper presented at the Australian Social Policy Conference, 20-22 July 2005 University of New South Wales, [https://www.aspc.unsw.edu.au/sites/www.aspc.unsw.edu.au/files/uploads/aspc\\_historical\\_references/2005/paper110.pdf](https://www.aspc.unsw.edu.au/sites/www.aspc.unsw.edu.au/files/uploads/aspc_historical_references/2005/paper110.pdf), p 49.

The assessment and review processes are inaccessible, inconsistent and personality driven often rendering them impenetrable for those most in need. Some of these flaws may be addressed through educating the bureaucracy on the importance of transparency, accountability and procedural fairness in their decision-making process. However, we acknowledge that there are significant challenges in communicating with clients who are in crisis. This difficulty in communication can often result in applications being cancelled or decisions remaining unchallenged, giving rise to an inherent unfairness that arises from a combination of the circumstances of the applicant and the inaccessibility of the decision-making process. The status quo is not a foregone conclusion as the stories below will illustrate, some mechanisms do exist for ensuring that the application process is responsive, however this responsiveness is ad hoc and driven by individual managers and often triggered by strong advocacy.

We have observed numerous instances where our clients are not aware or do not understand the decisions which impact them. The decisions are sometimes made outside of the legislative time frames, clients are rarely invited to comment on adverse/absent evidence used to reach a decision which negatively impacts them. The correspondence sent to clients by Housing ACT is often vague. An example is the absence of explanations about the waiting list categories rendering their titles obscure and meaningless. In most cases clients assume that High Needs is the top category and have no idea how long the respective waiting lists are. Decision makers are often inaccessible by applicants and their advocates. Policy to produce evidence tends to be applied rigidly placing an unrealistic and unfair evidentiary burden on vulnerable individuals.

Applicants consistently struggle with engagement with Housing ACT and as a result of repeated negative interactions, abandon engagement altogether.

Restorative justice requires of parties to address harms and help repair and restore relationships through an inclusive process of shared problem solving. It seeks to restore harmony to communities and requires of parties that they take responsibility and meet the needs of those who are hurt.

It has been our experience that most of the circumstances that come to our attention would not be resolved by Housing ACT in favour of our clients but for our involvement. We have observed that some senior staff do embrace restorative practices and seek to champion assessment methods which facilitate this, when this approach is taken it has far reaching impact on the experience of clients and the outcome of cases. Unfortunately, this approach is the exception, though it does suggest that there are means of achieving restorative practices within Housing ACT.

## **Assessment and Review processes**

### Application for Priority Housing:

The application process for Priority Housing/Transfers must undergo a three-stage assessment with initially the assessing officer determining that it should be considered

for priority. The assessing officer must then prepare a brief to be triaged with senior management and if approved will be 'written up' to be referred to the Multi-Disciplinary Panel (MDP). The process implemented at the MDP stage is unclear. The MDP membership is not disclosed, the MDP receive submissions from the assessment team only. The applicant nor their representative can participate in this process. The MDP recommends whether an application is placed on the priority list or not and a senior manager makes the final determination based upon this recommendation. This process is in our experience opaque, lengthy and inefficient.

MDP decisions are subject to review by senior officers at Housing ACT. There are no clear procedural documents to identify what the powers of the reviewing officers are.

If the review is unsuccessful then the appeal can proceed to an equally opaque process in the Housing Assistance and Tenancy Review Panel (HATRP). Like the MDP process it has been our experience that the HATRP only receive the information that the assessing team provide to them. This sometimes does not include evidence which we have submitted and is critical to the case making the process inefficient, biased and incomplete.

If the decision remains unsatisfactory applicants can make an application to ACAT for review.

The ACAT review process enables applicants to appear before the decision maker, answer questions, put their case forward and respond to issues raised by Housing ACT. This enables applicants to participate in the decision-making process and be heard.

## **Barriers to Housing**

### Chronic homelessness,

Chronic homelessness is a barrier to obtaining housing. Housing ACT require of applicants for priority housing that they demonstrate extreme vulnerability coupled with a proven capacity to sustain a tenancy.

Applicants who have been homeless for an extended period are unable to produce evidence of their capacity to sustain a tenancy and are expected to engage with various support agencies to build and develop this capacity. This approach is misguided in its expectation that individuals experiencing chronic homelessness can engage with services, while they struggle each day to find a safe place to sleep that night. The correct approach to this scenario is the Housing First approach that provides the accommodation and then the engagement, rather than the cart before the horse approach that is the current policy.<sup>5</sup>

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<sup>5</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.



‘Housing First’ is an approach to social housing policy which recognises that ‘everyone deserves a home of their own, regardless of personal circumstances, prior to engaging in any rehabilitative efforts’.<sup>6</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>7</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>8</sup> Put simply, provision of independent housing without conditions, the ‘Housing First’ approach, has ‘changed the landscape of what is considered possible for people suffering from chronic homelessness’.<sup>9</sup>

This story illustrates a common scenario for those experiencing long term homelessness, when the homelessness itself is the barrier to housing in the absence of a Housing First approach.

### ***Jane’s Story***

*Jane is an Aboriginal woman in her late 30s who has experienced chronic homelessness for over a decade. She has a history of trauma that has meant that she is unable to stay in shared accommodation. Sometimes she can couch surf with family or acquaintances, but mostly she sleeps outside in the harsh Canberra climate. Jane is an impressive person who despite her circumstances has overcome substance abuse and volunteers when she can at a community organisation.*

*Her homelessness has prevented her from meeting the activity requirements to receive Centrelink payments. Her payments were cancelled on a number of occasions and she had to subsist on no income at all. She often has no phone credit with which to contact agencies nor income to pay for bus fares to attend appointments.*

*She had made three applications for social housing assistance over the course of almost a decade. Her first two applications were either lost or cancelled because Housing ACT had been unable to contact her. Her most recent application was finally processed in 2017, but she was only assessed to fall within the High Needs category, the second of three categories of need with an approximate waiting period of 2 years or more. This was despite presenting information about substantial supports including drug and alcohol rehabilitation and employment training, it was deemed*

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<sup>6</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>7</sup> *Ibid*, 81.

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

<sup>9</sup> Sam Tsemberis and Ben Henwood, ‘Pathways’ Housing First: A Consumer-Driven Approach to Ending Homelessness and Promoting Recovery’ in Dr Steven A Estrine and Robert T Hettenbach et. al *Service Delivery for Vulnerable Populations: New Directions in Behavioural Health* (Springer Publishing Company, 2010) 183, 186.

*that this type of support was insufficient to satisfy Housing ACT that our client would be capable of sustaining a tenancy. By this point she had been homeless for approximately 15 years.*

*Throughout the application process she was repeatedly told that her chronic homelessness was a barrier to being categorised in the highest need category. She was told that she should stay in shelters in order to have the shelter assess her ability to sustain a tenancy. There was no respect paid to the fact that Jane's Aboriginal family network ensured that she had a couch to sleep on from time to time and this was more suitable to her needs than entering a shelter.*

*The rationale provided was that Housing ACT could not be satisfied of her ability to sustain a tenancy given that she had not previously held a tenancy. After significant agitation by CCL she was interviewed for the first time by a senior decision maker who advised her that if she provided additional evidence about the presence of additional support services that he would facilitate a referral to the MDP to be considered for priority allocation. However, after providing this evidence the original decision was affirmed with the advice that although she had engaged with support services, they were not the support services that Housing ACT deemed to be sufficient. Her insistence that she was fearful of entering shelters and would rather sleep outside or on a family member's couch was ignored.*

*After sustained advocacy by CCL a manager at Housing ACT became involved in the case and referred the matter to a different decision maker who arranged a further face to face meeting with our client ultimately they referred the matter for consideration to the MDP to be classified in the highest needs category. No further evidence was required. Our client was deemed eligible for priority housing and received an offer of a property shortly thereafter. She is now happily housed and grateful to finally have a place to call home.*

This matter would not have progressed to the priority housing list without the intervention of CCL. This is despite the fact that our client's circumstances demonstrated the presence of multiple complex needs that under legislative guidelines ought to have been addressed by classification in the highest needs category. The advocacy required involved not only submissions of law and fact but liaising with Housing ACT managers and multiple services and having support services redraft their letters to satisfy the evidentiary burden.

This type of chronic homelessness is particularly prevalent in the Aboriginal community as clients face significant barriers in navigating the system due to the cultural ignorance of decision makers and cultural and historical issues that impact client engagement with government agencies. Moreover, the evidentiary burden imposed is a significant barrier which reaffirms in our clients' minds the systemic injustice that perpetuate historic disadvantage.

#### Domestic Violence



Housing ACT have Domestic Violence (DV) policies that if applied correctly can be of tremendous assistance to survivors of DV and demonstrate insight by Housing ACT into how restorative justice can repair fractured relationships. However, it has been our experience that these policies are not automatically applied by Housing ACT but require advocates to bring these policies to the attention of assessing officers and undertake advocacy with senior staff before a favourable outcome is achieved.

### ***Chelsea's Story***

*Chelsea is an Aboriginal woman with two young children. She was experiencing very significant domestic violence at the hands of her former partner. The threats to their safety became so serious that Chelsea and her children fled their Housing ACT property and sought shelter in a women's refuge. They were staying in a single room, which is all that the refuge could offer. After three months of living there, the shelter needed to move them on. Chelsea had asked for a transfer. Housing ACT put her on the High Needs list, saying that she could not be put on the Priority List because she had a large sundry debt.*

*Chelsea was told that she needed to contact the Vacated Debts team and get a copy of her invoices, and if she wanted to challenge any of the debt, she would need to do that separately. She was also told that another option for her was to start making payments towards the debt for three months before she could be considered for Priority.*

*Chelsea contacted CCL. We wrote to the assessing officer at Housing ACT to point out that the Housing ACT Domestic and Family Violence Policy 2015 outlines that debt will not operate as a bar to a transfer where a woman's safety is at risk. We argued that Chelsea's case fell squarely within this policy, and that the general policy around debt did not apply as it was superseded by the family violence policy.*

*The assessing officer responded to our email quickly, saying that she would take our arguments to her team leader. Apart from this debt issue, the assessing officer had already prepared her case for referral to the MDP. She told us when the next Panel meeting would be, and said that now that she could add our submissions to the case, her team leader was willing to sign off on it. As a result, the matter was considered by the MDP and Chelsea was placed on the Priority List.*

*Soon after this, Chelsea and her children were offered a three bedroom property that they moved into straight away. Though Chelsea was confused and frustrated when she was initially refused reassessment to the Priority List, the responsive approach that Housing ACT adopted once their family violence policy was brought to their attention made Chelsea feel supported. She and her children are very happy and safe in their new home.*

### ***Joan's Story***

*Joan is an Aboriginal woman with four children under 5 years. She has recently fled her home fearing for her safety and that of her children following years of domestic violence. Prior to leaving her home she made several attempts to seek a transfer through Housing ACT citing domestic violence as the reason.*

*She did not receive any response to her application and finally left her home with the children and obtained assistance from the Domestic Violence Crisis Service (DVCS) to stay in a motel room. During the course of 2 weeks she moved to 12 different motel rooms with her four children.*

*CCL became involved in the case at this point and obtained support letters and referred the matter to a senior manager in Housing ACT with a request for urgent action. The senior manager referred the case to Housing ACT's Tenancy Support and Community Connections Officer (TSCCO), a position responsible for working with individuals in crisis. The TSCCO officer tried to communicate with Joan directly but the relationship between Joan and Housing ACT was so fractured at this point that she refused to speak with him and directed him to speak with her lawyers.*

*A week after lodging the application for a priority transfer she was issued with a Notice to Remedy by her housing manager due to the damaged state of her Housing ACT property. She was frantic and very distressed, she said that the damage was DV related. We contacted the housing manager's team leader and articulated the circumstances to him. He was responsive and supportive. He referred us to the TSCCO.*

*Meanwhile we received a call from the assessing officer asking for more evidence to support the case. We brought the DV policy to her attention and asserted that there was enough evidence submitted as per their policy to warrant a priority assessment.*

*One month after the urgent transfer application was submitted we contacted HACT and asked about the progress of the case, suggesting that an assessment in the case was urgent and necessary. The TSCCO officer liaised with the different sections in Housing ACT and arranged a meeting which included all parties concerned, including CCL, Joan, the assessment team and tenancy. The meeting was very positive with the assessment team articulating their support for Joan and confirming that they had all of the necessary evidence to refer the matter for priority consideration. The tenancy team explained that they had made a request with senior management to reduce Joan's rent so that she was not paying rent at her property which she had fled. They arranged for the locks on her current property to be changed and discussed features that she might like to specify in her transfer applications that will make the property safe for her into the future.*

*This was an extremely positive meeting where Housing ACT responded well and in a coordinated manner. This was a restorative approach which enabled Joan to feel safe and supported by Housing ACT and confident that her transfer application would be*

*processed with care. Joan's case is still pending and no decision regarding her priority status has been made two months since the application was lodged.*

What Joan's story reveals is that Housing ACT have the mechanisms to deal with situations involving crisis in a coordinated and timely manner. However, what all three stories tell us is that this response is triggered through strong advocacy rather than being an automatic response. The response also depends very much on which senior staff member we draw into the conversation. What is particularly unusual and encouraging about Joan's story is the willingness of Housing ACT to work with CCL. This can be attributed to the manager that was contacted and the individuals at Housing ACT that were involved in this particular discussion. It is very rare for an assessing officer to engage with us when we try to communicate with them on behalf of our clients. Joan's case enabled us to work together in a coordinated manner to assist a person in crisis. This scenario involved restorative justice in practice. Unfortunately it remains a rare and personality driven scenario.

### Disability & trauma

Many of our clients experience a range of disabilities including mental illness. Their health has a substantial impact on their capacity to advocate for themselves and to navigate the Housing ACT processes for seeking access to housing that meets their needs. Given the high evidentiary burden imposed by Housing ACT, clients experiencing a range of vulnerabilities including disability and historical disadvantage, remain locked out of the system.

As with our other cases, it is clear that there are mechanisms in place that can facilitate a restorative approach to processing applications for housing, yet these mechanisms are not automatically triggered by Housing ACT staff but require ongoing and strong advocacy by lawyers.

### ***Alexandra's story***

*Alexandra is a single mother of two with a genetic skin condition which means that she is prone to contracting infections, which could be life threatening. She was seeking a transfer to a property to accommodate her new baby and meet her disability needs. She had provided medical evidence to support her request for particular housing needs such as a bath; non-carpeted flooring and air conditioning – all required to help her to manage her condition. She also provided medical evidence with recommendations that she not share a bedroom or bathroom with her children if possible because of the risk of cross-contamination.*

*Alexandra had a difficult relationship with Housing ACT because they had issued her several Notices to Remedy and she had a fractured relationship with her housing manager. Alexandra felt that Housing ACT did not understand her situation and there were many breakdowns in communications.*

*Housing ACT placed her transfer application on the high needs list which currently has a waiting period of 3 or more years.*

*Alexandra lodged a disability discrimination complaint with assistance from a family member. The ACT Human Rights Commission held a conciliation meeting between Alexandra and Housing ACT which failed to resolve the complaint.*

*The matter was not resolved and referred to ACAT. Alexandra contacted the CCL Disability Discrimination Law Service requesting assistance.*

*DDL assisted the Alexandra to file the necessary documents and represented the client at an informal meeting suggested by ACAT between the Alexandra and Housing ACT to try to resolve the matter without further formal proceedings. DDL negotiated a settlement which resulted in Alexandra being transferred to a three bedroom house with no carpet; a separate bath and shower; and an air conditioning unit.*

*The negotiations were conducted with a view to restoring the relationship between our client and Housing ACT which had broken down prior to and during the ACAT proceedings. Alexandra felt that as a result of the negotiation process Housing ACT finally listened to her and developed some understanding of her circumstances. Alexandra was happy with the outcome and felt that her relationship with Housing ACT had improved as a result of the informal negotiation process.*

### ***Marianne's Story***

*Marianne is an Aboriginal woman with two children. She has multiple disabilities including mental illness and physical disabilities that significantly impact her mobility. She requires a full time carer to assist her with daily tasks including the care of her children.*

*Her children both have significant physical and mental health issues.*

*Her current Housing ACT property is not suitable for the family's disability needs.*

*She has asked for a transfer to a property that is disability accessible and has the number of bedrooms to accommodate her family and a carer. She has submitted letters from her doctors, the children's doctors and support workers advocating for a home that meets the family's needs. However, Housing ACT have refused to accommodate this family and have assessed her needs as being High Needs and not priority.*

*She is frustrated and has given up on the system. She feels that no matter what she says and what evidence she produces, Housing ACT will not provide her with a transfer.*

*These stories illustrate the profound impact that approaches not consistent with restorative justice practices have on individuals with disabilities. Despite our client's significant disabilities Housing ACT processes and policies are applied to them as*

though they did not have such disabilities. There is significant room for improvement in Housing ACT dealings with applicants with disabilities.

### Illiteracy/ limited education

In many cases our clients struggle with the paperwork that is involved in understanding and accessing their rights and obligations. Some clients cannot read at all and in the absence of clear and accessible communication from their Housing Managers, they are left in a state of limbo where they have no means of knowing what to do next. This is a significant issue for Aboriginal clients.<sup>10</sup>

Many of our clients are alone and do not have social supports or family and friends to help them to navigate the process, so they are reliant on their assessing officers or housing managers to be accessible and helpful. Unfortunately this is often not the case causing significant disadvantage to people in crisis.

### ***Leonard' Story***

*Leonard has been a public housing tenant since 2001. He lives in a block of apartments with many other public housing tenants. Leonard has had real difficulties with other residents at the apartments. He has been physically assaulted by them and his tyres are frequently slashed, which is costly for him to repair. The police have not been of much assistance to Leonard, and things got so bad that in desperation, he applied for a transfer. He was placed on the High Needs list for a transfer to a one bedroom property in the Woden area.*

*Ten years later, he has still not been transferred, and he continues to be targeted by the other residents. The reasons for this extremely lengthy delay are unclear. Housing ACT have not offered Leonard any explanation as to why they have not transferred him. Leonard cannot read or write, and Housing ACT had the wrong address for him, so his mail was going to another letterbox. It took Leonard a long time of not hearing any news to realise that there was a problem with his mail not getting to him. The few letters that were sent to him did not help him to understand the process or where his application was up to.*

*This left Leonard feeling frustrated and forgotten in the system, year after year. While Leonard tried to get some updates on his transfer application from his Housing Manager, he was always given the same vague answer: that his application was on the waiting list. Leonard cannot understand it, as he feels he is a model tenant who always pays rent on time and keeps the place clean and tidy.*

*Recently, Leonard had a serious heart attack. After some emergency cardiovascular surgery, he was discharged back home. Leonard can no longer get up the three flights*

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<sup>10</sup> AHURI, "How is Social Housing Best Delivered to Disadvantaged Indigenous People Living in Urban Areas?" *AHURI Research and Policy Bulletin* 157 (2013) [https://www.ahuri.edu.au/\\_data/assets/pdf\\_file/0016/3058/AHURI\\_RAP\\_Issue\\_157\\_How-is-social-housing-best-delivered-to-disadvantaged-Indigenous-people-living-in-urban-areas.pdf](https://www.ahuri.edu.au/_data/assets/pdf_file/0016/3058/AHURI_RAP_Issue_157_How-is-social-housing-best-delivered-to-disadvantaged-Indigenous-people-living-in-urban-areas.pdf), p 3.

*of stairs to his apartment, making a transfer all the more urgent. Leonard had letters from the hospital and from his GP about his medical condition and his requirement for a ground floor property, and requested a priority re-assessment. He was told that before his matter would be considered, Housing ACT would need a letter from the Methadone Clinic. He was not told why Housing ACT wanted a letter from the Clinic, and Leonard assumed they wanted more information about the heart attack. Leonard went to the Clinic and obtained a letter, which he submitted to Housing ACT. He was told that this letter was not suitable, and that he needed another letter from the Methadone Clinic about his AOD issues.*

*Leonard feels that Housing ACT are determined not to transfer him and keep presenting obstacles for him. He is deeply mistrustful of Housing ACT, because of the poor communication, apparent inconsistency in the treatment of other tenants, the lack of transparency, and the exceptionally lengthy delays.*

## **Aboriginality**

Many of these stories demonstrate that Aboriginal Australians face significant hurdles in accessing the decision-making processes at Housing ACT. Many of these barriers can be attributed to an absence of cultural competency. Significant reform is required in this area by Housing ACT as it currently has no mechanisms in place whereby Aboriginal or Torres Strait Islander customers can be supported through this labyrinth.

Some jurisdictions have attempted to address these issues by developing specific programs for indigenous customers. WA Department of Housing employs Aboriginal Customer Support Officers who support Indigenous families at risk of losing tenancies, assist tenants to deal with antisocial behaviour, advise tenants on policies and procedures and assist tenants to access appropriate external assistance.<sup>11</sup>

Article 23 of the UN Declaration on the Rights of Indigenous Peoples Article provides that Indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions. The establishment of the Aboriginal Housing Office in NSW (AHO) was intended to use Indigenous views to inform policy changes.<sup>12</sup> AHO is a statutory body

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<sup>11</sup> Paul Flatau, et al, *Indigenous Housing Need and Mainstream Public Housing Access and Sustainability Responses*, paper presented at the Australian Social Policy Conference, 20-22 July 2005 University of New South Wales, [https://www.aspc.unsw.edu.au/sites/www.aspc.unsw.edu.au/files/uploads/aspc\\_historical\\_conferences/2005/paper110.pdf](https://www.aspc.unsw.edu.au/sites/www.aspc.unsw.edu.au/files/uploads/aspc_historical_conferences/2005/paper110.pdf), p 52.

<sup>12</sup> Vivienne Milligan, et al *Urban Social Housing for Aboriginal People and Torres Strait Islanders: Respecting Culture and Adapting Services*, AHURI Final Report No. 172, August 2011, [https://www.ahuri.edu.au/\\_data/assets/pdf\\_file/0014/2075/AHURI\\_Final\\_Report\\_No172\\_Urban\\_social\\_housing\\_for\\_Aboriginal\\_people\\_and\\_Torres\\_Strait\\_Islanders\\_respecting\\_culture\\_and\\_adapting\\_services.pdf](https://www.ahuri.edu.au/_data/assets/pdf_file/0014/2075/AHURI_Final_Report_No172_Urban_social_housing_for_Aboriginal_people_and_Torres_Strait_Islanders_respecting_culture_and_adapting_services.pdf), p 99.



governed by an all-Aboriginal board, which provides advice to the Minister for Housing on Aboriginal housing issues in NSW.<sup>13</sup>

Indigenous Housing Authority of the NT (IHANT) has an integrated public housing system that offers a model of deep Indigenous community involvement in the construction, maintenance and management of public housing.<sup>14</sup>

In Victoria, applications that have been rejected in the mainstream public housing sector can be revived by the Aboriginal Housing Board on the advice of the Aboriginal Housing Services Officer who is currently seconded to the Board at the Housing Office.<sup>15</sup>

Urban Indigenous courts could be used as a model for making dispute resolution processes better suited for Indigenous tenants. The Galambany Circle Sentencing Court (ACT) aims to develop Indigenous practices and mitigate the inefficiencies of the traditional Anglo-Saxon criminal justice system in its approach to indigenous offenders.<sup>16</sup> The Court operates under a Practice Direction requiring the court to involve victims, offenders and their supporters and afford them a voice.<sup>17</sup> The Magistrate sits alongside panel members and Aboriginal Elders, who can explain matters of cultural importance to the court, and to the defendant.<sup>18</sup>

These examples provide some guidance as to what measures can be adopted to make the Housing ACT system more accessible to Aboriginal Australians. An Indigenous advisory board constituted to assist the Minister for Housing on issues pertaining to Aboriginal and Torres Strait Islander customers would assist the Minister in developing policy that deals with cultural rights and deliver services in a culturally competent manner. Moreover, it would facilitate the employment of Aboriginal and Torres Strait Islander staff to manage properties and as decision makers to assess and review application for housing/transfer. An Aboriginal review body would ensure that matters of cultural significance are not overlooked in the decision-making processes.

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<sup>13</sup> NSW Government Family and Community Services. "About the Aboriginal Housing Office." Last Accessed 24 September 2017. <http://www.aho.nsw.gov.au/about-us>.

<sup>14</sup> Paul Flatau, et al, *Indigenous Housing Need and Mainstream Public Housing Access and Sustainability Responses*, paper presented at the Australian Social Policy Conference, 20-22 July 2005 University of New South Wales, [https://www.aspc.unsw.edu.au/sites/www.aspc.unsw.edu.au/files/uploads/aspc\\_historical\\_conferences/2005/paper110.pdf](https://www.aspc.unsw.edu.au/sites/www.aspc.unsw.edu.au/files/uploads/aspc_historical_conferences/2005/paper110.pdf), p 55.

<sup>15</sup> *Ibid.*

<sup>16</sup> Sarah Xin Yi and Toney Foley. "Implementing Restorative Justice to Address Indigenous Youth Recidivism and Over-Incarceration in The ACT: Navigating Law Reform Dynamics." *Australian Indigenous Law Review* 18(2), (2014): 138-151. <http://www.austlii.edu.au/au/journals/AUIndigLawRw/2015/9.pdf>, p 142.

<sup>17</sup> *Ibid.*, p 143.

<sup>18</sup> Magistrates Court of the ACT. "Galambany Court." Last Accessed 22 September 2017. [https://www.courts.act.gov.au/magistrates/courts/galambany\\_court](https://www.courts.act.gov.au/magistrates/courts/galambany_court).

## **Conclusion**

Restorative practices are compatible with both the goals and some of the policies and procedures at Housing ACT. Applicants for social housing are experiencing more vulnerabilities and crisis than the general population. Interaction with social housing tenants and applicants must be tailored to acknowledge these challenges. Decision makers must be mindful of tenants' circumstances and approach their task accordingly. A one size fits all approach to decision making will inevitably lead to unjust outcomes that fracture relationships between tenants and their landlord. By applying an approach that brings all parties to the table, Housing ACT can ensure that their goal as the social housing provider in a Territory that prides itself on its human rights credentials, are met.

In our experience there are some decision makers, managers, allocations officers and advocates at Housing ACT that recognise the importance of being accessible, transparent and fair in their approach. These officers assist CCL and our clients to obtain positive and restorative outcomes. Unfortunately this is not the case across the board, but given the existence of this type of approach coupled with restorative elements such as the Housing ACT Domestic Violence policy and the TSCCO officers, we are hopeful that restorative justice can be applied across the board ensuring that those most in need of a fair and just process will have access to it.

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