

Exiting Prison into Homelessness

By Dhurrawang Aboriginal Human Rights Program for Canberra Community Law - 20 June 2019

First Published in Ethos (ACT Law Society Magazine)

'Ex-prisoners are over represented in all forms of homelessness; and homeless people are more likely to be imprisoned than those with housing'¹

Summary

When a public housing tenant in the ACT is imprisoned, they are often faced with the prospect of homelessness upon release as the ACT public housing authority (Housing ACT) has a policy of commencing eviction proceedings to evict incarcerated tenants if their term of imprisonment is likely to exceed 3 months.²

This approach is unusually harsh when we consider the policies of other Australian jurisdictions that allow longer terms of absence and attempt to process applications for housing assistance from prisoners prior to their release.³

Housing ACT's approach to incarcerated tenants is particularly concerning given its status as a public authority subject to obligations under the ACT *Human Rights Act 2004* (the *Human rights Act*). *Human Rights Act* provides that families and children must be protected by society.⁴ The *Human Rights Act* also imposes positive obligations on public authorities to refrain from arbitrarily interfering with the rights of individuals to privacy, family and home.⁵ This means that

...when a public authority lessor brings an application under the Residential Tenancies Act, it is open to the tenant to argue that the making of the order would be disproportionate or unreasonable such as to amount to an arbitrary interference with their home...⁶

These rights recognise the significance of a home in providing vital emotional and physical safety and stability to families and children. A home is an essential element to a dignified human

¹ Baldry et al, 'Ex-prisoners, homelessness and the state in Australia' (2006) 39 *Australian and New Zealand Journal of Criminology*

² ACT Government Community Services, Incarceration of Tenants Policy, accessed at http://www.communityservices.act.gov.au/hcs/policies/incarceration_of_tenants

³ See Appendix A.

⁴ *Human Rights Act 2004*, s11.

⁵ *Human Rights Act 2004*, s.12, see *Commissioner for Social Housing in the ACT v Massey* (Residential Tenancies) [2013] ACAT 41.

⁶ *Commissioner for Social Housing in the ACT v "A"* (Residential Tenancies) [2015] ACAT 13.

existence. When children and families lose their home, they lose access to other basic human rights such as health, education and safety.

The *Human Rights Act* also protects the cultural rights of Aboriginal people and Torres Strait Islander people to maintain control, protect and develop their kinship ties. This right affords First Australian children and their families the right to remain connected, to practice and share their culture and their languages. A home is essential to the realization of the right to maintain control, protect and develop culture, knowledge, language and kinship ties.⁷

When faced with the significant rate of Aboriginal incarceration in the ACT and the clear cycle of homelessness and incarceration; Housing ACT- a public authority with legal obligations to protect families, children and the cultural rights of Aboriginal people and Torres Strait Islander people- must develop and deliver policies that are consistent with these obligations.⁸

The current Housing ACT policies and practices in evicting incarcerated tenants have been determined by the ACT Civil and Administrative Tribunal in a number of decisions to entail arbitrary interference with the rights to privacy and reputation.⁹

Moreover, the public housing application and assessment system is complex, opaque and challenging for unrepresented individuals to successfully navigate. Although incarceration is recognised by Housing ACT as a complex need justifying placement on the Priority Housing list, in practice former prisoners who apply for public housing must demonstrate a capacity to sustain a tenancy prior to being offered housing again.

This type of Continuum of Care model of housing assistance currently in effect in the ACT has been described as

*‘stairway to housing systems - almost perfectly designed to weed out the most unwell, the most challenging and most vulnerable people before they arrive in stable long-term housing’.*¹⁰

Failure to offer eligible inmates a suitable home upon release is inconsistent with obligations to protect families and children and the cultural rights of First Australians under the *Human Rights Act*. This approach fails to recognise the overwhelming evidence that Housing First principles should underpin public housing policy and the clear link between homelessness and incarceration. Particularly given that the 2017/2018 recidivism rates in the ACT that more than 44 percent of detainees returned to prison within two years of their release.¹¹

⁷ *Human Rights Act 2004*, s27(2)

⁸ Baldry et al, ‘Ex-prisoners, homelessness and the state in Australia’ (2006) 39 *Australian and New Zealand Journal of Criminology*

⁹ *Human Rights Act 2004*, s.12, see *Commissioner for Social Housing v Lysle* [2016] ACAT 26 *Commissioner for, Commissioner for Social Housing in the ACT v “A”* (Residential Tenancies) [2015] ACAT 13.

¹⁰ Felicity Reynolds, ‘Homelessness Actually: Evidence for Housing First’ (2009) 22(9) *Parity* 48, 48.

¹¹ Justice and Community Safety Directorate, Annual Report 2017-2018, p77.

Our Recommendations are that human rights compliant approach to this issue would entail:

1. A policy allowing tenants to be absent from their property for a 12 month period during which Housing ACT maintains the property, ensuring that it is secure;
2. An extension of the 12 month period considered on a case by case basis;
3. Where an extension cannot be granted and the tenant loses their tenancy (through relinquishment or eviction proceedings) Housing ACT move their name onto a special register and commence identifying suitable properties for them within 3-6 months of release with the view of an offer of accommodation being made 3 months prior to release;
4. The accommodation offered is suitable to the needs of the tenant including cognisance of the impact of high density and high crime areas on those seeking to rehabilitate.

What we do in the ACT when public housing tenants are imprisoned:

Despite the strong emphasis on Housing First as a mode of crime prevention¹² and an expression of concern by the ACT Human Rights Commissioner regarding the eviction of incarcerated tenants from Housing ACT properties¹³ the Commissioner for Social Housing ACT terminates prisoner's public housing tenancies by issuing a 26 week no-cause notice – requiring prisoners to vacate the premises within 26 weeks and if this has not occurred applying for Termination and Possession orders through the ACT Civil and Administrative Tribunal ('ACAT').

The *Residential Tenancies Act 1994* (the RTA) which governs all tenancies and occupancies in the ACT provides that lessors may serve a notice to vacate where there has been no breach of the standard residential tenancy terms, so long as they provide the tenant with 26 weeks' notice to vacate.¹⁴ This power was enacted to enable private landlords to gain possession of their property where there has been no breach of the terms of the lease. However, Housing ACT routinely use this same provision to evict incarcerated tenants. Canberra Community Law has represented numerous clients facing eviction in these circumstances.

As the landlord does not require a reason to commence eviction proceedings in these circumstances, the tenant's only defence is their rights under the *Human Rights Act 2004*. In some cases, where the end of incarceration is imminent and where children, disability and mental health are at play, the ACAT has decided not to terminate the tenancy on the basis of the tenant's human rights and what has been determined to be arbitrary interference with the tenant's right to privacy, family and home.¹⁵ However, these represent a minority of cases where tenants are legally represented and where Canberra Community Law intervenes within time to affect an

¹² See for example Marie Lawrence, 'Locked up or Locked out: How Housing insecurity Undermines Criminal Justice Reform' (Kennedy School Review, 10 October 2017) <<http://ksr.hkspublications.org/2017/10/10/locked-up-or-locked-out-how-housing-insecurity-undermines-criminal-justice-reform/>>

¹³ ACT Legislative Assembly, Attorney General's Report of the Rehabilitation of male detainees at the AMC, (ACT Standing Committee on Justice and Community Safety, 2016) 118.

¹⁴ Clause 94 of the Standard Residential Tenancy Terms (Schedule 1 of the *Residential Tenancies Act 1997* (ACT))

¹⁵ See *Commissioner for Social Housing in the ACT v Massey* (Residential Tenancies) [2013] ACAT 41.

outcome. In most cases tenancies are terminated or relinquished and those facing the most disadvantage must navigate homelessness upon release from prison.

An intermediate step that is often taken by Housing ACT to facilitate relinquishment prior to the end of the notice period is to directly approach the incarcerated tenants in prison and pressure them to relinquish their tenancy. This approach is made directly to the tenant even when the tenant is legally represented in relation to their tenancy.

The tenant is placed in the difficult position of relinquishing their tenancy or facing eviction proceedings. The information often presented to tenants by Housing ACT include possible rental debt or concern about the potential for squatter activity or damage to their property. As the government landlord, Housing ACT has considerable power within the landlord/tenant relationship and it is our view that an approach of this nature is an abuse of this power given the stakes for the tenant. This is particularly so as Housing ACT does not inform the tenant that they can seek legal advice prior to making a decision.

What is the impact and what could we do better?

*'The links between homelessness, imprisonment and re-imprisonment are unequivocal' as accommodation instability compounds risk of arrest and 'is a predictor of return to prison.'*¹⁶ addressing other issues such as drug use, education and employment is unhelpful for the prisoner's transition if they are not adequately housed.² Homelessness disrupts ex-prisoner's reintegration into the community, increasing subsequent offending and leading to greater cost to society.¹⁷

The cycle of incarceration and homelessness extends to the family of the incarcerated individual, with children of prisoners reportedly 'six times more likely to be imprisoned themselves.'¹⁸ It is our experience that the effect of parental incarceration on children is compounded by release into homelessness, significantly limiting parents' ability to recover care of their children. An alarming factor given the increasing rates of Aboriginal child separations and removals in the ACT.¹⁹

Aboriginal and Torres Strait Islander people are overrepresented in the homeless population and in the criminal justice system in Australia, with a 'disproportionate number of Indigenous people caught in the vicious cycle of prison, re-arrest and re-incarceration.'²⁰ In 2015, approximately 31% of prisoners across Australia who were leaving prison were expected to be homeless with Aboriginal and Torres Strait Islander prisoners more inclined to leave prison and enter

¹⁶ Baldry et al, 'Ex-prisoners, homelessness and the state in Australia' (2006) 39 *Australian and New Zealand Journal of Criminology*

¹⁷ accessed at [https://www.homelessnessnsw.org.au/sites/homelessnessnsw/files/2016-12/Homelessness the justice system policy statement NSW HCA July 2011.pdf](https://www.homelessnessnsw.org.au/sites/homelessnessnsw/files/2016-12/Homelessness%20the%20justice%20system%20policy%20statement%20NSW%20HCA%20July%202011.pdf)

¹⁸ Ibid.

¹⁹ The Guardian, *Indigenous Children's removal on the rise 21 years after Bringing Them Home*, 25 May 2018, accessed at <https://www.theguardian.com/australia-news/2018/may/25/australia-fails-to-curb-childrens-removal-from-indigenous-families-figures-show>

²⁰ Homelessness NSW, 'Homelessness and the Justice System' 2011 page 1 accessed at [https://www.homelessnessnsw.org.au/sites/homelessnessnsw/files/2016-12/Homelessness the justice system policy statement NSW HCA July 2011.pdf](https://www.homelessnessnsw.org.au/sites/homelessnessnsw/files/2016-12/Homelessness%20the%20justice%20system%20policy%20statement%20NSW%20HCA%20July%202011.pdf)

homelessness than non-indigenous prisoners (38% v 28%).²¹ Indigenous women 'are the fastest growing cohort of prisoners in Australia,' making up 34% of all Australian women prisoners, but only 2.2 percent of the overall female population of Australia.²²

Women released from prison 'face greater challenges in accessing housing and experience higher levels of homelessness, debt, depression, isolation and social exclusion than men.'²³ The Victorian Ombudsman's investigation into this issue has identified that 'many female prisoners are victims of some form of abuse, and over 40 per cent are homeless upon release'.²⁴ The impact of being released into homelessness for women who have survived family violence is profound, with the lack of accommodation often causing them to return to violent situations.²⁵ This is especially concerning given that the vast majority of Australian women prisoners are sole parents of dependent children.²⁶

What do other jurisdictions do?

Risk factors such as poverty, housing insecurity, unemployment, poor health, disability, institutional intervention and poor educational outcomes, which are even more acutely experienced by indigenous women,²⁷ are compounded by the experience of incarceration and further compounded by release from prison into homelessness or unsuitable living conditions.²⁸ A variety of social factors, including access to secure housing, are crucial to the successful transition of prisoners back into the community.²⁹

States and Territories across Australia have varying means of addressing this issue with most attempting to help maintain the tenancy in the short term but where the term of imprisonment is longer than what the housing provider is willing to accommodate, the tenancy is relinquished or terminated and individuals are then required to reapply for public housing upon or immediately prior to release (refer to Appendix A for details of each jurisdiction).

In most States and Territories, the reality for former prisoners who have lost their public housing tenancy is either homelessness or communal shelter-style living. Post release shelters are unsuitable

²¹ Australian Institute of Health and Welfare, *The health of Australia's prisoners 2015* (2015), xi.

²² Debbie Kilroy, 'Women in Prison in Australia' *Current Issues in Sentencing Conference* (National Judicial College of Australia and the ANU College of Law, 6-7 February 2016) page 1.

²³ Homelessness NSW, 'Homelessness and the Justice System' 2011 page 1 accessed at https://www.homelessnessnsw.org.au/sites/homelessnessnsw/files/2016-12/Homelessness_the_justice_system_policy_statement_NSW_HCA_July_2011.pdf

²⁴ Victorian Ombudsman, 'Investigation into the Rehabilitation and Reintegration of Prisoners in Victoria' 2015 page 2 accessed at <https://www.ombudsman.vic.gov.au/getattachment/5188692a-35b6-411f-907e-3e7704f45e17>

²⁵ Ibid.

²⁶ Ibid page 2.

²⁷ Debbie Kilroy, 'Women in Prison in Australia' *Current Issues in Sentencing Conference* (National Judicial College of Australia and the ANU College of Law, 6-7 February 2016) page 2.

²⁸ Homelessness NSW, 'Homelessness and the Justice System' 2011 page 1 accessed at https://www.homelessnessnsw.org.au/sites/homelessnessnsw/files/2016-12/Homelessness_the_justice_system_policy_statement_NSW_HCA_July_2011.pdf

²⁹ Eileen Baldry, Desmond McDonnell Peter Maplestone Manu Peeters, 'Ex-Prisoners, Homelessness and the State in Australia' page 1 accessed at <http://journals.sagepub.com/doi/abs/10.1375/acri.39.1.20>

for those rehabilitating from drug and alcohol addiction and experiencing mental illness.³⁰ Overcrowded conditions or places where alcohol and drug use are prevalent are particularly problematic for Aboriginal people.³¹ This remains a significant reason cited by Canberra Community Law clients rehabilitating from drug or alcohol addiction for opting to sleep outside or 'sleep rough', rather than in supported shelter accommodation.

Current ACT Government Policy

The ACT Government Community Services policy position is that dwellings left vacant for more than three months are likely to attract vandalism, squatters and depreciation exacerbated by disuse.³² Our clients tell us that their home is all that they have left and losing their home whilst imprisoned is devastating to them – not just because of the loss of possessions which are routinely disposed of by Housing ACT- but the loss of a safe place to return to where family can re-congregate and heal. It also means that children cannot return to their parents care where there is no home to return to.

Absences for between three and six months can only be approved if there are no outstanding issues and there is evidence that retaining the tenancy is in the best interests of the community, for example it has 'considerable modifications to suit a tenant's physical disability, or location of supports essential for reintegration into society.'³³ Highly exceptional circumstances may justify an extension beyond six months.

The Housing Needs Determination states that 'incarceration in a corrective services facility, or mental health or other health facility' is a complex need to be taken into consideration for priority listing.³⁴ In practice incarcerated tenants do not automatically go onto the Priority housing list, rather they start on the Standard waiting list and must make a case for Priority allocation.

Prisoners are at a significant disadvantage when competing with applicants in the community for public housing. As well as demonstrating 'exceptional, urgent and critical needs that cannot be resolved by any reasonable means other than the early provision of social housing'³⁵, applicants will only be considered for priority housing if they are 'currently capable of independent living and with the capacity to undertake a housing tenancy to address their longer-term housing needs'.³⁶

Housing ACT uses a Continuum of Care model to enhance an individual's 'housing readiness'.³⁷ The 'continuum of care' approach requires applicants to 'show commitment to addressing their

³⁰ Andrew Griffiths, Fredrick Zmudzki and Shona Bates, 'Evaluation of Extended Throughcare Pilot Program – Final Report' 2017 *University of New South Wales* page 34 accessed at https://www.sprc.unsw.edu.au/media/SPRCFile/Evaluation_of_ACT_Extended_Throughcare_Pilot_Program.pdf

³¹ Ibid p 51.

³² http://www.communityservices.act.gov.au/hcs/policies/incarceration_of_tenants

³³ ACT Government Community Services, Incarceration of Tenants Policy, accessed at http://www.communityservices.act.gov.au/hcs/policies/incarceration_of_tenants

³⁴ Ibid 1.12.

³⁵ Commissioner for Social Housing, *Housing Assistance Public Rental Housing Assistance Program (Housing Needs Categories) Determination 2011 (No 2)*, NI2011-507, 24 August 2011, 2.

³⁶ Ibid.

³⁷ Guy Johnson, Sharon Parkison and Cameron Parsell, 'Policy Shift or Paradigm Shift? Implementing Housing First in Australia' (Final Report No. 184, Australian Housing and Urban Research Institute, March 2012), 4.

problems, before they are offered an opportunity to occupy their own tenancy'.³⁸ Prisoners face an inherent disadvantage because despite their urgent and critical need they are required to show a demonstrated capacity for independent living and are required to have significant engagement with services deemed to assist applicants with 'addressing their problems' prior to being considered for priority housing. Their incarceration has often resulted in a disconnect from such services in the community and it takes time and resources to re-establish these connections sufficiently to demonstrate engagement.

This situation highlights the importance of services such as the Canberra based Winnunga Nimityja Aboriginal Health Service, providing services to Aboriginal inmates that are followed through in the community.

How can a public housing system support the transition from incarceration to the community?

The Australian Institute of Criminology report reflected on the Queensland Government housing policy identifying that the risk of reoffending is reduced when ex-inmates have stable accommodation; close connections to family or community and frequent contact with agencies or people providing tailored support services.³⁹ The 'Seeing it Through Report: Options for improving offender outcomes in the community'⁴⁰ which established the Throughcare Unit within the ACT prison identified the need for housing services to collaborate across government to ensure a person-centered approach to exit from incarceration. This was highlighted again in 2014 when the Throughcare Pilot Program was evaluated, and accommodation post-incarceration was identified as the number one means for preparation for transition into community.

Most jurisdictions across Australia appear on their face to attempt to deal with the issue of tenant incarceration by putting in place mechanisms whereby the tenant can maintain their tenancy during a short period of incarceration. However, the national trend falls short of addressing the impact of homelessness on former prisoners with a focus on maintaining tenancies during a short remand period but moving to evict those with longer sentences and directing them back into shelter/transitional accommodation and re-application for housing assistance.

A system that is cognisant of the value of providing stable and suitable accommodation to former prisoners must recognize both the need for preservation of a tenancy in the short to medium term and the need for a robust system that ensures that those exiting prison after serving a longer sentence can access long term stable accommodation upon release. The need for housing to be available *upon* release stems from the implications that flow in relation to a prisoners' access to parole, custody of children and ability to rehabilitate.

³⁸ Guy Johnson, Sharon Parkison and Cameron Parsell, 'Policy Shift or Paradigm Shift? Implementing Housing First in Australia' (Final Report No. 184, Australian Housing and Urban Research Institute, March 2012), 4.

³⁹ Stuart Kinner, 'The post-release experience of prisoners in Queensland' (Australian Institute of Criminology Trends & issues in crime and criminal justice no. 325, 2003).

⁴⁰ Chief Ministers Department (2011)

http://www.cmd.act.gov.au/__data/assets/pdf_file/0004/269041/Seeing_it_Through_-_Options_for_improving_offender_outcomes_in_the_community.pdf

The literature uniformly supports the position that stable long-term accommodation is imperative to the rehabilitation and reintegration of prisoners. Housing First principles recognise that it is almost impossible for a homeless person to engage with support services and overcome their complex challenges without their immediate need for safe and stable shelter being addressed.⁴¹ Housing First literature has shown that it is generally not necessary for housing applicants to have overcome their complex issues to successfully maintaining independent housing.⁴²

In the United States, a two year longitudinal study between 99 'Housing First' clients and 126 continuum of care clients found that retention rates were 89% and 47% respectively.⁴³ Locally, retention rates have also been high, with 100% of the individuals followed through the 'Housing First' Michah Projects study in Brisbane remaining housed.⁴⁴ Similarly in Europe, housing retention rates in 'Housing First' projects initiated in both Amsterdam and Copenhagen were extremely high, at approximately 90%.⁴⁵

Funnelling ex-prisoners into congregate living post release is not conducive to their reintegration and rehabilitation. There are strong indications that grouping many people with complex problems in the same buildings causes problematic environments, conflicts and unintended negative consequences.⁴⁶

The current response to incarcerated tenants in the ACT does not support the successful reintegration of prisoners into the community nor is it consistent with the government's human rights obligations. A Housing First approach is the appropriate means of preventing former prisoners from descending into homelessness and reoffending upon release. Our clients consistently report that living in shelter and supported accommodation interferes with their efforts to rehabilitate from drugs and alcohol and is an unsafe and unstable environment. The current approach is failing those most in need and requires urgent reform.

Recommendations

We recommend that Housing ACT immediately amend their practice of evicting incarcerated tenants and instead implement a system whereby:

1. Tenants can be absent from their property for a 12-month period during which Housing ACT maintains the property ensuring that it is secure,
2. An extension of the 12-month period will be considered on a case by case basis,
3. Where an extension cannot be granted and the tenant loses their tenancy (through relinquishment or eviction proceedings) Housing ACT move their name onto a special

⁴¹ Jeannette Waegemakers Schiff and Rebecca A. L. Schiff, 'Housing First: Paradigm or Program?' (2014) 23(2) *Journal of Social Distress and the Homeless* 80, 80.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Carolyn Mason and Dr Peter Grimbeek, 'A Housing First Approach to Homelessness in Brisbane: Sustaining Tenancies and the Cost Effectiveness of Support Services' (Final Report to Ian Potter Foundation, Micah Projects, November 2013), vi.

⁴⁵ Volker Busch-Geertsema, 'Housing First Europe' (Final Report, European Union Programme for Employment and Social Security, 2013), 59.

⁴⁶ Volker Busch-Geertsema, 'Housing First Europe' (Final Report, European Union Programme for Employment and Social Security, 2013), 84.

- register and commence identifying suitable properties for them within 3-6 months of release with the view of an offer of accommodation being made 3 months prior to release,
4. The accommodation offered is suitable to the needs of the tenant including cognisance of the impact of high density and high crime areas on those seeking to rehabilitate,

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Appendix A

Victoria

The Victorian government allows temporary absences from public housing for up to six months with extensions for special circumstances. The Victorian policy on Temporary Absences from public housing draws on VCAT case law requiring the public housing provider to consider the impact of any

decision regarding an extension on the person's Charter (Human) rights⁴⁷ and work with the tenant and/or other affected parties and/or support workers to achieve an outcome that is in line with these rights. In taking a decision on an extension of a temporary absence, the Victorian housing provider will consider individual circumstances including the impact of severe hardship, the family unit, culture and religion and mental health.⁴⁸ The Victorian policy also allows applications from a 'friend or family member' to reside at the property as a caretaker during the temporary absence.⁴⁹

The policy does not go so far as to provide housing for former tenants exiting prison but attempts to address the impact of eviction proceedings on incarcerated tenants prior to embarking on the process.

New South Wales

The NSW Department of Family and Community Services (FACS) has a specific policy on the management of tenants who are incarcerated or facing a period of rehabilitation allowing for the tenant to be absent for a period of up to six months. An incarcerated tenant may apply for an approval to extend the absence beyond six months where there are unusual circumstances. If the tenant has not been released from prison at the end of six months, FACS will consider an application for recognition as a tenant from a remaining household member or terminate the tenancy.⁵⁰

Western Australia

In WA if a tenant is sentenced to a term of imprisonment of more than six months, the tenant is considered to have ceased to occupy the property.⁵¹ However, the WA Housing Authority can allow requests from the incarcerated tenant to have someone 'housesit' while they are in prison beyond the six-month period.

Queensland

Public Housing tenants in Queensland are able to be absent from their tenancy for a period of up to eight weeks total over a 12-month period without approval.⁵² Provisions also apply for a friend relative or neighbor to house-sit while absent but they must be added to the household occupancy agreement. The policy notes that if a tenant needs to be absent from their tenancy for more than five months within the 12 month period, tenants are encouraged to discuss with Housing Service

⁴⁷ The decision within *Goode v Common Equity Housing Ltd (Human Rights)* [2016] VCAT93 identified that the decision does not bind all social housing providers by the Charter of Human Rights and Responsibilities but provides a strong foundation to argue that most government –supported social housing providers be bound by section 38 of the Charter. The decision within *Burgess v Director of Social Housing* [2014] VSC 648 identified that there are two decisions that must be made when a public authority seeks to evict a person and requires proper consideration of the health and likely impact of the eviction on the individual.

⁴⁸ Victorian State Government, Temporary absence operational guidelines 2018

⁴⁹ The nominated person will be added to the residential tenancy agreement and the appropriate rental rebate application will apply to the amount of rent to be paid. However, sub-letting is not permitted.

⁵⁰ See also NSW Homelessness Community Alliance policy statement – July 2011 'Homelessness and the justice system' at https://www.homelessnessnsw.org.au/sites/homelessnessnsw/files/2016-12/Homelessness_the_justice_system_policy_statement_NSW_HCA_July_2011.pdf.

⁵¹ See Government of Western Australia Rental Policy manual
<http://www.housing.wa.gov.au/HousingDocuments/Rental_Policy_Manual.pdf>

⁵² See Queensland Government (<https://www.qld.gov.au>).

Centre staff their extenuating circumstances. There are no mandatory policies for the eviction of incarcerated tenants and the circumstances are considered on a case-by-case basis.⁵³

South Australia

The South Australian Housing Trust takes a case by case approach to tenants who are expected to be absent from their property. They are able to be absent for a period of three months without Housing SA approval, and can apply to the Trust for a period of another three months if there is a genuine need to be absent longer. The tenant can also nominate a family member or friend to act as a caretaker and live in the property while the tenant is absent. The SA policy identifies that if the tenant is Aboriginal and/or Torres Strait Islander then the caretaker should 'preferably be of Aboriginal and/or Torres Strait Islander decent'. Both caretaker and tenant must complete a caretaker application form.⁵⁴

Northern Territory

The Northern Territory Government Department of Housing and Community Development allows an escalation of responsibility to approve an extended absence (beyond 30 days) and approve a sub-tenancy application from a caretaker for a period of up to six months.⁵⁵

Tasmania

The policy for Tasmanian public housing tenants who enter a period of incarceration indicate they are 'precluded from retaining their tenancy in the same property while undertaking a prison sentence of eight weeks or more'.⁵⁶ Where the period of incarceration is between 8-12 weeks (or up to a maximum of sixteen weeks with exceptional circumstances), the Department of Health and Human Services representative may exercise discretion to allow the tenant to retain the tenancy post-release. Special provisions apply for incarcerated people to apply for social housing through an Expression of Interest process six weeks prior to release but will not be offered a home until released and their circumstances assessed.⁵⁷ The policy notes a recognition of the risk of homelessness faced by people exiting prison.⁵⁸

⁵³ See <https://www.qld.gov.au/housing/public-community-housing/going-away-from-your-home>

⁵⁴ See <www.dcsi.sa.gov.au/service/housing-sa/housing-trust-policies/managing-tenancies/temporary-absences-policy>.

⁵⁵ Northern Territory Government – Extended Absences and Caretaker Arrangements
<https://dhcd.nt.gov.au/publications-and-policies/housing-publications>.

⁵⁶ Housing Tasmania Lease Clause 3.6 (a)

⁵⁷ Housing Tasmania, Tenants and applicants in prison policy – P2012/0179-039
<https://www.dhhs.tas.gov.au/housing/tenants/tenancy_facts_and_policies/while_you_are_a_tenant/tenant_s_and_applicants_in_prison_policy>

⁵⁸ Ibid.