



Northern Territory Housing Issues Paper and Response to the Housing Strategy Consultation Draft

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Introduction

About NAAJA

The North Australian Aboriginal Justice Agency (NAAJA) provides high quality, culturally appropriate legal aid services for Aboriginal people in the northern region of the Northern Territory in the areas of criminal, civil and family law, prison support and through-care services. NAAJA is active in systemic advocacy and law reform in areas impacting on Aboriginal peoples' legal rights and access to justice. NAAJA travels to remote communities across the Top End to provide legal advice and advocacy.

NAAJA's civil lawyers assist public housing tenants and clients seeking public housing in urban and remote areas. Many of NAAJA's clients with tenancy and housing or homelessness matters have significant vulnerabilities; including trauma, homelessness, mental and physical illness, experience domestic violence, sole parenthood, and old age. NAAJA's housing casework and litigation focuses on:

- defending evictions from public housing;
- assisting public housing tenants who at risk of eviction;
- assisting with requests for emergency repairs and applications for compensation for the failure to repair premises in accordance with the *Residential Tenancies Act* (NT) ("RTA");
- assisting clients with applications for public housing, including priority housing
- addressing barriers to public housing, for example seeking reinstatement cancelled applications and appealing unproven debts to the Department of Housing (DHsg); and
- administrative review of DHsg decisions, including debts, strikes issued under DHsg's Three Strikes Policy and notices of direction given under the *Housing Act* (NT).

NAAJA plays a lead role in advocating for the rights of public housing tenants and homeless people in a range of forums. NAAJA identifies and provides solutions to systemic issues in housing law, policy and practice.

NAAJA is a member of Aboriginal Peak Organisations of the Northern Territory (APO NT). APO NT has been working to highlight the problems with Aboriginal housing in the NT. Following the Aboriginal Remote Housing forum in March 2015,¹ a new Aboriginal committee Aboriginal *Housing NT* (AHNT) was formed to progress these critical issues and work towards developing an Aboriginal community controlled housing model.

NAAJA is deeply indebted to the work, expertise, support and legacy of Paul Pholeros and Healthhabitat.

¹ Bisset, H, *Aboriginal Remote Housing Forum Report*, Aboriginal Peak Organisations of the Northern Territory, 2015.

This issues paper and response

This issues paper and response to the Housing Strategy Consultation Draft² (Consultation Draft) is informed by our extensive experience delivering services to homeless people and public housing tenants across the Top End of the Northern Territory.

A large proportion of NAAJA's clients are homeless and a significant proportion of our civil casework is tenancy work. NAAJA receives no funding to provide tenancy or homelessness services to our clients by the Northern Territory Government.

The case studies in this submission are factual³. They have been included to illustrate our concerns and contextualise our recommendation and detail interactions between both public housing tenants and applicants for public housing and DHsg from NAAJA's perspective.

We urge the Northern Territory Government to take full account of the policies and practices that contribute to homelessness; the insecurity of public housing tenancies, punitive tenancy management approaches and policies that depress incentives to work and ultimately defeat the Northern Territory Government's home ownership aspirations. We call on the Northern Territory Government to embrace those programs, services and initiatives that facilitate access to public housing, support and assist homeless people, promote and sustain healthy living practices and provide sustainable, realistic pathways to home ownership.

² Northern Territory Government, Department of Housing *Housing Strategy Consultation Draft*, released 9 December 2015 (Consultation Draft).

³ Case studies have been de-identified to protect our clients' privacy and meet our legal professional obligations.

Part One: The backdrop

A crisis of homelessness and overcrowding

There is a historical shortage of housing Northern Territory, and is at its most severe in remote communities. The acute housing shortage in the Northern Territory that began in the 1950s 'is a central theme in Northern Territory politics that continues to this day'.⁴

The most recent government initiative aimed to address the shortage and improve the condition of houses in remote communities is the National Partnership Agreement on Remote Indigenous Housing (NPARIH).⁵ This led to an expansion of direct government control of public housing in the Northern Territory, with the takeover of around 5000 houses in remote communities previously controlled by Indigenous Community Housing Organisations (ICHOs)⁶ by the Commonwealth Government⁷ under five year compulsory leases under the *Northern Territory National Emergency Response Act 2007* (Cth). This was in direct contrast to moves in other jurisdictions around Australia to devolve responsibility for public housing assets from government to community and other organisations.

Following the expiration of compulsory leases on 17 August 2012, the Northern Territory CEO (Housing) gained control of the majority of public housing assets in remote communities in the Northern Territory – either in its own right or as a sub-lessor to the Commonwealth Government under leases granted by land trusts.

DHsg continues to manage its urban public housing stock, under increasing pressure from expanding wait lists, declining public housing stock and within a broader context of a crisis of homelessness in the Territory.

The Northern Territory has the highest rate of homelessness in Australia. One in four Aboriginal people in the Northern Territory were homeless according to 2011 Census data. 90% of all homeless persons in the Territory are Indigenous.⁸ Many of those who are homeless are disabled, in poor physical or mental health, or experience substance abuse issues.

⁴ Mickey Dewar, *Darwin – no place like home*, Historical Society of the Northern Territory, 2010, p 1.

⁵ Council of Australian Governments, 'National Partnership Agreement on Remote Indigenous Housing' (2008) <http://www.federalfinancialrelations.gov.au/content/national_partnership_agreements/indigenous/remote_indigenous_housing/national_partnership_variation.pdf>.

⁶ Rosenman N, Clunies-Ross A ' [The new tenancy framework for remote Aboriginal communities in the Northern Territory](#)," *Indigenous Law Bulletin* 7(24),11- 16, provides background to those changes. ICHOs were often affiliated with local community councils, which managed community infrastructure and municipal services. Poll taxes were insufficient to adequately fund repair and maintenance needed or enable new housing construction.

⁷ Rosenman N, Clunies-Ross A ' [The new tenancy framework for remote Aboriginal communities in the Northern Territory](#)," *Indigenous Law Bulletin* 7(24),11- 16, provides background to those changes.

⁸ AIHW *Homelessness among Indigenous Australians Report 2014*, table 2.1

The majority of homeless Aboriginal people in the Northern Territory live in severely overcrowded conditions.⁹ Overcrowding is driven primarily by a severe shortage of housing in remote and town communities, and secondarily by strong kinship obligations, which see people providing shelter for family members without a home.¹⁰ In the context of such a housing shortage, it is important to recognise that overcrowded Aboriginal households are actually rendering a service to homeless extended family members.¹¹

The lack of adequate and safe housing in remote communities has been identified as a key reason why people leave their home communities to live in urban centres such as Darwin and Katherine.¹² Because of the lack of affordable and appropriate accommodation in these centres, many end up living in the Long Grass or in Bush Camps. Participants in Larrakia Nation research who were asked why they left home and stayed in the Long Grass commented:

- Not enough houses at home. I worry for safety of family.
- Nowhere to live.
- Too many family in one house.
- No home. [I] left because of family problems ... [I was] looking after daughter and baby but not work. Now stop here. Daughter ask me to leave because boyfriend not like me.

The figures on how many houses are needed in the Northern Territory vary.

The *Little Children are Sacred Report* estimated that 4000 houses were needed to adequately house the Territory's population in 2007 and then more than 400 houses built each year for 20 years to keep pace with demand.¹³

In 2008, Australian National University's Centre for Aboriginal Economic Policy Research estimated that there was a need for an additional 7827 additional functional dwellings to meet the needs of Aboriginal people in discrete communities across the Northern Territory.¹⁴

Under NPARIH, 1465 houses have been built in 16 of 73 remote communities.¹⁵ As a result of providing less than half of the housing needed overcrowding has worsened in some communities as populations grow.

The vast majority of remote communities in the NT that is 57 communities out of 73 have not received additional houses under NPARIH. Only two communities in Central Australia have had additional housing built. Even in communities that did receive additional housing, a crisis of overcrowding remains due to the

⁹ AIHW *Homelessness among Indigenous Australians Report 2014*, table 2.1.

¹⁰ Birdsall-Jones et al 2010 and Memmott et al 2012

¹¹ Christina Birdsall-Jones et al, 'Indigenous Homelessness: Final Report', *Australian Housing and Urban Research Institute*, (March 2010), 9.

¹² Catherine Holmes and Eva McRae-Williams, The Larrakia Nation Aboriginal Corporation, Research Division *An investigation into the influx of Indigenous 'visitors' to Darwin's Long Grass from remote NT communities – Phase 2 Being undesirable: law, health and life in Darwin's Long Grass* 2008, p 27.

¹³ *Ampe Akelyernemane Meke Mekarle – Little Children are Sacred*, Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, 2007, p 195.

¹⁴ N. Biddle *The Scale and Composition of Indigenous Housing Need, 2001–06* N. Biddle CAEPR WORKING PAPER No. 47/2008, p 15.

historical underinvestment in remote housing. For example, 100 families applied for the last two houses allocated in Maningrida and there are no plans to construct further houses.¹⁶

At the same time, available figures indicate public housing stock in urban areas in the Northern Territory is not keeping up with demand; in Darwin, for example, the urban stock barely increased from 3,560 in 2010 to 3,566 in 2013.¹⁷

According to DHsg's 2013-2014 Annual Report, there are 5080 urban public housing dwellings across the Northern Territory's main towns, which includes 449 dwellings in town camp/community living areas, with approximately 11 000 occupants.¹⁸ In remote communities, there were 5096 public housing dwellings across the Northern Territory at 30 June 2014, with approximately 22 000¹⁹ people residing in these dwellings.

In mid 2015 it was reported that Minister for Housing had released figures which indicated that there were 76 fewer public dwellings across the Territory than the previous year– 53 fewer in remote communities and 23 fewer in urban centres.²⁰

There is also a significant shortage of private affordable rental accommodation in the Northern Territory. Anglicare's *Rental Affordability Snapshot 2015* surveyed 1,367 private rentals that were advertised for rent in the Northern Territory on 11-12 April 2015. It found that:

- There were no properties that were both affordable and appropriate for people who receive Newstart Allowance, Single Parenting Payment, Disability Support Pension or Youth Allowance;
- Four individual properties were suitable for at least one household type (a couple on the aged pension with no children) without placing them in housing stress; and
- 25 individual properties were suitable for at least one household type living on minimum wage without placing them in housing stress.²¹

The critical shortage of affordable housing and public housing in remote and urban Northern Territory is the primary driver of homelessness in the Northern Territory and contributes to the instability of public housing tenants, who feel pressured to provide shelter or refuge to homeless family members who simply have nowhere else to go. Unless this shortage is addressed, homelessness will only increase, with attendant consequences for mental and physical health, employment, school attendance and economic development.

NAAJA has many clients, generally Aboriginal people living in remote communities, who have never been adequately housed, who have raised their children whilst homeless and who are now beginning to realise

¹⁶ Email from the Department of the Prime Minister and Cabinet to NAAJA dated 16 February 2015

¹⁷ Department of Housing, *Annual Report 2009 – 2010*, p 48; Department of Housing, *Annual Report 2012 – 2013*, p 23.

¹⁸ Northern Territory Government, Department of Housing *2013-2014 Annual Report* p 8.

¹⁹ This is likely to be a significant underestimation and is at odds with ABS statistics. DHsg's *Annual Report* acknowledges this by stating "Resident numbers are based on information provided by the primary tenant at the most recent review date and can fluctuate significantly. Data may not reflect ongoing changes in household composition due to movement of individuals in and out of dwellings in remote communities. Therefore remote housing occupant data should be considered with caution."

²⁰ <http://www.ntnews.com.au/news/northern-territory/public-housing-dwellings-in-northern-territory-shifted-to-affordable-rent-scheme-for-middle-class/news-story/c4aed25bd3af46c267ede0348268e6df>

²¹ Anglicare, *Anglicare Rental Affordability Snapshot 2015*, p 59

that given wait lists are indeterminate²² and indefinite in remote communities, and will live out the rest of their lives homeless or living in severely crowded dwellings. The mental health implications of such a realisation cannot be underestimated, and should be factored into DHsg and Department of Health service delivery.

Whilst homelessness in other states and territories is 'typically more complex than just the lack of an appropriate house'²³, the Government needs to countenance the significant number of people in the Northern Territory who have simply never had a home to lose due to the historical, massive shortage of housing in the Northern Territory.

Suffice it to say, demand is huge and pressing.

Legal framework in the Northern Territory

This section details the legal framework which operates in the Northern Territory to contextualise the issue raised in this paper.

Residential Tenancies Act (NT)

The *Residential Tenancies Act* (NT) (RTA) is the law that governs the relationship between landlords and tenants in the Northern Territory. Its provisions attempt to balance the rights and responsibilities of tenants and landlords.

The RTA details the landlord's responsibilities, including:

- to maintain the premises in a reasonable state of repair;
- to keep and provide records of rent;
- to ensure premises are secure;
- to provide notice when attending the premises; and
- lawfully terminate tenancies.

The tenant's responsibilities include:

- to maintain the premises in an not unreasonably dirty condition;
- to pay rent; and
- to report repairs and maintenance.

The RTA sets out a mechanism for the resolution of disputes between landlords and tenants, by way of application to the Northern Territory Civil and Administrative Tribunal (NTCAT), and for compensation to be paid if either tenant or landlord breaches its obligations under the Act.

²² Email from Department of Housing, Tenancy Support and Compliance to NAAJA dated 5 November 2015.

²³ *Consultation Draft*, p 17

The RTA applies to all tenancies in the Northern Territory, including remote and urban public housing tenancies with DHsg as landlord.

The Housing Act (NT)

The *Housing Act* (NT) establishes the CEO (Housing). One of the functions of the CEO (Housing) is to provide and to assist in the provision of residential accommodation, subject to the directions of the Minister.

Section 34 of the Housing Act states that “[t]he *Residential Tenancies Act* applies to and in relation to premises let under this Act.”

Department of Housing policy

DHsg maintains policies which guide its decision making in key aspects of the life of public housing tenancies, from application, allocation and eligibility to the termination of public housing tenancies. These policies are published on its website.

From 2008 to 2013, DHsg maintained separate policies for its remote²⁴ and urban tenants.²⁵ DHsg removed the *Remote Housing Operational Policy* from its website on 1 September 2013, with the intention of ‘harmonising’ its remote and urban policies. DHsg has advised that this was part of a broader departmental program to move to one public housing model, with remote and urban service delivery combined within the one department.

DHsg has been undertaking a review of its policies since September 2013. DHsg has been engaging with the Legal Services Group,²⁶ which provides feedback and recommendations to improve the legality and practical operation of DHsg policies and practices. NAAJA is the lead contributor of the Legal Services Group, and has drafted and collated feedback on the Three Strikes, termination, income and assets, eligibility, transfers, allocation, tenant responsibility, inspections, and tenant damage policies and continues to advocate for the reintroduction of a domestic violence policy.

²⁴ Remote tenancies were covered by the *Remote Housing Operational Policy* 2009. DHsg did not make its *Remote Housing Operational Policy* publically available until 19 May 2013, despite the policy being in operation since 2009. From 2009 onwards, the *Remote Housing Operational Policy* was not available on DHsg's website. NAAJA made repeated requests for this to occur. DHsg assured NAAJA and other legal services that it would be loaded onto its website on 22 February 2012 during a Remote Housing Legal Services Meeting. It was put onto DHsg's website and therefore made publically available on or around 19 May 2013: email dated 19 May 2013 from DHsg to NAAJA.

²⁵ Urban tenancies were under the *Territory Housing Operational Policy Manual*.

²⁶ The Legal Services Group includes NAAJA, the Central Australian Aboriginal Legal Aid Service, the Darwin Community Legal Service, the Top End Women's Legal Service, the Katherine Women's Information and Legal Service, and the Central Australian Women's Legal Service.

Part Two: Homelessness

Remote homelessness and overcrowding

Severe overcrowding in remote communities in the Northern Territory continues to be both a cause and concealer of primary and secondary homelessness.²⁷ It also negatively impacts on health and safety and participation in education and employment.²⁸ As a result of a lack of adequate housing in remote communities, adults and children including those with disabilities and the elderly, are forced to sleep on the floor in kitchens, in tents other makeshift arrangements, often sharing mattresses in a small space; nuclear family units often squeeze into small bedrooms. NAAJA solicitors assist many remote clients who are aged, disabled, suffering poor health or escaping violence that cannot access housing in remote communities because of the housing shortage. A number of our clients have died waiting to be allocated public housing.

Communities continue to cry out for increased infrastructure. Representatives of the Milingimbi community wrote to the then Prime Minister, the Honourable Tony Abbot MP in 2013, explaining the impact of overcrowding and the shortage of housing was having on their community and pleading for more houses to be built:

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

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

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

²⁷ Christina Birdsall-Jones, et al, 'Indigenous Homelessness: Final Report', *Australian Housing and Urban Research Institute*, (March 2010), 7-8. Overcrowding can sometimes prevent primary homelessness, where existing tenants take in a homeless family. However, overcrowding can also force people into secondary or primary homelessness in situations where overcrowded living conditions become unbearable, and family tensions or household breakdown arise.

²⁸ Fie J (2008)

The Department of Prime Minister and Cabinet advised the Commonwealth Ombudsman that that infrastructure in Milingimbi is at capacity and cannot support further development and that the capital works commitment for Milingimbi under the National Partnership Agreement on Remote Indigenous Housing (NPARIH) were met in 2013.

Shortage of housing in remote communities leaves victims of violence without options

The severe shortage of housing in remote communities leaves victims of violence and domestic and family violence without viable options to live away from the perpetrator of violence. NAAJA has assisted a number of women who are victims of violence who have sought to transfer to different houses because the perpetrator is returning to the community or lives in the house next door.

In all cases, the lack of unallocated housing in the remote communities has meant that the victims' options have been to move away from the community or remain living with the perpetrator of violence. Not all remote communities have safe houses and in those without, women are resorting to drastic measures to escape violence.

Case studies: Shortage of housing means no escape from violence

1. A woman approached NAAJA for assistance to apply for a transfer of housing within her remote community. The woman's child had been seriously assaulted by a person living in the neighbouring house. The perpetrator had been imprisoned as a consequence and was due to be released. Our client did not feel that she could provide a safe environment for her child, so sought to move away from the perpetrator to another part of the community.

NAAJA provided details of the crime, the perpetrator and the impact on the child and his family to DHsg. DHsg advised that the client's application for a transfer was unsuccessful as other applicants had a greater priority for allocation. The woman left the community.

2. In 2015, a client approached NAAJA for assistance. Her former partner was about to be released from goal, having stabbed her. She lived in a house in a remote island community with family and expected her former partner to return to the house. She was not a signatory to the tenancy agreement, and so could not exclude him from the premises. The client had completed an application for housing in the community, however DHsg advised:

Unlike in urban public housing there are no houses in the remote communities that become vacant on a regular basis to be utilised in [these] situations

DHsg advised that her only option was to move into another family member's home. Our client advised that this was not possible as her family members' houses were already overcrowded. DHsg advised the client to contact the women's shelter in the community.

3. NAAJA is assisting a woman who lives with family members in overcrowded conditions in a community in East Arnhem Land. Her family members regularly threaten her with abuse. There is no safe house in the community. NAAJA has advised DHsg of the domestic and family violence. DHsg did not consider the violence to be serious because it was not physical and refused a request to separately house the woman when the family were being moved into transitional housing.

Recommendation 1: That the Northern Territory Government funds the expansion of public housing stock in remote and urban areas to meet demand, including any necessary infrastructure upgrades to facilitate this.

Urgent need for support services in remote communities

There are no specifically funded services to assist homeless people in remote communities, despite the overwhelming number of homeless people that reside in remote communities. The Consultation Draft does not acknowledge this reality.

Services that assist homeless people in remote communities are addressed to other aspects of their situation, for example money management services, health services or Department of Children and Families caseworkers. These programs do not specifically address the symptoms or causes of their clients' homelessness

There is an urgent need for services to be provided for the large homeless populations in remote communities, including:

- emergency, shelter or crisis accommodation;
- tailored packages of support for people at the time they need it,
- day spaces;
- facilities to wash clothes and people;
- storage facilities for belongings, identification and medicines;
- facilities to cook and prepare meals; and
- casework support services, including assistance with applying for public housing, identification of need for counselling, mental health supports and money management assistance.

These services would bring a multitude of benefits. They would benefit homeless people directly, by connecting them with appropriate casework services to assist in overcoming barriers to applying for housing or employment, and to address other issues, such as trauma.

Such services would also reduce the impact of overcrowding on remote public housing dwellings, by providing alternative spaces to wash and cook and prepare meals.

It would assist the Northern Territory Government to identify the need for housing supply and services across the Territory, by ensuring that those in need of housing have housing applications registered with DHsg and that barriers to lodging applications for public housing are minimised.

Recommendation 2: That the Northern Territory Government fund homelessness support services in remote communities, including emergency, shelter or crisis accommodation; tailored packages of support for people at the time they need it, day spaces; facilities to wash clothes and people; storage facilities for belongings, identification and medicines; facilities to cook and prepare meals; and casework support services, including assistance with applying for public housing, identification of need for counselling, mental health supports and money management assistance.

Demand for public housing unquantified

NAAJA is concerned that the Consultation Draft does not make clear whether the numbers of people on the public housing waiting list included in the report applies to both remote and urban applicants.

The report states 'There are currently 3448 household on the waiting list for social housing.'²⁹ This figure appears to have been arrived at adding the applicants for the urban regions of Darwin, Nhulunbuy, Katherine, Tennant Creek and Alice Springs regions.³⁰ It does not appear to include data from applicants for remote housing.

Supporting this, the 'Summary of issues identified in remote communities visited' does not include the waiting list figures for those communities. It is unclear why these figures are absent from the Consultation Draft - if DHsg is maintaining up to date electronic records of remote applications for housing these figures should be readily ascertainable.

Presenting data on how many houses are available in the community, for example, 73 in Ali Curung, without specifying how many applicants for public housing there are in that community gives no indication of the need for housing in that community or any other remote community.

At present the need for remote housing is unquantified in the Consultation Draft report. Given that approximately 50% of DHsg's public housing stock is in remote communities³¹, this is not acceptable.

²⁹ *Consultation Draft*, p 26

³⁰ It appears that the figures for the waiting lists in the urban areas detailed on page 9 o of the Consultation Draft have been added together to constitute the 'public housing waiting list'

³¹ *Consultation Draft*, p 13

Recommendation 3: that the final report include the number of houses in and wait list data for every community and urban centre, so as to clarify the need for housing in the Northern Territory at a point in time.

Recommendation 4: that the Northern Territory Government undertakes a scoping study to identify the true need for public housing, transitional accommodation, supported and hostel accommodation in the Northern Territory.

Identifying DHsg policies and practices which exacerbate homelessness

There is an urgent need to identify DHsg policies and practices which cause and exacerbate and prolong homelessness. We identify a number of such policies and practices below, however consider that DHsg need to comprehensively examine this issue at all levels of service delivery.

DHsg has considerable scope to interpret its policies and deliver services to prevent homelessness and assist a tenant to reduce risks to losing their tenancy. Further, this can be done in a manner that is respectful and creates a relationship of trust between DHsg and the tenant. It does not appear that DHsg takes a homelessness prevention stance in its service delivery. NAAJA sees this manifest in a number of different ways.

Evictions leading to homelessness

DHsg continues to seek evictions of people who are highly vulnerable and would suffer significantly if made homeless, without considering the relevant consequences of their decision. This shows that DHsg are not actively trying to prevent homelessness. A full examination of the legal deficiencies of this is detailed below. However, on a broader level, the policy attitude that this reflects must be and can be addressed.

Case study: Failure to consider the consequences of termination of tenancy

Prior to being allocated public housing, our 18 year old client had been homeless for over two years – she was homeless when her first child was born.

DHsg issued a notice to remedy breach and then a notice of termination for rent arrears. Our client drove over 600km to borrow \$500 to pay the arrears. Her car broke down on the return trip and she to spend the borrowed money on repairs to the vehicle to enable her to get back to Darwin.

When the client came to NAAJA, she had resigned herself to losing the house because her relationship with DHsg had broken down. NAAJA made representations to DHsg about the consequences for the client and her young family if they were evicted. NAAJA was able to negotiate that the client pay a lump sum from

her tax return to pay some of the arrears and enter into a repayment arrangement for the remainder. DHsg withdrew its application for termination and the client and her family were able to remain in their home. But for the client seeking legal assistance, she would have been evicted into homelessness by DHsg, along with her young family.

Refusing to backdate rent rebate forms

If a tenant has put in a rental rebate form late, DHsg may refuse to backdate it. This means the tenant is charged market rent for a period and the rent account quickly falls into arrears, despite continued eligibility for the rebate. DHsg continue to terminate tenancies on the basis of rent arrears that have arisen from its own refusal to backdate rebates tenants were eligible to receive. This causes considerable anxiety and hardship to the tenant, particularly if DHsg takes possession of the premises.

A homelessness prevention approach would involve DHsg backdating rental rebate forms if the tenant is eligible and taking active steps to identify ways to minimise the risks of termination of the tenancy. For example, if a tenant is in rent arrears, DHsg should review their records to see if there are rebate decisions that contribute to the debt, contact the tenant to enter into an Agreement to Pay, speak to the tenant about factors impacting on their ability to pay rent or submit rebate forms in a non-judgemental and non-threatening way, and/or refer the tenant to a financial counsellor for assistance with budgeting.

Case study: failure to adopt homelessness prevention approaches to tenancy management

NAAJA assisted a client in February 2014 to appeal a decision by the Commissioner of Tenancies to evict her and her children for rent arrears. The majority of the rent arrears arose because our client was late in submitting her rental rebate renewal forms, resulting her being charged market rent. DHsg refused to backdate the rebate despite that fact that she was eligible for the rebate and had good reasons for not submitting the form on time.

Our client and her five children were survivors of domestic violence, had limited family supports in Darwin and had experienced grief and trauma from the loss of close family. Two of her children were under the care of child protection authorities because of their challenging behaviours, but were returned to our client's care during the course of the proceedings.

NAAJA arranged a meeting between DHsg, the Department of Children and Families and our client, in which our client was able to explain the competing priorities and stressors in her life and understand the importance of getting rent rebate forms lodge on time. NAAJA focussed on our client's many strengths. We were able to negotiate an agreement with DHsg, which saw the eviction orders quashed, rental rebates backdated, an instalment plan entered into by our client to pay the remaining rent arrears, an improvement

in our client's relationship with DHsg and important relationships built between the DCF and DHsg staff working with our client.

Recommendation 5: that DHsg adopt policy or guiding principles of interpreting its policies beneficially, particularly in circumstances where the tenants' security of tenure is at risk and homelessness will be the consequence if the policy is interpreted punitively. Staff at all levels of the DHsg need to be trained in how to apply policy beneficially with the intention of preventing homelessness.

Two year ban on applying for or staying in public housing

DHsg's *Public Housing Eligibility Policy* prevents tenants who have been evicted from public housing from applying for, or staying in, public housing for a period of two years.³²

Because of the lack of affordable housing in the Northern Territory, the shortage of crisis accommodation and hostels and if friends and family also live in public housing, this policy means that if evicted, a public housing tenant (and their family) will be homeless for an absolute minimum of two years. At present the waiting list for priority housing is around two years to three years, depending on the size of the house required, so a person who is forced to wait for two years to apply for housing will need to wait around four years to be allocated a house.

Banning former tenants from applying for public housing is unnecessarily punitive. Becoming homeless is a significant and sufficient detriment to breaching a tenant's obligations. Long wait lists prevent those who have been evicted from immediately returning to housing. A better approach would be to use the information about 'what went wrong' in previous tenancy to better support a tenant in future housing.

NAAJA considers its role in defending evictions from public housing as vital in light of this policy. Too often, it does not appear that DHsg takes into account its role in creating homelessness when terminating tenancies.

Recommendation 6: that DHsg remove the two year ban from applying for or staying in public housing in the *Eligibility Policy* following eviction from a public housing dwelling.

Nhulunbuy – 13 year wait list for public housing

In the remote town Nhulunbuy a government decision to stop people from accessing existing housing is preventing immediately housing many families. Nhulunbuy has the longest waiting list for urban public housing in the Northern Territory. There is a wait list of up to thirteen years for a three bedroom house.³³

³² Department of Housing, *Public Housing Eligibility Policy* "Except in Remote Communities, Town Camps and CLAs, unless in consultation with the HRG, former tenants who were evicted or voluntarily vacated leaving sufficient evidence to justify an eviction (under breach of tenancy agreement conditions or satisfactory tenancy criteria), are ineligible for public housing; or to reside in a Department of Housing property for a period of two years... After the two year period, the applicant can become eligible for housing by demonstrating that they have successfully maintained housing and agreeing to enter an Acceptable Behaviour Agreement on allocation. The tenant will be subject to an initial three month tenancy agreement to enable the Department of Housing to monitor the tenancy." (emphasis added)

³³ ABC news online, 'Calls for Nhulunbuy's empty Rio Tinto homes to help ease the region's chronic public housing shortage' (12 November 2012), <http://www.abc.net.au/news/2014-11-12/housing-crisis-nhulunbuy-as-rio-tinto-homes-empty/5885092> (accessed 4 March 2015); NT News,

There is a significant need for increased public housing stock in Nhulunbuy and surrounding communities. NAAJA has many clients from Nhulunbuy and surrounding communities who face additional stresses due to homelessness and overcrowding - domestic violence; inability to secure or maintain a job; youth suicide; inability to store and cook food; inability to clean clothes and bodies; and exacerbation of medical problems. Two of NAAJA's clients have died while homeless and waiting for suitable housing.

A solution to the housing crisis in Nhulunbuy is readily available. In mid-2014, 250 houses were vacated by miners and their families with the closure of the Rio Tinto alumina refinery. The houses were allocated to the development entity, Developing East Arnhem Limited, which was established by the Northern Territory Government and Rio Tinto in November 2014, with the purpose of 'fostering economic development in the East Arnhem Region'.³⁴

In March 2015, NAAJA wrote to the Minister for Housing, the Honourable Bess Nungarrayi Price MLA, requesting the NTG make a significant proportion of the 250 houses available for public housing in Nhulunbuy. Minister Price responded by stating that the houses were reserved for economic development purposes and industry that the NTG hopes to attract to East Arnhem Land. There are strong economic arguments in favour of the NTG making houses available for public housing tenants now, rather than waiting indefinitely for industry to develop.

Stable housing is imperative for employment and enterprise: overcrowding and homelessness are major impediments to Aboriginal people participating in the local economy. The provision of housing to Aboriginal people in Nhulunbuy would open up economic activity and development opportunities in the area, for example in areas of health, social services, art, culture, and tourism.

Up to 190 houses remain untenanted (following the provision of 60 houses to Miwatj Health).³⁵ The NTG has the unique opportunity to comply with its basic human rights obligations, while demonstrating its commitment to significantly reducing severe overcrowding and increasing the supply of new houses. These are two objectives it committed to achieve by 2017/2018 through NPARIH.

'Nhulunbuy's public housing wait time grows even longer as houses sit empty' (25 April 2015), <http://www.ntnews.com.au/news/northern-territory/nhulunbuys-public-housing-wait-time-grows-even-longer-as-houses-sit-empty/story-fnk0b1zt-1227320249530> (Accessed at 22 October 2015)

³⁴ Developing East Arnhem, 'Access to Developing East Arnhem housing by third parties Policy', 21 November 2014, <http://www.developingeastarnhem.com.au/content/171114%20DEA%20Housing%20Policy.pdf> (accessed at 22 October 2015)

³⁵ Correspondence from Minister Price to NAAJA dated 19 May 2015.

Case studies: a right to housing

1. NAAJA assisted a 70 year old Yolgnu man from Yirrkala, East Arnhem Land. Our client lived with his 58 year old wife, his four adult children, and four grandchildren. He had renal failure and arthritis; he was in a wheelchair and received renal treatment three times a week.

Before he passed away, our client slept on a makeshift bed on the verandah of a relative's house in Yirrkala. At least 15 other people lived in this house. Our client and his wife sometimes stayed at a friend's house in Nhulunbuy which was also severely overcrowded. They slept on the kitchen floor of this house. Our client had applied for public housing in Yirrkala and Nhulunbuy at least four times in the last ten years: DHsg lost all of these housing applications. After NAAJA assisted our client to make a complaint to the NT Ombudsman, and DHsg's Complaints Unit, DHsg moved the client and his family into a house in Yirrkala. The house had no wheelchair access. Our client's wife, who is elderly and has back problems, had to assist him to shower, and use the toilet. This caused our incredible shame.

For two years, NAAJA advocated for our client to be moved to Nhulunbuy. Our client wanted to live in Nhulunbuy so that he could live in a house with just his immediate family, and be close to the Nhulunbuy hospital. NAAJA was told that there was no housing in Nhulunbuy to accommodate our client and his family. NAAJA assisted our client to write to the NT Government about the lack of housing. He wrote, 'we hope you can understand how it feels to struggle as we are and see so many empty houses in Nhulunbuy and know that they aren't for people like us.' Our client passed away August 2015, homeless.

2. NAAJA is assisting a 53 year old Yolgnu woman who moved from a remote community to the Nhulunbuy area for work. She has been Northern Territory Government employee for the last five years and her work serves her local community and promotes the efficient functioning of a number of Commonwealth and Territory government agencies. Our client has been employed her whole adult life in various roles and is a local government representative. She has studied at a number of institutions.

Our client applied for housing in Nhulunbuy several times, and has been told there is a 13 year waiting list. She raised 5 children, and now cares for a 9 year old foster child. She lives in a 3 bedroom house in a community a short distance away from Nhulunbuy. She lives with 7 other people, including her ex-partner who is often violent towards her. Our client's ex-partner makes her pay a significant share of the rent to live in the house. Even though she pays rent, our client often sleeps outside in a tent with her foster daughter. People take our client's food and she finds it hard to get a good night's sleep, which makes it hard for her to function at work. Our client often stays at the women's shelter in Nhulunbuy to escape her violent ex-partner.

In spite of the families' difficult living conditions, our client's foster child is doing very well at school – she is bright and intelligent, and wants to learn. Our client contributes her local community through her employment and care work.

Adequate funding for legal services to provide tenancy services

Support services for people who are homeless or at risk of homelessness³⁶, must also include advocacy and or legal advice services, so that tenants are provided with support and assistance to assert their legal rights and understand their responsibilities under the law.

The NTG currently funds one legal service in the NT to provide tenancy advice services, the Darwin Community Legal Service. DCLS is unable to travel to remote communities and its work is primarily urban based.

Recommendation 7: The NTG should expand funding to allow an adequate level of service provision for tenants in remote communities and urban tenants to access independent legal advice regarding tenancy and housing issues.

Homelessness – what could be done?

In addition to the ideas for possible responses presented in the Consultation Draft, further initiatives (including stated recommendations) include:

- identify Department of Housing policies and procedures that could be improved to reduce barriers to entry or re-entry into public housing for homeless people;
- fund homelessness prevention services
- establish domestic and family violence shelters in every remote community;
- working with the Department of Health and Aboriginal Medical Services to identify the health related impacts of the lack of housing, and make housing more appropriate in order to achieve health outcomes;
- funding for specialist homeless support services in remote communities;
- expansion of mental health service provision in remote communities;
- expansion of public housing stock in urban and remote communities;
- an audit of public housing stock and the need for public housing in remote communities;
- fund independent legal and advocacy services which actively prevent homelessness, advise clients on rights and responsibilities under the law and DHsg policies; and
- clarifying the current distribution of funding for homelessness and supported accommodation programs provided by the Department of Housing in remote communities.

³⁶ Consultation Draft , p 15

Part Three: Supported Accommodation

NAAJA does not have expertise in the area of supported accommodation but are aware that there is a shortage of supported accommodation in urban areas in the Northern Territory, and those that exist have long waitlists.

Further, not all supported accommodation facilities are set up to work with people from remote communities who speak languages other than English and or have complex needs. There needs to be better targeting of supported accommodation facilities so as to ensure they are meeting the needs of the community.

Case study: shortage of supported accommodation for people with complex needs

NAAJA assisted a family whose child had been taken into the Department of Children and Families care, as his multiple medical conditions meant that he was unable to receive adequate health treatment in his home community. The family were living in severely overcrowded conditions and reunification with their child was dependent on the family having secure, stable housing.

NAAJA assisted the family to make an application to transfer from the families' home community in West Arnhem Land to Darwin. While the family was waiting to be allocated housing, NAAJA referred the family to a supported accommodation provider. The provider interviewed our client and advised that their program was not suitable as our clients would need to communicate with the assistance of interpreters, needed assistance to access medical treatment and other essential services.

The client waited another year before being allocated a place in another supported accommodation facilities, further delaying their reunification with their young child.

There is a complete absence of supported accommodation facilities in remote communities, excepting residential aged care facilities, which exist in only a very few remote communities.³⁷ There are no supported accommodation facilities for young people, people with disabilities, people with substance use problems or mental health conditions.

Lack of short-term and transitional accommodation in Darwin and Katherine

The lack of short-term accommodation in Darwin, Katherine and other regional areas in the Northern Territory has a number of detrimental impacts. Firstly, people travelling into Darwin or Katherine to access medical treatment, do shopping or visit relatives are often forced to sleep in the Long Grass due to the lack

³⁷ Residential aged care facilities are located in Maningrida, Borroloola, Anurugu, Alice Springs, Katherine, Tennant Creek, Wadeye, Wurrimiyanga, Docker River.

of available accommodation. Hostel accommodation is frequently full and a number of hostels have closed down in Darwin.

Visitors from remote communities and other parts of the Northern Territory often have to resort to trying to stay with family members or friends living in public housing. This can often lead what is described as a 'cycle of alienation'.³⁸ Overcrowding is a cause and a result of alienation from the public housing system.

Case study: lack of short-term accommodation

NAAJA is assisting an older Aboriginal couple living in public housing in Darwin. They live in a public housing complex in Darwin city. Their flat is close to the road, and fronts onto a major thoroughfare that goes through the complex. The central location of the flats means that it is easy for people to walk, or catch a bus, and gather at the flat.

The couple's visitors come to town for different reasons - the Darwin show, for medical treatment, to see specialists, to go shopping, visit family, or attend meetings with Department of Children and Families. Aboriginal hostels are usually full, and there are no homeless shelters that visitors can stay at. Our clients are often faced with the option of providing temporary shelter or relegating their visitors to homelessness. Our clients' tenancy is now at risk due to complaints by neighbours of antisocial behaviour. The complaints relate to visitors to the premises – both consensual and non-consensual. Children play; people talk loudly; and some may drink and end up in fights.

DHsg has issued two strikes³⁹ against our clients – they face eviction if they receive a third strike. Their tenancy would not be at risk if there were viable short term accommodation options for people visiting Darwin.

Supported accommodation – what could be done?

- Audit of the need for specialist ongoing and short term supported and transitional accommodation services, in urban and remote areas;
- Expand tenancy support programs and services to remote communities; and
- expand supported accommodation services to remote communities.

³⁸ Rae Porter, *Discordance, mobility and agency: Dilemmas for housing reform in Northern Territory Aboriginal Settlements*, Report 76 2010. Ninti One Limited, Centre for Appropriate Technology page 43, referring to Prout S. 2008. The entangled relationship between Indigenous spatiality and government service delivery. *CAEPR Working Paper No. 41*. Available at <www.anu.au/caepr/>.

³⁹ Public housing tenants in the Northern Territory can be given 'strikes' under DHsg's *Three Strikes policy*. Strikes are given for allegations of anti-social behaviour. If a tenant is given three strikes they are 'considered for eviction'. Under recent changes to the policy, strikes now last for 12 months. This means that a tenancy can be at risk for x months. For background *Parity article*

Part Four: Social Housing

Remote public housing

Legal services in the Northern Territory, particularly NAAJA, CAALAS and NTLAC, have experienced a large upswing in matters relating to remote public housing since 2008.

Similarly, the Commonwealth Ombudsman's Annual Report 2010–11 indicated that there was a consistent flow of complaints to the Ombudsman in relation to housing reforms in the NT.⁴⁰ These complaints related to:

- confusion surrounding how much rent people are paying or should be paying;
- confusion about tenancy agreements, difficulties associated with the responsibilities of head tenants and people not receiving copies of tenancy agreements or having them explained in their language;
- confusion about processes and timeframes for repairs and maintenance requests;
- weaknesses in the system used to log, receipt, monitor and provide status reports to residents for repairs and maintenance requests;
- lack of response or delayed action in relation to repairs and maintenance requests;
- collection of poll taxes or service fees despite reforms aimed at ending this practice;
- failure to implement systems to facilitate rent payments for people on Centrelink payments who were not on income management scheme, resulting in people being unable to pay rent when they exited income management⁴¹;
- failure to provide rent statements, in contravention of RTA obligations
- poor quality work under the Strategic Indigenous Housing and Infrastructure Program (SIHIP) and little action or avenue made known to tenants to have deficient or faulty work fixed;
- problems with transitional housing arrangements for people who were required to move out of their homes while SIHIP work was undertaken; and
- concerns about the transparency and effectiveness of Housing Reference Groups, and about how decisions are made and communicated by these groups, together with an overreliance on Housing Reference Groups to communicate critical government decisions or policy to communities.

⁴⁰ Commonwealth Ombudsman (2011) *Commonwealth Ombudsman Annual Report 2010–11*, Commonwealth Ombudsman, Canberra, p.89

⁴¹ By virtue of Part 3B of the *Social Security (Administration) Act 1999*, between 30 to 50% to 70% of the Centrelink payments of people under income management is paid into their bank account and the remaining portion is put into a Centrelink administered account to spend on their 'priority needs'. Section 123 TH of the *Social Security (Administration) Act 1999* defines priority needs as food; non-alcoholic beverages; clothing; footwear; basic personal hygiene items; basic household items; housing, including rent; home loan repayments; repairs; and maintenance; household utilities, including: electricity, gas; water; and sewerage; and garbage collection; and fixed-line telephone; rates and land tax; health, including: medical, nursing, dental or other health services; and pharmacy items; and the supply, alteration or repair of artificial teeth; and the supply, alteration or repair of an artificial limb (or part of a limb), artificial eye or hearing aid; and the supply, alteration or repair of a medical or surgical appliance; and the testing of eyes; and the prescribing of spectacles or contact lenses; and the supply of spectacles or contact lenses; and the management of a disability; child care and development; education and training; items required for the purposes of the person's employment, including: a uniform or other occupational clothing; and protective footwear; and tools of trade; funerals; public transport services, where the services are used wholly or partly for purposes in connection with any of the above needs; the acquisition, repair, maintenance or operation of: a motor vehicle; or a motor cycle; or a bicycle; that is used wholly or partly for purposes in connection with any of the above needs. The person can allocate their income managed funds to a BasicsCard, which can be used at retailers with BasicsCard merchant status and/or authorise Centrelink to make direct payments to third parties on their behalf, for example to pay rent, purchase priority goods or make payments to a telephone company or a utilities company.

Despite the five years that have passed since, NAAJA and other legal services in the NT continue to receive complaints and undertake casework and litigation on those issues. We are often required to take action in NTCAT, Public Housing Appeals Board and or make complaints to the Commonwealth and Northern Territory Ombudsman to progress matters. This comes at a significant cost to DHsg and its tenants.

It is unclear to what extent DHsg has actioned the recommendations contained in the Commonwealth Ombudsman's 2012 report, *Remote Housing Reforms in the Northern Territory*.⁴² As discussed, the problems experienced by remote tenants identified in that report persist and may be worsening. Many of these problems would be resolved if those recommendations were implemented.

Recommendation 8: that the NTG direct the DHsg to immediately implement the recommendations of the Commonwealth Ombudsman's report, *Remote Housing Reforms in the Northern Territory* and to publish a biannual report of progress until the reforms are fully implemented.

Limited on-the-ground housing services in remote communities for tenants

There have been a number of changes in responsibility for the delivery of services in remote public housing, which appears to have had the effect of drastically reducing the level of service provided to remote community residents.

Initially, tenancy management services were almost exclusively provided by DHsg. This included tenancy staff that travelled to remote communities to sign tenants up to tenancy and occupancy agreements, establish rent collection mechanisms for individuals (including family rent agreements), arrange allocation of dwellings and collect remote public housing application forms. Whilst there were inadequate levels of staff to ensure a sufficient level of services, at least remote tenants had some access to the Department of Housing, albeit infrequent. Repairs and maintenance services were largely contracted out to the local Shire Council or Community Government Council. This meant tenants could go to their local Shire Council office to request repairs and maintenance and complete applications for housing, which would then be sent to DHsg.

Although tenants had the ability to request repairs and maintenance in person, there were numerous pitfalls to the arrangements. The most significant issues related to inadequate recordkeeping by Shire Councils of repair and maintenance requests, and a complicated system for approval of repairs with the DHsg, leading

⁴² Commonwealth Ombudsman *Remote Housing Reforms in the Northern Territory* June 2012, available at http://www.ombudsman.gov.au/files/remote_housing_reforms_in_the_nt_report.pdf (accessed 16 October 2015)

to endemic delays for repairs and maintenance (generally months outside of the statutory requirement to repair within two weeks).⁴³.Shires did not have access to DHsg systems and the system was paper-based.

In many communities, locally available tradespersons were not used to complete jobs. DHsg appeared to wait until there was a critical mass of, for example, electricity problems, before it would fly an electrician into a community. This led to long wait times and unsafe living conditions in many instances.

For example, a client in Galiwinku had a broken front door that did not shut properly and was not able to be locked. NAAJA was told by DHsg that the client would have to wait until a critical mass of at least 20 or 30 people had a broken door before the door could be replaced.

Remote housing service delivery post-March 2014

Since 1 March 2014, DHsg have engaged a panel of contractors to provide housing services, including:

- Delivery of housing maintenance coordination services
- Delivery of tenancy management services
- Panel contract for provision of trade qualified services.

There are a number of problems manifesting from this type of service delivery. DHsg is a public housing provider and should therefore be accessible and sensitive to vulnerable and disadvantaged people, even if sub-contracting its services. Contractors do not operate shop fronts in most communities and some contractors service several communities. Often the contractor is only accessible via mobile phone and those numbers are not publicly available. The phone numbers of contractors do not appear on the DHsg's website, despite numerous requests for this to occur so as to increase accessibility to remote tenants.

In many communities it is unclear who is responsible for providing tenancy management services. For example, in Ramingining, there is not an accessible service provider to assist with applications for housing, requests for disability modifications, reporting changes in income, or notifying of changes in the household structure of residents.

The lack of access to DHsg services and staff is causing a number of significant problems in remote communities, including:

- delays in reporting repairs and maintenance, leading to tenant inconvenience and potential damage to DHsg assets;

⁴³ Section 63, *Residential Tenancies Act 1999 (NT)*.

- lack of access to public housing application forms – without accessible services to accept or assist with applications for remote or urban public housing, the number of applicants for public housing is depressed
- tenants cannot easily report changes in income or household structure – as a consequence, some tenants may be paying in excess of the rent required or conversely DHsg may not be collecting sufficient rent from the household, leading to preventable rental arrears debts;
- applicants for public housing cannot easily respond to the six monthly surveys DHsg sends to applicants to confirm an ongoing need for housing, meaning that some applications are cancelled whilst the person still needs housing; and
- people in need of disability modifications are not being identified or assisted to obtain the necessary documentation for DHsg to assess the need for such modifications.

NAAJA is effectively cross-subsidising services that should be provided by DHsg, and receives no funding to do so. For example, NAAJA has experienced an increase in the number of remote clients who require assistance with completing housing application forms. This is a service that should be completed by DHsg staff. NAAJA has had clients who have been turned away by DHsg staff and advised 'go to NAAJA for help with this.

Case Study: inaccessible tenancy management services

NAAJA is assisting a client who lives in a small remote community in Arnhem Land that does not have accessible tenancy management services. The client cares for her niece, a young disabled woman, who has minimal use of her right arm and both legs. She uses a wheelchair to move around. NAAJA visited the client and her niece in their home on an unrelated matter. The NAAJA lawyer observed that the ramp at the rear of the house did not meet the ground so if our client's niece wanted to move outside of the house, she was forced to do this on her hands by sliding or crawling with her one good arm. The house is surrounded by sand, making wheelchair access difficult.

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

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

Frequent occurrence of prolonged delays in the provision of urgent repairs and maintenance services

The repairs and maintenance services provided by DHsg in remote communities are neither responsive nor provided in accordance with the timeframes in the RTA. This compromises the health and safety of the tenants and their families.

The RTA requires that the landlord maintain premises in a 'reasonable state of repair'.⁴⁴

NAAJA has assisted countless numbers of remote tenants to seek repairs and maintenance - a significant proportion of our work involves assisting clients to obtain repairs that are essential to safe and healthy homes.

The vast majority of remote tenants assisted have already reported the need for repairs a number of times over an extended period before seeking NAAJA's assistance. Many remote tenants have advised NAAJA that they have 'given up'. Common repair requests that we assist with, including blocked sinks and toilets, leaking sewage and dangerous electrical wiring, include broken ovens, which affect a family's ability to prepare and cook food; holes in walls that allow vermin and snakes to enter a house and affects the ability to maintain a clean and healthy environment; and faulty electrical wiring, which pose clear safety issues.

Remote tenants are frequently told that there are no funds to address non-urgent repairs. Alternatively, remote tenants are told that damage is deemed to be 'tenant responsible damage' and will not be fixed. In a number of cases, tenants have had to seek recourse to the Commissioner of Tenancies (now NTCAT) for orders that emergency repairs be undertaken.

We regularly provide advice to clients regarding their rights to compensation under the RTA for DHsg's failure to repair within the time limits imposed by the law.

Case Studies: remote repairs

The following is a small selection of clients' stories that represent the common sorts of repair issues NAAJA assists with. In all of these cases the tenant had reported the request to DHsg numerous times without a response. Only after NAAJA pursued them formally were repairs addressed: We assisted:

1. In 2014 a household of 15 in Southern Arnhem Land who had no hot water for over 12 months;
2. In 2012 a large family in the Tanami Desert who had a raw sewage leaking into their backyard for over many weeks;
3. In 2014 an elderly woman in Arnhem Land who was advised by an electrician to keep her hot water service trip switch turned off because it was not safe. This remained for at least 4 weeks;

⁴⁴ Section 57, *Residential Tenancies Act 1999* (NT)

4. In 2015 a single mother with several children and grandchildren in her care with a stove with one hotplate working. This remained for over 12 months before the stove was replaced. (Poor quality stoves are a problem throughout the NT and in our experience is less common to speak to a person whose stove is completely working.); and

5. In 2015, a young father who must insert a paperclip into a light switch to use it because it does not work.

Examples where NAAJA have litigated these issues include:

6. NAAJA assisted a client who had been seeking emergency repairs to her public housing premises in a remote community in East Arnhem Land for a number of years. The repairs included a serious roof leak that made portions of the house unusable, a broken toilet, which meant that the client Bara had to flush the toilet with a bucket for a two year period, broken shower taps, which meant that the client needed to use a spanner to turn the water on, and broken locks on the laundry and front doors which meant that the premises could not be secured. For a portion of this period, our client was caring for her disabled grandson – she suffered considerable distress and inconvenience. She had advised the Shire Council on a number of occasions.

NAAJA advised DHsg of the repairs in September 2014. NAAJA made an application to the Commissioner of Tenancies for orders that the emergency repairs be completed for compensation. It took 6 months for the repairs to be completed. DHsg paid the client compensation on confidential terms.

7. After many attempts to resolve the matter with DHsg, NAAJA commenced proceedings in the Commissioner of Tenancies for emergency repair and compensation orders for a remote client who had been reporting a serious roof leak, which caused electrical faults, for nearly three years. Around the same time, a serious shower leak saw her bathroom flood and water leach into the hall and bedrooms. As a result of the delay in repairing the shower leak, the client had resorted to drilling holes in the bathroom floor to drain some of the water flooding her house, resulting in a pool of water building up under the house. NAAJA lodged an internal complaint with DHsg in relation to the shower. Within one month of commencing Commissioner of Tenancies proceedings, DHsg had ensured that all repairs were done and compensated the client for loss of bargain, inconvenience and distress caused.

Aboriginal organisations to deliver tenancy and property management services

Although the Consultation Draft recognises that '(remote) communities want greater input into and responsibility for housing design and management, and for more housing work to be done by local people', the Northern Territory Government does not appear to have taken this on board, recently awarding the contract to manage Alice Springs Town Camps to a for-profit enterprise, in preference to the existing contractor, Central Australian Affordable Housing Company, which is a not for profit focussed on Aboriginal people which had been providing services for 5 years.⁴⁵

DHsg and the NT Government more broadly must be aware of the value of Aboriginal run services in providing effective outcomes in these areas. Visiting contractors regularly complain that tenants aren't home or miss information vital to working effectively in a community. Housing services are jobs that can be done by community members.

Recommendation 9 a: that DHsg urgently review its contracted remote repairs and maintenance services so as to ensure that it meets its obligations under the RTA, and to ensure that its assets are not degraded through lack of cyclical maintenance.

Recommendation 9 b: that DHsg conduct an audit in line with Healthhabitat's *Housing for Health: The Guide* of its assets constructed or refurbished under NPARIH or SIHIP to identify and address systemic repairs and maintenance issues.

Recommendation 10: that DHsg publish and make widely available information regarding the contact details of contractors, their responsibilities under their contract (for example, tenancy management, repairs and maintenance), and complaints processes for when a contractor is not providing the expected services. This information should be published on DHsg's website and distributed widely in remote communities.

Premises removed from public housing stock without guiding policy - 'Beyond Economic Repair'

DHsg must comprehensively address the situation where a house reaches such a state of disrepair that it deems it to be 'Beyond Economic Repair' (BER), and removes the dwelling from public housing stock.

This is a significant issue, particularly in remote communities where the removal of one house from the public housing stock can impact up to 15 or 20 residents. This in turn puts more pressure on overcrowded houses and impacts on levels of homelessness. In 2010, the Executive Director of Remote Housing, Mr. Andrew Kirkman, told a Senate Estimates hearing 'at least a couple of hundred houses' across the Northern Territory deemed BER would need to be demolished.⁴⁶

Despite the scale of this issue, there is no publically available policy on the decision-making process that guides DHsg in relation to BER determinations. Further, the practice of moving tenants into already

⁴⁵ *The Australian* "Aboriginal Housing in Alice Springs not like LJ Hooker" <<http://www.theaustralian.com.au/national-affairs/indigenous/aboriginal-housing-in-alice-springs-not-like-lj-hooker/news-story/81721bcef17022db28e3e31e73e36812>> accessed on 5 February 2016.

⁴⁶ Natasha Robinson, 'Shoddy homes to be rebuilt for Aborigines' (The Australian, News, 18 June 2010) <http://www.territorystories.nt.gov.au/bitstream/10070/222043/2/Giles-180610-Hendos_deceit_unravels_attachment1.pdf>.

overcrowded houses, as has been the case in many communities, is not an appropriate response to removing houses from public housing stock.

This will be an ongoing issue due to the low quality of much of the public housing stock and so must be addressed as a matter of priority.

When asked by NAAJA and CAALAS about the process that DHsg takes when determining if a house is BER, DHsg advised:

*“Territory Housing ... makes decisions ... based upon estimated cost and structural engineers’ reports...two principles are used...a. The structure is unable to be repaired and does not represent value for money; b. or repairs will not extend the life of the assets and does not represent value for money.”*⁴⁷

*“Lot [redacted] was inspected and was deemed BER by TH staff as it did not meet key objectives of a safe, secure and affordable dwelling.”*⁴⁸

*“Decisions taken in respect of removing tenants from unsafe houses are made on a case by case basis by the Regional Executive Director, given the seriousness of the matter. These decisions are also taken in conjunction with myself and advice from the HRG ... on the balance of the state of the structure and the risk of injury to tenants”.*⁴⁹

In relation to appeal rights, NAAJA or CAALAS has been variously advised by DHsg:

*“The [Territory Housing Appeals] Board have no jurisdiction to hear an appeal about a tenant living in a house deemed BER”.*⁵⁰

*“I cannot see how we would allow an appeal against such a decision, even if the decision is not well received”.*⁵¹

*“If a tenant wants to challenge an assessment they can raise this ... via the NT Government’s housing complaint and appeals process”.*⁵²

NAAJA has not been provided with the numbers of houses that have been deemed BER, those that have been rebuilt and those that have been left uninhabitable. Given the variability in the quality of public housing dwellings in both urban and remote areas and the critical shortage of housing across the Northern Territory, we consider that a clearly articulated policy on how these decisions are made is imperative.

NAAJA has raised these concerns in a range of forums over a number of years, including at Legal Services meetings, the NT and Commonwealth Ombudsman and the former NT Coordinator General of Remote Service Provision. Creating a BER policy should be an urgent priority for the Department.

⁴⁷ Answers to Estimates Questions on Notice Families, Housing, Community Services and Indigenous Affairs Portfolio, 2012-2013 Budget Estimates Hearings, Question No: 291, Pat Sowry, Executive Director, Remote Housing FAHSCIA, 12 July 2012

⁴⁸ Communication from DHsg Complaints and Appeals Unit, 20 April 2012

⁴⁹ Communication from Andrew Kirkman, Executive Director, Remote Housing DLGRS, 6 June 2012

⁵⁰ Communication from Housing Complaints and Appeals Unit, 20 April 2012.

⁵¹ Communication from Andrew Kirkman, Executive Director, Remote Housing DLGRS, 6 June 2012

⁵² Answers to Estimates Questions on Notice Families, Housing, Community Services and Indigenous Affairs Portfolio, 2012-2013 Budget Estimates Hearings, Question No: 291, Pat Sowry, Executive Director, Remote Housing FAHSCIA, 12 July 2012.

Further to a lack of policy, NAAJA is aware that DHsg has not terminated tenancies in accordance with the RTA's requirements for providing notice of termination following a BER determination. This means that tenants have been deprived of their appeal rights and, in some circumstances, evicted in circumstances contrary to law.

Case studies: Beyond Economic Repair

NAAJA assisted a client from a community in the Daly River region of the Northern Territory. The client had lived in the premises since around 1995 and had strong cultural and familial connection to the property. In around 2012, he was asked to move out of the house so that the house could be refurbished. Sometime after the refurbishment, the roof began leaking in multiple places, including through a fan. He reported the issue and was told to move out temporarily because of safety concerns and to allow the premises to be repaired. He, his wife, three children and an elderly sister moved in with family in overcrowded conditions, but continued paying rent for some months. The rent payments being made by our client and his wife via Centrelink were unilaterally ceased by DHsg, effectively ceasing the tenancy, but without providing any notice to the tenant. DHsg appear to have entered negotiations around this time to lease the house to a building contractor in exchange for repairs to the premises. The premises had been determined to be BER, but notice had not been provided to our client of this decision or terminating the tenancy under the RTA. DHsg attempted to get our client to agree to relinquish his dwelling. There was no offer of an alternative tenancy made to our client until some 7 months later, after NAAJA had become involved.

NAAJA assisted the client to make an application to the Commissioner of Tenancies for orders that the purported termination of the tenancy was not valid, for emergency repairs and compensation. The matter was settled on a confidential basis in 2015.

NAAJA is assisting a client in East Arnhem Land who lives in a house with 30 adults and children as a result of a BER house being demolished. Residents of two overcrowded households were forced to live in one house. The house is soon to be demolished following damage caused by two cyclones in early 2015. The client sought NAAJA's assistance to communicate to DHsg that the residents wished to live in a cluster of three or four houses, rather than one house. DHsg denied that those people all lived in the one house, and stated that it did not encourage overcrowding, and would be replacing houses 'like for like'.

Recommendation 11: that DHsg immediately develop a policy to guide Beyond Economic Repair determinations, which includes:

- reasonable estimate of the cost of repairs;
- an assessment as to how removing a house from public housing stock will impact levels of overcrowding and the public housing waitlists in that community or region;
- a social impact assessment of the impact of any increase in overcrowding on school attendance, health and employment outcomes in the community;
- an assessment of the responsibility for the repairs;
- an indication of whether the house will be replaced;
- the ability of DHsg to transfer the tenants of a BER house to another premises; and
- an assessment of tenant safety.

Recommendation 12: that DHsg provide tenants living in premises that have been determined to be BER (according to objective criteria), with notices of termination which detail:

- reasons for the decision, including an explanation as to how DHsg has addressed BER policy criteria;
- a statement as to who has assessed the house to be BER;
- proposed transitional arrangements; and
- appeal rights.

Legacy dwellings – denial of protections under RTA

Despite the recommendation of the Commonwealth Ombudsman, in its report *Remote Housing Reforms in the Northern Territory*,⁵³ DHsg has not made clear whether it accepts that the RTA applies to the houses in remote communities which it refers to as ‘legacy dwellings’ or ‘existing houses’.⁵⁴

DHsg’s *Remote Housing Operational Policy* created a hierarchy of rights for remote housing tenants depending on the dwelling the tenant lives in:

- a) *New, rebuilt and (generally) refurbished dwellings* - rent is charged and DHsg enters into a tenancy agreement pursuant to the RTA with tenants.⁵⁵
- b) *Legacy dwellings/existing houses* – houses which are have not been refurbished or have been refurbished but are deemed by DHsg to not be ‘safe and habitable’. Tenants of these houses pay rent, which DHsg terms a ‘maintenance levy. DHsg enters into tenancy agreements with the tenant

⁵³ Commonwealth Ombudsman, *Remote Housing Reforms in the Northern Territory* (June 2012).

http://www.ombudsman.gov.au/files/remote_housing_reforms_in_the_nt_report.pdf (accessed at 16 October 2015).

⁵⁴ See discussion below regarding legacy dwellings.

⁵⁵ Department of Housing (NT) *Remote Rent*

<http://www.housing.nt.gov.au/remotehousing/information_for_remote_tenants/remote_rent_and_other_charges> (accessed 5 February 2016).

which it terms 'occupancy agreements'. DHsg does not consider that the RTA applies to tenants of legacy dwellings, and limits its responsibilities to 'arranging for repairs and maintenance to be completed'.⁵⁶

- c) *Improvised dwellings* (tin houses, humpies etc.) - no rent is charged and DHsg does not repair or otherwise maintain these properties. As no rent is charged, these tenants do not have the protection of the RTA.⁵⁷

In September 2011, NTLAC, CAALAS, and NAAJA (with the support of legal services across the NT) made a request directly to Federal Minister Macklin and Northern Territory Minister Burns for tenants of legacy dwellings to be recognised as being covered by the RTA (by way of a change in DHsg policy). This was refused. The Commonwealth Ombudsman recommended that DHsg obtain legal advice as to the status of legacy dwellings and occupancy agreements in 2012.

The *Remote Housing Operational Policy* has been removed from the DHsg website and replaced with the *Remote Housing Leases Policy*⁵⁸, which states:

"Occupants of existing dwellings who are required to enter into an occupancy information document ('OID') with the Department of Housing are required to pay a maintenance levy. Under the OID, the occupants are required to keep the dwellings clean and tidy and in a reasonable standard."

The terms of the policy imply a between 'tenancy agreements' and 'occupancy agreements', and 'rent' and 'maintenance levy', and so make it unclear whether DHsg accepts that tenants of legacy or existing houses receive the protections of the RTA.

It is unclear what DHsg has advised its staff and contractors as to the legal status of legacy dwellings, and how this impacts on the level of service that tenants of legacy dwellings receive as a consequence.

The diminution of rights for tenants of legacy dwellings means that DHsg is not meeting its responsibility under the NPARIH for 'ensuring provision of standardised tenancy management and support for all Indigenous housing in remote areas consistent with public housing standards of tenancy management'⁵⁹. DHsg does not release figures on the amount of legacy dwellings in the NT, nor will it disclose whether it has obtained legal advice pursuant to the Commonwealth Ombudsman's report.

⁵⁶ Northern Territory Government, Department of Housing, *Remote Public Housing Policy - Operational Policy* – January 2013, section 16

⁵⁷ Improvised dwellings – makeshift houses or shelters that are not considered public housing and for which no rent is payable. Northern Territory Government, Department of Housing, *Remote Public Housing Policy - Operational Policy* – January 2013, section 15

⁵⁸ Northern Territory Government, Department of Housing *Remote Housing Leases Policy*

http://www.housing.nt.gov.au/data/assets/pdf_file/0011/164783/Remote_Housing_Leases.pdf, accessed on 5 February 2016.

⁵⁹ NPARIH, p 6 [16(b)].

The issue of whether tenants of legacy dwellings are covered by the RTA has yet to be tested in a court. However in a matter before the Commissioner of Tenancies in 2015 on behalf of a remote tenant living in a legacy dwelling, DHsg argued that the Commissioner of Tenancies did not have jurisdiction to hear the matter as it claimed that it was:

- exempt from the RTA because it was providing the accommodation for 'charitable purpose'⁶⁰;
- exempt from the RTA because it argued that no rent was payable under the agreement;⁶¹ and
- not the landlord of the premises.

NAAJA strongly rejected these arguments as: government entities cannot be charities⁶² and charging tenants rent below the market rental is not tantamount to a charitable purpose⁶³; rent payable under the tenancy agreement was \$138 per week, and irrespective of the way DHsg characterised the payment as a 'maintenance levy', the payments were in the nature of rent;⁶⁴ and it was the landlord of the premises as the premises were subject to a long term sub lease granted to the CEO (Housing).

Those submissions were withdrawn. However as the matter settled it remains unclear if DHsg accepts that legacy dwellings were covered by the RTA more broadly.

Legal services have noticed a number of consequences that flow from DHsg's characterisation of occupancy agreements, particularly greater delays and refusals to complete repairs and maintenance, and the refusal to conduct reconciliation of rent payments before 2010, which are contrary to DHsg's legal obligations under the RTA.

Case studies: legacy dwellings

1. NAAJA assisted a tenant living in a legacy dwelling with windows with a large number of missing louvers, which DHsg refused to replace. DHsg advised that the tenant could appeal to the Territory Housing Appeals Board (THAB) but stated that it was unclear whether the THAB would have jurisdiction to accept the complaint.
2. In the case of another tenant living in a legacy dwelling with a broken window, DHsg boarded up the window instead of repairing it.
3. NAAJA assisted a tenant living in a legacy dwelling with 19 other people, where one of the two toilets was blocked off by DHsg rather than being repaired.

⁶⁰ Section 6(1)(f) of the RTA states that the RTA does not apply to an agreement 'in respect of premises provided for the use of homeless, unemployed or disadvantaged persons for charitable purposes or for the purposes of providing emergency shelter or accommodation'. INCLUDE SECTION ON MASONIC VILLAGE

⁶¹ Section 6(1)(c) of the RTA states that the RTA does not apply to an agreement 'in respect of premises provided for the use of homeless, unemployed or disadvantaged persons for charitable purposes or for the purposes of providing emergency shelter or accommodation'.

⁶² *Central Bayside General Practice Association (formerly known as Central Bayside Division of General Practice Ltd) v Cmr of State Revenue* (2006) 229 ALR 1

⁶³ *Darwin Masonic Memorial Village Incorporated v Yvonne Odergaard* (unreported, NTRTCmr, 16 April 2013)

⁶⁴ *SA Crate Pty Lts v State of South Australia* (1983) 35 SASR 92 at 97-98

Recommendation 13: that DHsg immediately publicly acknowledge that tenants of legacy dwellings/existing houses attract the protections of the RTA, and incorporate this position into policy and procedure.

Inadequate systems to track rent payments

Until 2013, DHsg did not keep adequate records of rent for its remote tenants, in contravention of section 36 of the RTA. Its systems could not track who was paying rent and which house the rent should be attributed to. There was no effective mechanism to ensure that tenants were paying the correct amount of rent and the maximum dwelling rent⁶⁵ was not being exceeded as DHsg did not know how much rent it received for a dwelling.

In addition, DHsg did not keep records of tenants of legacy dwellings on its electronic database – the Tenancy Management System (TMS), despite receiving \$4 million in rent from tenants of legacy dwellings in 2012. DHsg manually reconciled the rent paid by tenants of legacy dwellings in its regional offices.⁶⁶

The Commonwealth Ombudsman described the problem as follows:

Territory Housing cannot easily provide rental statements for residents who are not on TMS. It also has difficulties identifying whether people are paying rent when they should not or, conversely, whether people are not paying rent when they should⁶⁷

The Commonwealth Ombudsman further identified that existing information technology systems were inadequate in recording and tracking tenant information.⁶⁸

When legal services have requested rent statements from DHsg on behalf of people who had paid rent to DHsg, they were advised that the best way of determining how much rent a person has paid was to petition Centrelink. This meant that to determine how much rent a household had paid or was paying, each member of the household had to obtain Centrelink records dating back to 2008, and then reconcile this information against rental liabilities.

This system placed an unworkable burden of proving the accuracy of rent payments on remote tenants, which in most cases, they could not address without legal assistance.

Delays in obtaining refunds for rent paid in error

In a significant number of cases, rent payments were made to DHsg by people without liability to pay rent, and DHsg had great difficulty in identifying the erroneous payments because of the inadequacies of their rental records systems.

⁶⁵ Department of Housing *Remote Public Housing Rent* http://www.housing.nt.gov.au/_data/assets/pdf_file/0018/138222/rfs37_remote_rent_Sep12.pdf accessed 5 February 2016.

⁶⁶ Communication between Andrew Kirkman and Lauren Walker, NAAJA

⁶⁷ Commonwealth Ombudsman at 3.63

⁶⁸ Commonwealth Ombudsman at Recommendation 7

This was exacerbated a number of factors:

- From 2008 to 2013, DHsg did not provide identifying reference numbers to tenants, employees or Department of Human Services Centrelink to attach to payments to enable it to identify rent payments made to it;
- From 2008 to 2013, DHsg did not work with Department of Human Services Centrelink's to establish systems to recognise Centrelink Reference Numbers (CRN), which are attached to rental payments made to it by Centrelink.
- Department of Human Services Centrelink set up income management deductions for rent payments to DHsg without obtaining information as to whether the person was liable to pay rent;
- DHsg appeared to direct employers in remote communities to establish rent deductions to DHsg for all employees, irrespective of whether the person was a tenant or not; and
- Limited understanding by service providers of the extent of remote homelessness and overcrowding led to the assumption that 'everyone lived in a public housing dwelling' and therefore that everyone was liable to pay rent.

DHsg' focus appeared to be on establishing and receiving rental payments from remote tenants, without placing a corresponding importance on creating identifying reference numbers, which would have enabled employers, Centrelink and the small amount of tenants who pay by direct debit to identify the payments made and ensure DHsg could correctly apply rent receipts upon receipt.

NAAJA has assisted many clients who have paid rent to DHsg in error or where DHsg has not kept adequate records of their rent payments. Resolving these problems has taken lengthy advocacy.

Case studies: DHsg lack of adequate rent records

1. NAAJA received a complaint from a client living in a remote community on the Tiwi Islands. The client lived with his parents who owned their own home. His employer mistakenly arranged for him to pay rent to DHsg from his wages. He paid rent to DHsg from 6 December 2010 to 3 August 2011.

DHsg advised NAAJA that it had no way of identifying the payments made in its accounts and that the client would need to provide proof of the payments made. A DHsg employee advised NAAJA that it had 'millions of dollars' in an account but could not identify payments by particular tenants or households. NAAJA assisted the client to obtain a refund of the payments, 10 months after he first requested a refund from DHsg.

2. NAAJA assisted three women in a remote community in Arnhem Land, whose employer paid rent to DHsg, despite the women and their families living in makeshift shelters without kitchens, toilets, laundries or showers, and which were not DHsg assets. NAAJA obtained refunds of \$8960 for these women. DHsg had no records of the payments made and relied on payslips supplied by NAAJA to identify the amount that needed to be refunded. It took four months for the women to receive their refunds.

3. NAAJA was approached by a woman whose uncle had paid \$6900 to DHsg between October 2008 and June 2011 via a Centrelink income management deduction. Her uncle had built his own house on an outstation in Daly River region. DHsg do not provide services to outstations and he had no liability to pay rent to DHsg. Centrelink had no address for the man, and DHsg could not locate the \$6900, until NAAJA provided proof of payments. The uncle is now deceased and the family needs to obtain letters of administration in order to get a refund for the money.

Reconciliation of remote rent payments

Following media interest⁶⁹ in the issue in 2012, DHsg conceded that it held in excess of \$1.39 million in un-reconciled remote rent payments in its Accountable Officers Trust Account. DHsg did not know who had made rent payments to it or which tenancies it belonged to. Remote tenants who have maintained consistent rent payments appear to be in rent arrears. DHsg retains rent payments made by people who are not living in houses and or have no liability to pay rent.

⁶⁹ Australian Broadcasting Corporation, *Lateline*, 'NT housing accounts a shambles', reporter Kate Wild, broadcast 17 August 2012 available at <<http://www.abc.net.au/lateline/content/2012/s3570663.htm>>; *The Australian* '\$27 a week for a bed by the chook shed', published 20 August 2012.

In response, DHsg was forced to take action to upload all remote tenants, including tenants of legacy dwellings, onto its electronic database TMS and reconcile the Accountable Officers Trust Account. DHsg engaged Deloitte to advise on its rent reconciliation process.

Since 2013, DHsg has been manually reconciling all remote rent payments made after 1 July 2010. Hundreds of thousands of transactions need to be manually uploaded one transaction at a time and transferred from Data Warehouse to TMS. DHsg advised NAAJA in December 2015 that it expected to complete its rent reconciliation program in June 2016.

DHsg does not consider that rent payments made to it before 1 July 2010 need to be reconciled as it does not consider that its remote tenants were paying rent subject to tenancy agreements.

NAAJA rejects DHsg's interpretation of the law and believes that the decision to retain rent paid to in error before 1 July 2010 leaves DHsg exposed to legal challenge.

The manual reconciliation work is ongoing and in the meantime, the inadequacy of its rent records has detrimental impacts on its remote tenants. These are detailed below.

As far as NAAJA is aware, DHsg has not communicated that it is going through a process of reconciliation of all rental payments made to it to its tenants, or that there is a reasonable risk that the information that it holds regarding the person's rental payments is inaccurate. This is particularly concerning as if a tenant's account is in credit following reconciliation, DHsg applies the rent payments to outstanding debts from previous tenancies (which are unproven), without apparent authority from the tenant.

The only way that DHsg appears to communicate about the reconciliation process is in response to legal services enquiries on behalf of individual tenants. This is a significant oversight and should be rectified immediately.

Case study: remote rent reconciliations

In March 2014 NAAJA sought rent statements from DHsg on behalf of ten tenancies in a remote community in the Central Desert region. In some cases, our clients had been told by DHsg that they owed rent – they came to NAAJA concerned about how much rent was owed. DHsg provided NAAJA with Tenancy Management System records for each tenant. The records appeared to show that nine tenants were in rent arrears and of those, seven tenancies owed more than \$1,000 to DHsg. NAAJA advised the tenants of this information.

Shortly after DHsg advised NAAJA that all remote rent accounts required ‘reconciling’ and that its rent statements could not be relied on for accuracy. Tenants were advised to pay their ongoing rent until the debts could be verified. We have not been advised if these accounts have been reconciled

In some cases, DHsg has been unable to identify remote rent payments made by tenants within its own accounts.

Case study: inability to track rent payments for tenant of legacy dwelling

NAAJA assisted a remote tenant of a legacy dwelling to make an application to Commissioner of Tenancies in March 2015 seeking compensation for DHsg’s failure to repair the premises in accordance with the RTA. The client had established deductions from her wages to pay DHsg rent.

The lawyer for DHsg advised that the client was \$7000 in rent arrears, that it had no record of receiving her rent payments, and her credibility was compromised as a consequence. A reconciliation of the client’s rent account was conducted, and rent credit was applied to a debt from a previous tenancy without the knowledge or the permission of the tenant, who disputed the debt.

The matter resolved on a confidential basis, with DHsg conceding that it was in receipt of the tenant’s rent payments, and the rent owed by our client was \$800. DHsg could not explain the discrepancies in the information provided.

FOI application to find out rent information

In order to access information regarding the rent payable or the status of the rent account for a public housing dwelling, NAAJA is required to make an application for the release of information under the *Information Act*, a process which can take in excess of 30 days. This information should be more readily available.

Retention of poll tax payments without legal, contractual or policy basis

Prior to DHsg's takeover of remote housing ICHOs generally collected a set amount of money from each community resident. This charge referred to as a poll tax, varied in each community but was usually around \$30–40 per person each fortnight. Until 1 July 2010, DHsg charged remote public housing tenants poll tax, irrespective of whether they lived in a house or a tent, were homeless, or subject to extreme overcrowding. It does not appear that DHsg has a legal, contractual or policy basis for retaining poll tax.

We act for a number of clients who made payments to DHsg without any liability to do so. The matters have been ongoing since 2012 and have involved complaints to the NT Ombudsman and the Commonwealth Ombudsman. The NT Ombudsman wrote to DHsg stating:

It is concerning that the department may continue to retain payments from tenants and residents for a poll tax, yet has no policy or procedure in place detailing the particulars of this scheme. The department was unable to provide this office any information on the legal, contractual or policy framework to explain this scheme.

In my view, it is necessary that the department develop clear policy and procedure detailing the basis for retaining a poll tax. Without such a policy, any decision made by the department to retain poll tax would be fraught with ambiguity.

The NT Ombudsman recommended that DHsg refund our clients poll tax payments. DHsg refused to implement this recommendation. To date, there is no publically available policy regarding poll tax.

Recommendation 14: that DHsg ensure there are effective and transparent mechanisms to identify, collect and record rent payments for each person paying rent and that rent information is readily available to tenants.

Recommendation 15: that DHsg continue the remote rent reconciliation process and not take any action on rent 'debts' until the reconciliation process is complete.

Recommendation 16: that DHsg reconcile all remote rent payments including poll tax from 1 July 2008.

Recommendation 17: that DHsg communicate with tenants about the reconciliation process that it is under way, advise of any refunds to be made, and if the account is in credit, to advise the tenant of any outstanding debts and their ability to appeal those debts, and refer for legal advice, prior to applying the credit to any outstanding debts, and advise the tenant of their ability to appeal the outcome of the reconciliation processes.

Inadequate rent records created hardship and barriers to accessing public housing

The failure to keep adequate rent records results in real hardship for remote tenants.

Remote tenants are being told that they have rent arrears debts in circumstances where their rent accounts have not been reconciled and they therefore may not even be in debt. The prospect of a debt creates uncertainty, concern and stress in a tenant's mind regarding their susceptibility to eviction as result of rental arrears.⁷⁰

The inaccuracies and inadequacies of DHsg's rent records for remote tenants have also created barriers to housing for an indeterminable number of applicants for remote and urban housing. DHsg policies provide that if a person owes a debt to DHsg, they are prevented from applying for and being allocated a public housing dwelling.⁷¹ Despite discretion existing as to whether to enforce this provision⁷² and DHsg's knowledge about the inaccuracies of its rent records, DHsg staff routinely reject applications for housing if a person has an existing debt for rent or maintenance. In circumstances where DHsg is aware that has not kept accurate records of remote rent payments, this is patently unfair.

NAAJA has acted for a number of clients trying to move from a remote community to either Darwin or Katherine who have been prevented from doing so because their remote rent account shows an alleged rent debt.

⁷⁰ Section 96A of the RTA states that a landlord can give a notice of breach to a tenant if they have been in rent arrears for not less than 14 days. If the tenant does not remedy the breach as required by the notice, the landlord can apply under section 100A of the RTA for an order for termination of the tenancy and possession of the premises.

⁷¹ NTG, Department of Housing *Public Housing Eligibility Policy* "Applications will be rejected if the client has an outstanding debt to the Department of Housing. An offer of allocation may also be deferred until the debt is fully repaid"

http://www.housing.nt.gov.au/_data/assets/pdf_file/0007/153097/Public_Housing_Eligibility.pdf

⁷² NTG, Department of Housing *Public Housing Eligibility Policy* "Exemptions may be applied on discretion of the Housing Manager, where the client enters an Agreement to Pay and maintains repayments over three consecutive months; or, if the client can prove bankruptcy."

http://www.housing.nt.gov.au/_data/assets/pdf_file/0007/153097/Public_Housing_Eligibility.pdf

Case studies: barriers to housing created by DHsg rent and debt processes

1. DHsg told a client who was seeking to transfer from public housing in a remote community to public housing in Katherine that she had to pay an alleged \$14,000 rent debt in full before the transfer could proceed – creating an indefinite barrier to the transfer. The client sought NAAJA's help to identify the basis of the alleged debt. NAAJA sought a reconciliation of the client's rent account. After 3 months, DHsg advised that the balance of the rent account was zero and the client did not owe any rent. The transfer application was only then able to progress.

2. NAAJA began assisting a client in 2012 to obtain a refund of rent paid to DHsg via her income management account. The client had no liability to pay rent as she was homeless and living in a tent - DHsg had no record of the client being a tenant. The money was paid to DHsg by the Department of Human Services Centrelink (DHS) from her income management account. DHS was aware the client was homeless, but continued to make the payments.

The client attempted to resolve the issue herself in May 2012 and asked DHsg to \$5460 owing to her. Instead of refunding her, DHsg applied the money to pay off an alleged debt relating to a tenancy which ended in 1997. It had been refusing to allow her to apply for housing because of the alleged debt.

NAAJA assisted her to appeal to the Territory Housing Appeals Board. In August 2014, DHsg advised that it would refund her \$5460 to her income management account. It did not provide any reasons for its decision or for the delay.

DHsg has undertaken to prioritise reconciliations where a priority housing or transfer application is made, and where this is brought to its attention. However it remains an issue that front-line staff reject or delay the processing of applications, and/or require tenants and applicants to enter into repayment plans to pay off alleged and unverified rent debts.

NAAJA has made a number of complaints to the Commonwealth Ombudsman regarding the Department of Human Services' role in setting up deductions from its clients income management accounts where there was no liability to pay rent. In doing this, DHS has acted contrary to one of the key objectives of income management – to reduce hardship and deprivation.

Recommendation 18: that DHsg ensure that all staff are aware of the reconciliation process and do not reject applications for housing on the basis of unverified debts nor take any action on rent 'debts' until the reconciliation process is complete.

Application for remote public forms and allocation process

The decision as to whether to allocate a person a public housing premises in a remote community is incredibly significant.

Often it means lifting a person out of homelessness or overcrowded conditions. People who have not been allocated housing generally live in overcrowded conditions, makeshift shelters or tents. People may be forced to constantly move from house to house, leaving when their presence has caused tension. Living in this way has significant impacts on health and wellbeing. Given the construction phase of the NPARIH has been completed in most communities, if a person has not been allocated a house to date, their current situation or lack of housing is now permanent or indefinite. In NAAJA's experience, the understanding for many of our clients that living indefinitely in overcrowded conditions, tents or substandard accommodation, that there is no end in sight, is having an impact on mental health.

It's vital, therefore, that decisions with such significant ramifications are based on up to date and accurate information, decisions are transparent, communicated adequately and can be appealed.

There are a number of serious deficiencies with DHsg's remote application form and allocation processes, which NAAJA has been advocating for changes to since 2012.⁷³ Since this time, DHsg has allocated hundreds of houses in remote communities, apparently without adequate information to guide its decisions

The application form

One of our key concerns is that the remote housing application form⁷⁴ does not require applicants to provide information that, following the DHsg's publically available policy material, are critical to determining whether applicants fulfil the criteria that dictate the priority of their application.⁷⁵

NAAJA is deeply concerned that these issues have compromised allocation decisions made by DHsg in remote communities.

The Priority Needs Criteria are homelessness; overcrowding; frail, aged or people with a disability and their carers; domestic and family violence; local employment and other criteria that may be identified by the Housing Reference Group. Each application or family group is allocated points based on the above criteria.⁷⁶ The allocation is then made to the applicants/family group accorded the highest points.

⁷³ NAAJA raised these issues at the Remote Housing Legal Services meeting on 20 July 2012, and subsequently wrote to DHsg on 8 October 2012 and 26 March 2013.

⁷⁴ Department of Housing, Remote Housing Application Form <http://www.territoryhousing.nt.gov.au/_data/assets/pdf_file/0017/142028/srf53_remote_public_housing_application_form_feb12.pdf> accessed on 5 February 2016.

⁷⁵ Remote Housing Operational Policy December 2009, and *Priority Application Policy and Allocation and Commencement of Tenancy Policy*

⁷⁶ Commonwealth Ombudsman, *Remote Housing Reforms in the Northern Territory* p. 30 at 3.97-3.98.

The form does not provide guidance to the applicant regarding the basis on which DHsg makes its allocation decisions or prompt the applicant to provide this information. The Commonwealth Ombudsman shares NAAJA's concerns:

"Consequently, people who have particular needs that may have an impact on decision making about waiting list prioritization do not know that they should make these known to Territory Housing."⁷⁷

By contrast the Priority Housing Form which is used in urban areas includes a section which asks the applicant to indicate why they are applying for priority housing, which is extracted below.⁷⁸

Reason for applying for priority housing

Medical Financial Social / family reasons Homelessness Domestic violence

Provide details:

.....

.....

.....

.....

The Priority Housing Application Form also includes a section for a referral agency or medical practitioner to detail the reasons for the application and how priority housing would help the applicant. This does not appear on the Remote Housing Application form. Similarly the urban Housing Application Form⁷⁹ includes a section on 'housing need' which provides a list of tick boxes to allow applicants to indicate why their current accommodation is unsuitable. This provides a trigger for applicants who may not otherwise consider their current accommodation 'unsuitable'.

In an attempt to counter this, it is DHsg's practice to interview applicants for remote housing prior to allocation decisions being made, so that it can talk to remote applicants about their reasons for needing remote public housing. However, it does not appear that all applicants are interviewed prior to each allocation meeting and interpreters are rarely used.

In order to attempt to ameliorate the effect of these deficiencies, NAAJA has provided information to DHsg regarding hundreds of our clients' personal circumstances, including medical conditions, the impact of homelessness and overcrowding, details of employment history and caring responsibilities. We assist clients to obtain support letters. This enables DHsg to make decisions armed with relevant information.

NAAJA has assisted many remote clients to obtain copies of their applications and any supporting documentation from DHsg. We do so to confirm that DHsg has retained and is still considering their housing application. We consider this to be necessary as DHsg does not provide written confirmation of the

⁷⁷ Ibid.

⁷⁸ http://www.housing.nt.gov.au/__data/assets/pdf_file/0019/5671/SF28_-_PriorityHousingApplication.pdf

⁷⁹ http://www.housing.nt.gov.au/__data/assets/pdf_file/0008/5669/SF31_-_Urban_housing_application_form.pdf

receipt of an application for remote housing and to ensure that the information provided to DHsg is accurate and sufficient for it to base an allocation decision.

Worryingly, often the only information that DHsg retains on a remote client regarding their application is information provided by NAAJA. That is there are no records of DHsg's interviews with the applicant or any discussions of the priority needs criteria or records of when the person's application was considered by DHsg and the Housing Reference Group.

These deficiencies seriously call into question the robustness and accountability of DHsg's allocation decisions.

Confirmation of receipt of applications

DHsg offers a lower level of service to remote tenants. Specifically, DHsg does not provided remote tenants with confirmation in writing that it has received their application.

NAAJA has received complaints from applicants for remote public housing which express uncertainty regarding whether DHsg has received their application. Without confirmation of receipt from DHsg, applicants do not know whether their application has being taken into consideration when houses are allocated.

Further, DHsg does not provide remote tenants with written confirmation that they have been allocated a house.

Case study: no confirmation of receipt of housing application

A client in Maningrida sought NAAJA's assistance because she had not been provided with confirmation in writing that her application for housing had been successful. We contacted DHsg and were able to advise her that application had been successful. This is DHsg *Procedure – Remote Public Housing Applications* which states "Advise applicant of acceptance and any conditions. Letter sent".

No written confirmation of appeal rights

Most significantly, from 2009 to 2014 DHsg did not advise applicants in writing that that they had not been allocated a house, the reasons for the decision or their ability to appeal it.

This is contrary to procedural fairness and DHsg's policy *Procedure – Remote Public Housing Applications*, which states "Advise client they are unsuccessful. Provide appeal information. Letter sent".

Changes to the allocation process and the application form will assist DHsg and HRGs with information-gathering and decision-making processes; give applicants for remote housing a better understanding of the basis on which allocation decisions are made if they provide this information from the outset; contribute to

the transparency and quality of allocations decisions made by DHsg; and mitigate against complaints being made by remote tenants regarding allocations decisions.

Case study: inadequate DHsg records regarding need for housing

NAAJA assisted a remote tenant to apply to the Territory Housing Appeals Board in 2014, appealing the decision to not allocate her a house, despite her urgent need for housing and living in appalling conditions. She lived in a tin shed without a kitchen, bathroom or any real facilities for living; she was by definition homeless.

We obtained the client's application form and other documentation from DHsg and found that DHsg had only retained pages 1, 3 and 5 of her application. There was no evidence that her application had been put before the Housing Reference Group. DHsg had not retained information regarding her urgent need for a house beyond what NAAJA had provided, and had failed to interview her to find out why she needed a house (as was required by DHsg policy) before it allocated a large number of houses in the remote community in April 2012. DHsg had relied on out of date information when making its allocation decisions. DHsg did not advise the client in writing that she had not been allocated a house or that she could appeal to the Territory Housing Appeals Board. The Territory Housing Appeals Board made, inter alia, the following recommendations in May 2014:

Reasons: Territory Housing and applicants are assisted by the collection and recording of relevant information, and, transparent and accountable decision making processes. Both are required for procedural fairness, to facilitate best practise decision making processes, and to reduce appeals regarding remote housing allocations.

The Appeals Board, Territory Housing, the Appellant and her advocate were prejudiced by the absence of documentation. This included an incomplete application form, and no Territory Housing generated records detailing priority needs specific to the applicant or communications between Territory Housing and the applicant regarding her housing needs until the HRG Allocation records dated 20 October 2013.

The absence of essential documents and records contributed significantly to (or caused) the Appellant to file this appeal as there was no evidence to show that the Appellant's priority needs were known to or understood by Territory Housing prior to the allocations of late 2013. This deficiency would be addressed by implementing the above recommendations.

Findings: The Board recommended the following submissions of the Appellant be implemented as a matter of priority:

1. The remote housing application form be amended to ensure an applicant can provide detailed information regarding priority needs criteria.
2. Territory Housing record and maintain up to date remote housing applicant information, including priority needs documentation, in an electronic form.
3. Territory Housing advise remote housing applicants in writing of a decision to not allocate them a house and of their ability to appeal allocation decisions.

To date NAAJA has not been advised of what actions have been taken to implement these recommendations or what actions DHsg taking in response to NAAJA's correspondence on this issue. We have made a complaint to the Northern Territory Ombudsman.

We understand that DHsg is in the process of consolidating a number of its forms; however this is too late for the thousands of allocation decisions that have been made by DHsg to date in remote communities.

Case study: inadequate information

In July 2014, NAAJA sought an internal review of a DHsg decision to allocate the house our clients lived in to another person. Our clients had a 3 week old baby and had no other housing options. They had applied for remote public housing but their application was not processed properly by DHsg. In addition, as the remote housing application form does not prompt the applicant to include information about any priority needs for housing; our client was unaware of the need to provide this information to the DHsg. As part of its review, DHsg held a special Housing Reference Group meeting. DHsg made a fresh decision regarding the allocation of the house, this time armed with information provided by NAAJA about the clients' urgent need for housing. The young family were allocated the house, narrowly avoiding homelessness with a newborn baby.

Recommendation 19: that DHsg confirm receipt of application forms in writing, and should advise applicants after each allocation meeting as to whether they have been successful and of their appeals rights and processes.

Concerns regarding quality of SIHIP and NPARIH works and materials

NAAJA has received complaints regarding refurbishment and construction work done under the SIHIP and NPARIH schemes.

It is accepted by DHsg that the refurbishment work did not improve the standard of houses to an 'urban standard'. This needs to be borne in mind when DHsg is making assessments of tenant responsible damage and as context for the tenancy management relationship. Mr Andrew Kirkman, then Executive Director of Remote Housing stated:

it was not possible to bring community housing to an urban standard because there is not enough money to do all the necessary work⁸⁰

Australian Housing and Urban Research Institute research into tenancy management reform in the Northern Territory reported that a commonly cited concern was the discrepancy in standards between new and refurbished houses where, in some cases, only health and safety issues were addressed. The Council noted that the discrepancy in standards led to conflict in some communities where tenants felt unfairly treated by the amount of improvement their property had received. Similarly

Limited refurbishments also made it difficult for tenancy managers to address condition issues with tenants. In one community a service provider pointed to the refurbishments where kitchens were upgraded with stainless

⁸⁰ Quoted in N Scullion MLA: Official website <http://www.nigelscullion.com/media-hub/nt/100000-and-still-no-tiles-floor-indigenous-housing>

*steel fittings but windows were not fixed and walls were not painted. They noted: Like you can't really talk to tenants about new graffiti on the walls they hadn't been painted in the first place. (SP52).*⁸¹

DHsg considers that differences in the level of amenity are addressed by charging less rent for houses with fewer amenities. In remote communities, tenants of refurbished houses are charged rent at 18 per cent of accessible income compared to tenants of new dwellings and those in public housing in urban areas, where tenants are charged at 23 per cent of accessible income.⁸²

The Council for Territory Co-operation queried if the alliance arrangements under SIHIP and NPARIH - which had high administrative costs - detrimentally affected how much refurbishment work could be done. It drew attention to the use of repairs and maintenance grants to complete refurbishments to show that the average refurbishment cost of \$75,000 was inadequate to return houses to a functioning, safe and healthy standard. It was further concerned that the work on refurbished houses did not match the amount of money said to be spent on them and the work was not of the standard it was told was being delivered.

It stated:

So called refurbished houses are returned to tenants half-done. The CTC wonders what message is being sent to tenants...about looking after the house and keeping it in good condition, when it was handed over in such a mixed state

*The CTC's overriding concern is about the apparent gap between what is being told by government departments and what can be plainly seen being delivered on the ground in communities.*⁸³

Concerns regarding the quality of materials used are ongoing. For example, in Maningrida because low grade fly wire was used on all of the houses constructed in the new suburb instead of security mesh, a significant proportion of the 125 houses newly constructed no longer have functional fly wire. DHsg has advised tenants that they are responsible for the cost of replacing fly wire.

Transitional housing

When building or refurbishing houses through NPARIH and SIHIP, DHsg has regularly failed to provide adequate transitional accommodation to displaced tenants.⁸⁴

NAAJA wrote to Ministers Macklin and Chandler in March 2013 seeking that transitional accommodation be provided for people in remote communities whose houses were being upgraded or repaired under the NPARIH. Senior Territory Housing executives assured NT legal services that the issue of transitional housing had been resolved and would not reoccur.

⁸¹ Habibis, D., Phillips, R., Phibbs, P. and Verdouw, J. (2014) *Progressing tenancy management reform on remote Indigenous communities*, AHURI Final Report No.223. Melbourne: Australian Housing and Urban Research Institute. Available from: <http://www.ahuri.edu.au/publications/projects/p41023>. ([Accessed on 5 February 2016])

⁸² DHsg, 'Rental Rebate: factsheet' (May 2015) < http://www.housing.nt.gov.au/__data/assets/pdf_file/0009/67743/rental_rebate_FS02.pdf >

⁸³ Council of Territory Co-operation, 'Recent community trips' (May 2011) <<http://www.nt.gov.au/lant/parliamentary-business/committees/ctc/trips%20report%20final.pdf>>, p 8.

⁸⁴ Ibid 42.

Case study: transitional housing

NAAJA became aware in December 2013 that people in remote community in East Arnhem Land were living in tents following the demolition of their homes for rebuilding under the NPARIH. NAAJA spoke to a number of community members who had been affected by DHsg's failure to provide transitional housing. In response to a request from an elder in the community, NAAJA wrote to the Prime Minister, the Minister for Indigenous Affairs, and the NT Minister for Housing. This is an excerpt of the letter:

An elder in Ramingining described his experience living in a tent in the wet season as:

'Terrible. I am an old man. I was one of the victims of the rain and outside living. Sleeping outside for 2 weeks and some people for three months. Rain is not your family. My clothes were wet. My laptop, camera, TV all ruined in the tent. Too many mosquitos. Terrible cold in tent.

As stated above, some people have been living in tents for up to three months and have had to use neighbours' houses to go to the toilet and showering for the duration.'

The NT Minister for Housing has since replied to our correspondence, stating: *It was unfortunate that two local alliance contractor employees acted in direct contradiction of Territory Housing and alliance contractor policy and protocol in relation to transitional housing for two tenants in Ramingining. As soon as this matter was brought to the attention of the Department, it was immediately remedied and the alliance contractors issued an unreserved apology to the Department, the Housing Reference Group and senior community members for the manner in which the transitional accommodation arrangements for these tenants was managed.*

Absence of policy regarding electricity reconnection leads to NT Ombudsman investigation

NAAJA became aware that a significant number of public housing tenants in Wadeye had suffered long periods without electricity after their meter boxes had been intentionally damaged.

DHsg told tenants that it required \$500 to be paid upfront to restore power. We attempted to resolve the matter directly with DHsg but did not receive satisfactory responses as to why the delays had occurred. It did not appear that DHsg accepted that it was responsible for maintaining power to premises and that were emergency repairs under the RTA.

We made complaints to the NT Ombudsman, which launched an own motion investigation into DHsg and PowerWater. The report of the investigation *Let there be Light*⁸⁵ was tabled in the Northern Territory Parliament in September 2015.

The NT Ombudsman found that there was:

⁸⁵ OmbudsmanNT *Let there be light Essential services – Response by Department of Housing and Power and Water to widespread incidents of damage to electricity meters in a remote community*, June 2015

http://www.ombudsman.nt.gov.au/sites/default/files/downloads/let_there_be_light_0.pdf Accessed on 5 February 2016

- unreasonable delay in repairing damaged meters and associated property and restoring power to a number of households - 12 houses were without power for more than 20 days, 8 were without power for between 10 to 14 days; 19 were without power for up to 10 days,
- considerable delay and a lack of coordination in developing an agreed policy and procedures to deal with damaged electricity meters; and
- poor communication with interested stakeholders who raised concerns about the process for repairing damaged meters and a practice of requesting tenants pay for repairs.

The NT Ombudsman further stated:

It is imperative that, in providing services to remote communities, the NT Government take responsibility for timely replacement of meters at its cost, particularly in widespread emergency situations like those arising in Wadeye.

PWC and the Department should, as a matter of urgency, agree on which of them is responsible for the cost of repair/replacement of meters or the share that each should contribute. They should set that agreement out clearly in a joint or agreed policy that addresses the issues discussed in this report. That policy can then be published to provide interested tenants and stakeholders with a clear understanding of the situation.

DHsg has now accepted that it has legal responsibility to maintain electricity supply and has commenced trialling protective cages for meter boxes in Wadeye, resulting in a significant reduction of power interruptions as a result of intentional damage to meter boxes.

However, despite the time that has passed since the tabling of the report, it does not appear that PWC or DHsg have agreed which agency will take financial responsibility for the costs of a replacement meter where no wrongdoer can be identified. Neither DHsg nor PowerWater have published policies in line with the NT Ombudsman's recommendations.

NAAJA has been advised that a number of electricity meters have been smashed in criminal acts in a large remote community in Arnhem Land in late 2015 and early 2016. PowerWater are charging tenants \$450 to replace pre-paid meters and not replacing meters until full payment is made. Another service provider in the community has confirmed that incidents of damage in that are fairly regular and occur monthly.

Recommendation 20: that DHsg accord with the recommendation of the NT Ombudsman to as a matter of urgency, agree on which of them is responsible for the cost of repair/replacement of meters or the share that it will absorb when no wrongdoer can be identified.

Recommendation 21: That DHsg roll out protective cages for meter boxes in communities which experience regular incidents of criminal damage to meter boxes.

Urban public housing

DHsg's consistent failure to operate within the confines of the law and its own policies is a serious and systemic issue, with far-reaching implications.

The bulk of NAAJA's work acting for clients against DHsg is related to its poor quality decision making. We are overwhelmingly successful in having DHsg decisions overturned on the basis that they do not comply with law and/or policy – at the investigation and regulation level, at the Public Housing Appeals Board and in the Commissioner of Tenancies, Northern Territory Civil and Administrative Tribunal, and the Local Court.

This comes at considerable cost for DHsg and tenants and applicants for public housing.

DHsg expends considerable resources to investigate complaints, review unproven debts, convene the Public Housing Appeals Board, defend matters in Courts or Tribunals, and pay compensation to tenants. These are all costs could be avoided if DHsg improved the quality of its decision making by implementing a rigorous compliance framework, regularly training its employees on the importance of following law, policy and the principles procedural fairness.

Most significantly, costs are borne by tenants and applicants for housing. Our clients are stressed and anxious and often have to endure months of insecurity not knowing if their tenancy will be terminated, they are paying unproven and unsubstantiated debts which places them in financial hardship or have faced years of homelessness having been repeatedly told that that DHsg cannot accept their application for housing without proper grounds or have had to repeatedly asked to complete application forms, transfer forms and eligibility forms that all contain the same information because DHsg has lost their forms.

There are a number of recent examples of DHsg's failure to act in accordance with the law and its policies, which are set out below. This systemic issue needs to be addressed so as to reduce the stresses on tenants and public housing applicants, and so that DHsg's constrained budget is not further depleted by having to repeatedly respond to its poor quality decision making.

Recommendation 22: That DHsg improve the quality of its decision making by implementing a rigorous compliance framework, regularly training its employees on the importance of following law and policy and the principles of procedural fairness at all levels of the organisation.

Failure to apply law and policy – termination of tenancies

NAAJA regularly assists tenants who have been given notices of termination in circumstances where DHsg:

- has not applied the correct legal standard;
- has not terminated the tenancy in accordance with the law,
- has not followed its policies in deciding to terminate the tenancy; and or
- has acted disproportionately by terminating a tenancy in response to a minor breach of the tenancy agreement given the considering the legal, social and psychological consequences of eviction.

In addition to the cost consequences of terminating the tenancy in these circumstances, this creates a relationship of distrust DHsg and the tenant, further destabilising the tenancy.

Failure to apply the correct standard of tenant maintenance prescribed by the RTA

DHsg has both terminated and attempted to terminate an indeterminate amount of public housing tenancies whilst relying on a standard regarding the condition of the premises that is not legal.

DHsg’s tenancy agreement requires tenants to maintain the premises in a ‘neat and tidy’ condition,⁸⁶ while the law requires the tenant to maintain the premises in a ‘not unreasonably dirty’ condition,⁸⁷ which is a different standard.

NAAJA has seen a number of tenancies terminated on the basis that the tenant had an untidy yard, which is a disproportionate response for vulnerable people in public housing particularly as homelessness is the inevitable consequence for those tenants who do not seek legal advice or have received inaccurate advice

Case study: Attempt to evict elderly disabled vulnerable tenant for untidy yard

In July 2015, NAAJA assisted an elderly tenant who had been given a notice of termination following an alleged breach of the tenancy agreement. DHsg issued the tenant with a ‘notice to remedy breach’ alleging that the tenant had breached the term of its common provisions which stated ‘the tenant shall maintain and keep at their own expense the Premises in a neat, tidy and clean state having regard to the condition of the premises’.

DHsg sought termination of the tenancy by making an application to the Northern Territory Civil and Administrative Tribunal despite being aware that the tenant had a number of serious medical conditions, and that her son had recently taken his life. DHsg did not refer the tenant to its Tenancy Support Programs, despite being aware that her medical conditions impacted on her ability to maintain the yard of the premises. DHsg records stated that the tenancy manager had advised the tenant as follows:

I ALSO ADVISED MS X THAT IF SHE WAS WELL ENOUGH TO CALL HOUSING ADVISING US THAT SHE IS ILL, SHE IS WELL ENOUGH TO CALL A COMPANY TO REMOVE THE CAR. SHE SAID THAT SHE WILL GET A DOCTORS LETTER ADVISING THAT SHE CANT DO IT. I ADVISED THAT SHE IS WELCOME TO DO THAT

⁸⁶ Clause 20.5.(e) of the DHsg Common Provisions, contained in the Tenancy Agreement

⁸⁷ Section 51 (1)(a) RTA

BUT I DIDN'T ASK HER TO PICK UP THE CAR AND MOVE IT HERSELF. I ASKED HER TO CONTACT A CAR REMOVAL COMPANY TO REMOVE IT FOR HER, SO I WAS UNWILLING TO GIVE AN EXTENSION ON THE MATTER.

Despite her disabilities, the tenant arranged for the grass to be mowed, for palm fronds and weeds to be removed and household items to be stacked against the side of the house. She was incredibly distressed by the notice of termination and genuinely believed that she would be made homeless.

NAAJA wrote to DHsg and sought for the NTCAT proceedings to be withdrawn on the basis that the incorrect standard had been applied, and that DHsg was not likely to obtain possession of the premises due to the client's serious health conditions and age. DHsg withdrew the notice

Failure to follow policy – 'antisocial behaviour' terminations

DHsg has terminated an unknown number of public housing tenancies by issuing 'without grounds' notices of termination⁸⁸, where it had previously made allegations of antisocial behaviour against the tenant. This was contrary to its policies, which stated that DHsg would only terminate the tenancy as a last resort⁸⁹ and that in circumstances where there were allegations of antisocial behaviour it would apply to the Local Court 'as the evidence against the tenant must be proved'.⁹⁰

Case study: Attempted termination of tenancy of single mother contrary to policy

NAAJA assisted a public housing tenant, a single mother with two young children, who had been given three strikes under DHsg's Three Strikes Policy, but had subsequently been given a 'without grounds' notice of termination by DHsg. NAAJA put DHsg on notice that it considered that it was acting contrary to its policies. DHsg made an application to the Commissioner of Tenancies (CoT) and sought possession of the premises. The CoT made orders that possession of the premises be given to DHsg, having found that the notice to vacate was valid. NAAJA assisted the tenant to appeal to the Local Court, arguing that the CoT had a discretion as to whether to give possession to the landlord, irrespective of the validity of the notice.

⁸⁸ Section 89 of the RTA allows a landlord to terminate a tenancy without providing a reason by giving the tenant 42 days notice to vacate the premises.

⁸⁹ [eviction] will not be taken without having regard to Territory Housing objective of housing those most in need and that there are very few options available to low income tenants outside public housing *Territory Housing Operational Policy Manual* 11.5.4. This policy was in force until 1 September 2013. The policy that replaced it *Tenancy Agreement Breach* states 'If the behaviour is a breach of the tenancy agreement, the Department of Housing will warn the tenant informally that there has been a breach. Further warnings will be made in writing as an eviction due to this type of Breach must go through the local court'. Department of Housing *Tenancy Agreement Breach Policy* http://www.housing.nt.gov.au/_data/assets/pdf_file/0018/152820/Tenancy_Agreement_Breach.pdf Accessed on 5 February 2016

⁹⁰ *Territory Housing Operational Policy Manual* 11.5.4. This policy was in force until 1 September 2013. The policy that replaced it *Tenancy Agreement Breach* states 'If the behaviour is a breach of the tenancy agreement, the Department of Housing will warn the tenant informally that there has been a breach. Further warnings will be made in writing as an eviction due to this type of Breach must go through the local court'. http://www.housing.nt.gov.au/_data/assets/pdf_file/0018/152820/Tenancy_Agreement_Breach.pdf

The Chief Magistrate of the Local Court found that DHsg terminated the appellant's tenancy with complete disregard for and in contravention of its policies and by relying on the no grounds provisions of section 89, DHsg 'avoided the burden of having to establish the appellant's anti-social behaviour: a burden properly accepted by the respondent in its own internal policies'

The obvious tactical decision of the respondent to take the more expedient and less onerous course of terminating the tenancy pursuant to s 89 of the Act was, in my opinion, unbecoming of a model public landlord like the respondent, and inconsistent with its role as provider of public housing. Regrettably, the respondent's behaviour undermined one of the primary objects of the Act which is to fairly balance the rights and duties of both tenants and landlords. Put simply, the behaviour of the respondent was inconsistent with the old fashioned notion of "fair play" – a concept that is implicitly recognised in the *Residential Tenancies Act*.

The Court declined to make an order of possession and ordered DHsg to pay NAAJA's legal costs.

In response to this decision, the Minister for Housing has stated:

I note your concern that tenants may have their tenancy agreements terminated for no reason under section 89 of the Residential Tenancies Act. The Department of Housing is mindful of its role in supporting vulnerable clients. Accordingly, the Department of Housing has no intention of terminating tenancies for no reason or in circumstances where antisocial behaviour has been identified. Following the recent decision of C v Chief Executive Officer (Housing) on 16 February 2015, the Department of Housing is clear that tenants who are alleged to be responsible for antisocial behaviour at their premises will only have their tenancies terminated if those allegations are tested and proven by a court.⁹¹

Security of tenure – periodic tenancy agreements

The Consultation Draft implies that public housing tenants in the NT have security of tenure, stating 'leases for social housing are typically on-going and that 'Many tenants stay for many years'.⁹² This is inaccurate.

DHsg has historically offered fixed term tenancy agreements to its 'urban tenants' subject to eligibility criteria. The *Territory Housing Operational Policy Manual*⁹³ states at 9.9:

The aim of fixed term leases is to ensure that Territory Housing provides housing to those most in need while also providing tenants with security of tenure...All new public housing tenants will initially be granted shorter term leases as a form of probation...Subject to the tenant continuing to be eligible for public housing...and the tenancy being satisfactory ...tenants will be offered an extension of their fixed term lease at the expiry of their current lease term".

This policy has been replaced by the Tenancy Agreement Renewal Policy, which states:

If the tenant remains eligible and has complied with the terms and conditions of the lease agreement, they may be offered an extension as follows:

⁹¹ Letter from the Honourable Bess Nungarrayi Price MLA to NAAJA, 19 May 2015.

⁹² *Consultation Draft*, p 25

⁹³ Superceded

- a new six month lease may be offered to tenants who have complied with the terms and conditions of the lease agreement, having completed a three (3) month lease;
- a new one year lease may be offered to tenants who have complied with the terms and conditions of the lease agreement, having completed a six (6) month lease;
- a new two year lease may be offered to tenants who have complied with the terms and conditions of the lease agreement, having completed a one year (1) year lease.⁹⁴

Long term fixed term tenancy agreements provide security of tenure, which benefits health, wellbeing and family stability.

By contrast, DHsg has only ever offered periodic leases to its remote tenants. NAAJA understands that some remote tenants may prefer the flexibility offered by a periodic tenancy, but do not consider that remote tenants should be denied the opportunity to enter into fixed term tenancy agreements as a matter of course.

NAAJA is also concerned that this practice of offering accommodation on less favorable terms to remote public housing tenants, who are overwhelmingly Aboriginal people, contravenes sections 19(1)(a), section 38(1)(e) and section 38 (2) (b) of the *Anti Discrimination Act (NT)* and is racially discriminatory. We advised DHsg of this in 2012.

In early 2015 DHsg advised that it will institute periodic tenancy agreements for all public housing tenancies in the NT⁹⁵ and has been allowing fixed term tenancy agreement to lapse into periodic agreements in urban areas.⁹⁶ This will create considerable uncertainty in public housing tenants' security of tenure as periodic tenancies can be terminated at 42 days notice.

DHsg has recently advised that 84.6% of its tenancies are periodic, 72.43% in urban areas and 99.45% in urban areas.⁹⁷

NAAJA is concerned that DHsg continuing to rely on 'no reason' notices of termination to evict tenants in direct contravention to its policies, would amount to arbitrary and unreasonable decision making and, as stated by the Chief Magistrate is contrary to the duties of a public landlord. Based on our experience of regularly challenging this practice, it would affect the most vulnerable Aboriginal people - single mothers, people with disabilities and or mental illness, and the elderly.

⁹⁴ Department of Housing, *Tenancy Agreement Renewal Policy*

⁹⁵ Andrew Clapham, General Manager of the Department of Housing (the Department) advised the Aboriginal Peak Organisation of the NT's Remote Aboriginal Housing Forum on 13 March 2015 that DHsg would be entering into periodic tenancy agreements with all of its tenants.

⁹⁶ Section 83 of the RTA, A fixed tenancy agreement continues to apply to the premises on the same terms on which it applied immediately before the day the term ends, but as a periodic tenancy, if: (a) the tenancy agreement does not provide for the continuance of the tenancy after the day the term ends; and (b) a notice of termination has not been given under this Act in relation to the premises; and (c) the tenant remains in occupation of the premises after the day the term ends.

⁹⁷ Letter from DHsg to NAAJA dated 29 January 2016.

Despite the Minister's commitment to not terminate tenancies without reason, DHsg's draft *Public Housing Tenancy Agreement: Periodic Tenancy* foreshadows that DHsg will do exactly that.⁹⁸

20.2 Termination by Us

We may terminate this Tenancy Agreement without specifying a ground for termination by giving You 42 days notice in a notice of termination requiring You to vacate the Property.

The draft *Public Housing Tenancy Agreement: Fixed Term Tenancy* similarly foreshadows that DHsg will terminate short term fixed term tenancies with no reason.

20.2 Termination by Us

We may terminate this Tenancy Agreement by giving a notice of termination in accordance with section 101 of the RTA at least 14 days before the End Date that this Tenancy Agreement is terminated as at the End Date.

Recommendation 23: that DHsg in its role as public housing landlord and model litigant, enshrine in its policies and procedures that it will not terminate public housing tenancies using 'without grounds' notices of termination under section 89 or 90 of the RTA, except in circumstances where the tenant no longer meets eligibility criteria relating to income and assets.

Failure to follow the law – forced relinquishments

One of the most concerning practices that DHsg engage in is pressuring highly vulnerable tenants to 'voluntarily' relinquish their tenancies to DHsg.

'Consent' is usually obtained after DHsg advised the tenant that they have no prospects of maintaining their tenancy and that if they do not relinquish and are formally evicted they will be excluded from public housing for over two years.

This has effect of circumventing the client's rights to obtain legal advices or have the termination of the tenancy reviewed at any level by either the PHAB, CoT or NTCAT and contravenes the prohibition in the RTA on the landlord forcing or attempting to force the tenant to vacate the premises.⁹⁹

We have raised our concerns with DHsg with this practice on a number of occasions, but this type of termination is not proscribed in DHsg policy, and there is limited awareness of the RTA prohibition.

Case study: Elderly woman pressured to relinquish her public housing premises

NAAJA assisted a client who had 'voluntarily' relinquished her public housing tenancy after being given three strikes under the Three Strikes Policy. She ended up sleeping in a park with a young child and

⁹⁸ DHsg sought feedback on two draft tenancy agreements in September 2015. NAAJA provided feedback on the drafts in October 2015. DHsg initially advised that it would implement the new agreements in February 2016, but has since revised this position and now states that it will implement new agreements in the second half of 2016.

⁹⁹ s 66(2), *Residential Tenancies Act* (NT)

NAAJA was required to do a mandatory report regarding the child. NAAJA made an application to the Commissioner of Tenancies seeking an order that the tenancy be reinstated.

NAAJA met with DHsg and explained our concerns – that some of the strikes were not validly issued, that DHsg had not used an interpreter when procuring the relinquishment, that the client was illiterate and had not understood the relinquishment document that she had signed at DHsg's request. DHsg subsequently offered the client a new tenancy.

We are continuing to assist the client with an application for compensation because DHsg threw out her possessions after she vacated the house.

Failure to follow the law before raising debts

NAAJA has assisted many clients with reviews of DHsg debts relating to repairs and maintenance. In all matters, DHsg has not made an assessment of the tenant's legal liability in accordance with the RTA prior to repayment. Despite being obliged to under the law, DHsg does not take into consideration:

- fair wear and tear, including a consideration of the length of the tenancy;
- the age of the assets needing to be replaced or the depreciated value;
- whether damage to the premises was intentional or negligent, or caused by people at the premises without the tenant's consent;¹⁰⁰
- the reasonableness of the cost of repairs;
- the vicarious liability provisions of the RTA, including where damage is caused by domestic violence;¹⁰¹ and
- a comparison of the condition of the premises on occupation or vacation, by comparing photos or condition report.

These are all considerations relevant to the tenant's legal liability to pay for repairs under the RTA.

NAAJA considers that a significant volume of DHsg tenants and ceased tenants are paying debts that are wholly or partially unlawful. The debts may relate to:

- current tenancies where the DHsg is seeking termination of the tenancy on the grounds that the tenant has not repaired damage to the premises; or
- past public housing tenancies where the DHsg is recovering the alleged costs of repairs and maintenance said to be needed to the premises at the end of the tenancy.

¹⁰⁰ Residential Tenancies Act (NT) s 51.

¹⁰¹ Residential Tenancies Act (NT) s 12.

The significance of this issue should not be underestimated. DHsg policy requires it to take debts into consideration when making decisions to terminate tenancies,¹⁰² to reject applications for public housing, including priority housing,¹⁰³ and to reject applications for transfer, including on medical or social grounds.¹⁰⁴ Clearly these decisions have a direct impact on tenant well being and homelessness. Payment of a debt can cause financial hardship to tenants and the existence of a debt can create an insurmountable barrier to getting into public housing.

Case study: Termination decision based on unsubstantiated debt

NAAJA is assisting a client with a son with physical and mental disabilities. They lived together in public housing in Darwin. DHsg made a decision to terminate the tenancy on the basis that the tenant had not completed repairs to the premises,¹⁰⁵ which it estimated totalled \$16,000. The client and her son became homeless.

The client received an invoice from DHsg alleging that she owed a \$12,700 maintenance debt. NAAJA assisted the client to seek an internal review of the debt. The regional office decided that \$6100 of the debt should be waived as it “could not be substantiated”. The Investigations & Regulations Unit recommended that a further \$1,500 be waived, bringing the debt to \$5,300.

NAAJA made a further appeal to the Public Housing Appeals Board seeking that the remaining debt be reduced significantly on the basis that the charges were unreasonable given the retail cost of the items (for example charging \$266 for 5 fan knobs, which can be purchased for \$4); charges for the replacement of items that have depreciated and have no value; and charges for labour were unreasonable. We were unsuccessful in having the debt further reduced, however the Public Housing Appeals Board stated:

In June 2015 the Strategic, Legal and Risk Management Unit investigated the debt and applied rigorous procedures to determining available evidence, tenant liability and legally enforceable debt...Of note, these rigorous procedures would ideally have been applied at first instance, before a Notice of debt was issued.

It is unclear whether DHsg would have made the decision to terminate the tenancy of a carer and her disabled son on the basis of a \$5300 debt. NAAJA has assisted the to re-apply for public housing

Applying the incorrect legal standard when raising debts

¹⁰² Department of Housing *Tenancy Agreement Breach Policy* at 6.2

When maintenance or damage has been identified through either a periodic or special inspection, the Department of Housing will discuss the repairs required with the tenant and then send a letter outlining the steps to remedy this. Tenants will be given ample opportunity to repair the damage; however repeated failure to do so may result in eviction or non-renewal of a lease, at the discretion of the Housing Manager/ Remote Housing Manager

¹⁰³ Department of Housing, *Public Housing Eligibility Policy* at 6.4

¹⁰⁴ Department of Housing, *Public Housing Eligibility Policy* at 6.4 ” Existing tenants who apply to transfer to another public housing property will be rejected if there is any outstanding debt to the Department of Housing.

¹⁰⁵ There is no legal obligation for a tenant to complete repairs to the premises.

DHsg generally passes on the full cost of any cleaning or maintenance work at the end of every tenancy to the tenant, without an analysis of legal liability as detailed above. The basis for this appears to be that the Common Provisions state that tenant must 'maintain your premises in a neat, tidy and clean condition at all times'. This is different to the legal standard which states that the tenant needs to return the premises to the landlord in a 'reasonable state of repair and in a reasonably clean condition allowing for fair wear and tear'.¹⁰⁶

We note the recent NTCAT decision of *Rosas v Chief Executive Officer (Housing)*,¹⁰⁷ which found that the requirement that a tenant "maintain your premises in a neat, tidy and clean condition at all times" was inconsistent with the provisions of the RTA. NAAJA therefore considers all vacation debts to be unfounded in law in whole or in part.

In circumstances where DHsg is aware that it does not apply rigorous procedures to determine liability before issuing notices of debts and its own Investigations & Regulations Unit recommends that large portions of debts be waived because they are unsubstantiated or not legally justified, it is unconscionable to base its decision making on debts.

Failure to comply with the law - tenant responsible damage

DHsg does not appear to investigate whether damage at the premises has been caused intentionally or negligently prior to either raising a debt or requiring the tenant to rectify damage.

DHsg policy currently states that 'tenants will be held responsible for the cost of rectifying damage or attending to maintenance that has been caused by them'. This is contrary to s 57 of the RTA, which outlines DHsg's responsibility to maintain its properties in a 'reasonable state of repair'. Under the RTA, tenants have no obligation to be responsible to organise or pay for repairs. Section 51(1)(c) of the RTA states that a tenant must not intentionally or negligently cause or permit damage, but otherwise it is a landlord's obligation to repair if they have notice of a defect requiring repair, and seek compensation from the tenant.

In the Local Court matter of *Chief Executive Officer (Housing) v Pearce*¹⁰⁸ Magistrate Birch stated that he could not find a positive duty on the tenant to carry out repairs under the RTA. Therefore, requiring a tenant to carry out repairs to remedy a breach was outside the scope of the Act. Should a landlord wish to recoup costs of repairs it deems to be 'tenant responsibility' it must make an application to the NTCAT.

¹⁰⁶ Residential Tenancies Act Section 51 (2)

¹⁰⁷ [2015] NTRTCmr 25 (14 July 2015).

¹⁰⁸ [2007] NTMC 29 (4 June 2007)

We have observed a practice by DHsg that is inconsistent with the RTA, namely that DHsg is refusing to conduct repairs if they have not been reported to DHsg by the 'head tenant'¹⁰⁹, and have not been reported to the NT Police. The following is an email received in response to a NAAJA solicitor reporting an emergency repair to DHsg on behalf of a client:

In response to the complaint lodged on behalf of [REDACTED] concerning repairs to [REDACTED], there is no record of the lessee, [REDACTED] reporting this damage. Unless it was damaged from criminal activity and a Police report is provided, the repairs to the gate are assessed as tenant responsibility. Therefore the Department of Housing will not be actioning repairs.
Would you please convey this on to your client?
Thank you.

In doing so, DHsg is creating barriers to the reporting of repairs and maintenance, which is an obligation for tenants under the RTA.¹¹⁰ The RTA does not specify that a particular tenant must notify the landlord of damage, nor does it require a police report to be provided to disprove 'tenant responsibility' for damage. DHsg should encourage and accept reports of repairs and maintenance to protect its assets and comply with its obligations under the Act to maintain premises and make applications for compensation where necessary.

Rejecting applications for housing on the basis of alleged outstanding debts or a 'history of antisocial behaviour'

NAAJA has many clients who have been kept in homelessness by incorrect or unjustifiably strict application of DHsg policies. For example, clients with small debts or a history of 'antisocial behaviour' who have attempted to apply for housing have simply been turned away at the DHsg's front counters. Staff should be trained in and guided by fair and considered policy, which is flexible, discretionary and mandates a thorough assessment of each applicant's individual circumstances.

Lack of guidance around discretionary decision-making is particularly problematic in relation to applicants with alleged debts to DHsg. DHsg should not reject applicants solely because they have a housing debt where:

- the applicant has entered into an Agreement to Pay; or
- the debt has not been proved in the Commissioner of Tenancies or NTCAT.

In addition, as noted above, remote housing debts need to be considered in the context of a lack of adequate rent recording.

Front of house staff should assist prospective tenants in whatever way possible to ensure they have access to housing, for example setting up an Agreement to Pay, arranging a warm referral to an affordable housing provider or legal advice service or advising the person that they can seek a review of the debt.

¹⁰⁹ Head tenant is the term used by the Department of Housing to describe the tenant who is named on the tenancy agreement. Other tenants may not be named on the tenancy agreement but be paying rent direct to DHsg.

¹¹⁰ Residential Tenancies Act (NT) s 58.

Case study: Small debt creating long term barrier to public housing

NAAJA was approached by a client who sought assistance to apply for public housing. She had been trying to apply for a house for the past three years, during which time she had been homeless. She had been told by DHsg staff that because she had a \$200 debt from a previous tenancy that she could not apply for public housing.

In May 2015, our client finally managed to pay off the \$200 debt – she had lived in her car for nine months prior to applying for public housing. Had our client been placed on an Agreement to Pay at the time she first approached DHsg, been advised that DHsg had discretion around whether to impose the requirement to pay off the debt before allowing her to apply for housing, or advising her of her right to seek a review of the debt, she would likely be housed by now.

Debts caused during acts of domestic violence

In NAAJA's experience DHsg makes tenants financially responsible for damage caused during acts of domestic violence, which is contrary to the provisions of the RTA.¹¹¹ Of particular concern for NAAJA is the ongoing lack of a domestic violence policy to guide DHsg decision-making when dealing with victims of domestic and family violence.

In the past, DHsg had a specific Domestic and Family Violence (DFV) policy.¹¹² This policy is no longer available on DHsg's website – it was removed in or around September 2013. This policy reflected the legal position that the tenant was not responsible for damage caused during acts of domestic violence.

NAAJA has been asking for DHsg reinstate a revised DFV policy since early 2014. Ideally, this policy would guide the practice and procedure of DHsg staff to ensure that public housing tenants who experience domestic and family violence, some of DHsg's most vulnerable clients, are consistently afforded the respect, sensitivity, support and services they are entitled to. The impact of domestic and family violence is particularly relevant to applications for safe rooms, applications for transfer, and debts where damage has been caused in an incident of domestic violence.

DHsg has drafted a new domestic violence policy, which NAAJA provided detailed comment on 4 August 2015. As at 5 February 2016, no domestic violence policy appears on DHsg's website, to be accessed by public housing tenants, legal services or DHsg staff. This is creating significant problems.

Case study: liability for DFV damage

¹¹¹ Section 12 (3) *Residential Tenancies Act 1999* (NT)

¹¹² Northern Territory Government, Department of Housing, *Housing Services Operational Policy Manual Chapter 13 – Domestic and Family Violence*.

NAAJA assisted a client from Katherine to challenge an alleged debt through DHsg's internal review process. Damage was caused during incidents of domestic violence on the premises.

Despite being on notice about how the damage was caused, and the provision of the RTA that states that a tenant is not responsible for a breach of the tenancy agreement where domestic violence is the cause,¹¹³ DHsg raised a debt against the victim.

NAAJA assisted the tenant to appeal to the Public Housing Appeals Board, which agreed that the tenant should not be liable to pay for the damage.

Pursuit of statute-barred debts

Another policy of concern, impacting on urban and remote tenancies alike, is that DHsg pursues debts that NAAJA's legal analysis suggests are statute-barred.

In pursuing old debts, we understand that DHsg relies on the Crown exemption from the statute of limitations. Without the Crown exemption, ordinarily none of the following legal actions is maintainable more than three years after the action first accrues:

- An action to recover arrears of income, including rent.¹¹⁴
- An action founded in contract.¹¹⁵
- An action to recover money recoverable by virtue of an enactment (which includes legislation of the Territory),¹¹⁶ other than a penalty or forfeiture.¹¹⁷

The above does not apply to an action by the Crown for the recovery of a "fee, tax, duty or other sum of money".¹¹⁸

Claims by DHsg against tenants and former tenants arise when

- DHsg alleges a tenant or former tenant has not paid full rent for the time the tenant was in occupation of the premises; and
- DHsg alleges a former tenant owes a liquidated sum due to maintenance work that DHsg was obliged to carry out on the premises because the tenant did not maintain the premises to the standard required under either the tenancy agreement or the RTA.

That is, these are claims for rent, or claims under contract, or claims under an enactment. Whether DHsg can pursue an out-of-time claim for rental arrears or maintenance turns on whether the amount claimed is a fee, tax, duty, or other sum of money.

¹¹³ Section 12 (3) *Residential Tenancies Act 1999*

¹¹⁴ *Limitation Act* (NT), ss 22(1) and 4(1) ('income').

¹¹⁵ *Limitation Act* (NT), s 12(1)(a).

¹¹⁶ *Limitation Act* (NT), s 12(3) ('enactment').

¹¹⁷ *Limitation Act* (NT), s 12(1)(d).

¹¹⁸ *Limitation Act* (NT), s 6(3)(a)(i).

We do not believe that an old debt arising from the facts described above is a fee, tax, duty or other sum of money. Rent is a periodic payment in consideration for occupation; it is distinct from a payment in the nature of a fee, tax or duty. A fee is a payment for a service, whereas damages or compensation for alleged breaches of the RTA is an amount paid to redress some past wrong: it is not a consideration for a service, and thus is not in the nature of a fee. And plainly nor is rent a tax or a duty. Construed properly, we believe the case law supports our position.

Accordingly, DHsg ought to implement a policy of not pursuing statute-barred debts, and similarly ought not to refuse applications or requests for transfer on the basis of the existence of a statute-barred debt.

Recommendation 24: That DHsg conduct rigorous procedures to examine debts prior to issuing Notice of Debts, which consider:

- whether the premises are in a reasonable state of repair and are reasonably clean
- fair wear and tear, including a consideration of the length of the tenancy;
- the age of the assets needing to be replaced or the depreciated value;
- whether damage to the premises was intentional or negligent, or caused by people at the premises without consent;¹¹⁹
- the reasonableness of the cost of repairs considering how much the asset or services could be obtained for;
- the vicarious liability provisions of the RTA, including where damage is caused by domestic violence;¹²⁰ and
- a comparison of the condition of the premises on occupation or vacation, by comparing photos or condition report.

Recommendation 25: that DHsg conduct a thorough review of its policies and practices to ensure that they are being undertaken in accordance with the law and that DHsg staff at all levels are trained to understand the importance of compliance with law and policy and the costs that ensue when they are not complied with.

Recommendation 26: that DHsg staff at all levels are trained to understand the importance of compliance with law and policy and the costs that ensue when they are not complied with.

Recommendation 27: that DHsg implement a policy of not pursuing statute-barred debts, and/or ought not to refuse applications or requests for transfer on the basis of the existence of statute-barred debts.

¹¹⁹ Residential Tenancies Act (NT) s 51.

¹²⁰ Residential Tenancies Act (NT) s 12.

Failure to engage with tenants or make referrals to appropriate service providers

DHsg often fails to effectively communicate with and understand the circumstances of its tenants. As a consequence, the outcomes of its decisions can often be unfair, unjust and lead to homelessness if the tenant does not seek legal advice.

DHsg should place greater importance on ensuring effective communication with its tenants through the use of interpreters and a trauma informed approach to service provision. Through use of these techniques, relatively simple interventions can lead to results which have significant impact on a tenant's quality of life.

The following is an example of circumstances in which DHsg failed to take proper account of the tenant's circumstances and the hardship that would result from its decision to terminate the tenancy. DHsg should readjust its approach to one of 'preventing homelessness'.

Case study: Failure to consider tenant's circumstances prior to terminating tenancy

In 2014, NAAJA was approached by an elderly Aboriginal woman. She was a public housing tenant and a renal dialysis patient. She was facing eviction proceedings in the Commissioner of Tenancies as a result of rent arrears caused by her adult son going back to work and not paying rent. Our client paid her own share of the maximum rent every fortnight without fail, despite this causing her financial hardship. She faced homelessness if evicted. NAAJA liaised with our client's dialysis support worker and DHsg. We were able to get DHsg allow her to repay the rent arrears in small instalments and to agree to transfer her to a ground floor unit (for health reasons) in a seniors area, rather than evict her.

Punitive approaches to tenancy management - creating insecurity and not supporting tenants

DHsg's approach to tenancy management appears to be largely punitive – it seeks to problematise behaviours of public housing tenants as 'antisocial behaviour'¹²¹ and employs Public Housing Safety Officers to 'patrol' public housing premises.

Public Housing Safety Officers have powers to direct a person to not engage in anti-social behaviour, require a person's name and address,¹²² direct a non-tenant to leave public housing premises for up to 12 months,¹²³ seize dangerous articles or container containing alcohol,¹²⁴ and enter into public housing common areas and, with consent, public housing premises. Clients that seek NAAJA's assistance refer to

¹²¹ Anti-social behaviour is broadly defined in section 28E of the *Housing Act* (NT) as "Behaviour is *antisocial behaviour* if it: (a) involves abusive or violent behaviour directed to a person; or (b) creates alarm or fear in, or annoyance to, neighbours or others in the vicinity; or (c) involves graffiti, littering or vandalism." It is a subjective rather than an objective test.

¹²² This section applies if a public housing safety officer reasonably believes a person (a) has engaged, is engaging or is about to engage in conduct on public housing premises that constitutes a prescribed offence or antisocial behaviour; or may be in a position to help with the investigation of a prescribed offence or antisocial behaviour on, or partially on, public housing premises, Section 28D (2), *Housing Act* (NT)

¹²³ Section 28E, *Housing Act* (NT)

¹²⁴ Section 28G, *Housing Act* (NT)

Public Housing Safety Officers as being like 'public housing cops' and have expressed feelings of being harassed, watched and unfairly targeted by Public Housing Safety Officers.

Public Housing Safety Officers were brought into being in conjunction with the *Three Strikes Policy*, which was designed to provide public housing tenants 'with a clear, structured understanding of what is acceptable and what is not and, most importantly, what the ramifications are for disregarding behavioural expectations'.¹²⁵ Part of PHSOs' role is to document incidents of antisocial behaviour witnessed on routine patrols or in response to complaints of antisocial behaviours; they interview witnesses, complainants and public housing tenants to 'substantiate' incidents of antisocial behaviour.

Once incidents of antisocial behaviour reach a certain threshold, the tenant is given Strike letters which detail incidents of alleged anti social behaviour and warn the tenant that their tenancy is at risk. The tenant is also invited to a meeting with DHsg to discuss the incidents that form the basis of the strikes, and again are told that their tenancy is at risk.

DHsg refers tenants deemed 'at risk' to a Tenancy Sustainability Program (TSP), provided by various not-for-profit social support organisations throughout the NT. Referrals are made if a tenancy is seen to be having difficulty or is at risk of facing eviction action. Tenants undertake courses to learn about maintenance and visitor management and receive some support. It is NAAJA's observation that referrals are made as a matter of course rather than with the committed expectation of change. We do not observe DHsg workers and TSP working closely over long periods. We observe a small window for TSP, and if tenants 'fail to engage' within that, supports are cut off. What support is offered through outsourced TSP is overshadowed by the punitive approaches enshrined in DHsg policy and practice.

The approach taken by the DHsg is to threaten public housing tenants' security of tenure, in the hope that the fear of homelessness will lead to a change in what occurs at the tenancy. The *Three Strikes Policy* provides that strikes remain valid for 12 months. So a tenant with strikes bears the psychological burden of the risk of homelessness for an extended period. For example, for a tenant who is given strikes six months apart, their tenancy will be at risk for two years. This has the overall effect of destabilising and de-securing housing.

In NAAJA's experience of working with clients who have received strikes or had their tenancy placed at risk because of antisocial behaviour or property maintenance issues, the root cause is rarely tenants' unwillingness to change. Disability and mental illness, the actions of visitors, domestic violence, substance addictions or other social factors are more often the reason for a difficulty with a tenancy. If it is a goal of the public housing system to be a basis for tenants to be empowered to build stable lives and ultimately enter the private housing market, a punitive approach that threatens housing security is surely contrary to these purposes.

¹²⁵ *The Honourable Dr Chris Burns, Minister for Public and Affordable Housing, Hansard, Housing and Other Legislation Amendment Bill 2011, Second Reading Speech*

There is underlying conflict in the varied roles of PHSOs – in responding to tenants in distress or needing assistance, in responding to complaints of anti social behaviour and collecting and recording information on tenants’ alleged breaches of their obligations. Those roles sit uncomfortably together and impact on the tenants’ ability to trust or disclose the circumstances of their lives for fear that it will be collected as evidence to use against them in eviction proceedings.

NAAJA recommends that the DHsg develop ways to support tenants to overcome antisocial behaviour problems or property maintenance sustainability issues that do not rely on de-stabilising housing.

Case study: social and health factors

In 2015, NAAJA appealed a decision of the Commissioner of Tenancies to terminate a DHsg tenancy on the basis that the tenant’s yard was in an unreasonably dirty condition. The client had been at risk of eviction on for this reason for many months; however he was still unable to attend to his yard. The client had undiagnosed depression, was a single father of two sons, one of whom had a diagnosis of autism. The client was unemployed and did not own the tools to clean the yard.

Ultimately, even evicting the client did not make him able to clean his yard – as the social and health factors preventing him from doing so remained. Instead, the threat of homelessness added considerable stress to his life. Fortunately the decision was overturned by the Local Court; however had it not been the client would have been homeless and his ability to care for his children severely limited.

Below is an excerpt from a Darwin tenant, as published in an article from the housing journal *Parity*, entitled ‘Living on a knife’s edge: public housing insecurity in the NT’, which captures how many tenants respond to a potential eviction:

*The house is the only thing that makes me happy. I live below poverty but in my house, with my boys, I am happy. Sometimes I have sat in the yard crying because I just do not know what to do about Housing. The insecurity with the house stresses me out a lot. It’s really terrifying always being under threat with the house... Losing the house would tear us apart. I would become homeless and so would S. S has said to me...“I give up. There’s no point in living dad if they are going to take the house. Simple.”*¹²⁶

Creating an environment such as described above cannot be a strong foundation for a productive, empowering housing system.

¹²⁶ Quote from a Northern Territory man, currently facing eviction for failing to adequately maintaining his house and yard in a ‘neat and tidy’ condition in H. Dannatt ‘Living on a knife’s edge: public housing insecurity in the NT’ *Parity* 2014 (April) p 20.

Recommendation 28: that the DHsg develop ways to support tenants to overcome antisocial behaviour problems or property maintenance sustainability issues that do not rely on de-stabilising housing” policies.

Appeal rights

There are inadequate administrative review mechanisms available for public housing tenants in the Northern Territory.

There is no administrative review mechanism with the power to overturn decisions made by DHsg, bar the original jurisdiction of the Supreme Court. The recently established Northern Territory Civil and Administrative Tribunal does not have jurisdiction to consider DHsg decisions, except where relevant to a decision to terminate a tenancy.¹²⁷

The only recourse accessible to public housing tenants is the Public Housing Appeals Board, which has no statutory basis or binding powers. On occasion, DHsg has refused to implement the recommendations of its own Appeals Board. In these circumstances, a tenant’s only option is to make an appeal direct to the Minister for Housing or the Supreme Court. This leaves the effectiveness and utility of Appeals Board reviews open to question.

Recommendation 29: that NTCAT have jurisdiction to review the merits of DHsg decisions.

Failure to use tenancy agreements that comply with law

All 10,000 public housing tenancies in the NT are subject to tenancy agreements that do not comply with the law.

In March 2011, NTLAC, NAAJA and CAALAS wrote to DHsg and the Commonwealth Government advising that there were numerous significant inconsistencies between the Remote Public Housing Tenancy Agreements implemented by DHsg and the law. We provided DHsg and Commonwealth Government with a very detailed document which examined each clause of the remote tenancy agreement, the relevant section of the law and provided recommendations for its removal or amendment.

Some examples of terms which are inconsistent with the law:

¹²⁷ The Local Court in an unreported decision found that whether the CEO(Housing) had followed its policies regarding the termination of a tenancy was a relevant consideration in its exercise of its discretion under section 101 of the RTA as to whether to order possession of the premises to the landlord, the other considerations being the legal, social and psychological consequences of termination of the tenancy, following the decision of *Williams v CEO (Housing)* NTSC 28

- 11.25 Bring, or allow Residents or Visitors to bring, toxic, inflammable (petrol, diesel, oil), hazardous or illegal substances (alcohol, drugs of any kind except prescription medication) or illegal material into the Premises.
- 11.26 Light a fire, or allow Residents or visitors to light a fire to burn Rubbish, household or garden refuse or other matter in or near the Premises or Ancillary Property.
- 11.27 (Unless permission in writing is given by the Landlord) keep or use in the Premises a portable kerosene heater, oil burning heater or heaters of a similar kind.

In its 2012 report into remote housing, the Commonwealth Ombudsman recommended that:

*FaHCSIA and Territory Housing should review their tenancy agreements and practices to ensure compliance with the Residential Tenancies Act. This should include consulting with the Commissioner of Tenancies.*¹²⁸

Despite being on notice of this since March 2011 to date DHsg has not introduced new tenancy agreements. The ongoing reliance on tenancy agreements that do not comply with the law significantly weakens the integrity of DHsg's tenancy management in both remote and urban areas.

Case study: unsupportable tenancy term

In May 2012, NAAJA was approached by a woman from a community in Arnhem Land complaining she had been told 'no fires in the yard', despite the requests made by NTLAC, NAAJA and CAALAS in September 2010 that the "no fires in the yard" clause be removed from the remote public housing tenancy agreement. The client instructed: *It's our tradition to make fire. You can't change us – we are what we are. Our ancestors from generation to generation lived under the stars, made fire and cooked on the fire. There are sick people, they need to keep warm or they will die. The cold season is coming. We want to cook tea and damper on the fire, and big things like crabs and fish'.*

NAAJA complained to DHsg's Complaints & Appeals Unit and was subsequently advised: *Territory Housing has raised the matter of fires and public housing at the Housing Reference Group meetings and advised fires may be lit whilst using common sense around dwellings.*

The client advised "After first fire, my grandson put twigs on the fire. We are very happy

The Remote Public Housing Tenancy Agreement is based on the tenancy agreement used by DHsg in urban areas, which DHsg calls the Common Provisions. This means that every public housing tenancy is subject to a tenancy agreement which contains unlawful terms.

The inconsistencies between two sources of rights and obligations is not just a technical legal problem. It creates a number of significant consequences for tenants:¹²⁹

¹²⁸ Commonwealth Ombudsman's *Remote Housing Reforms in the Northern Territory* Recommendation 9, page 47

- Invalid terms mislead tenants by instructing the tenant to do or not do something and creates the impression that the obligations are legally binding;
- Invalid terms mislead DHsg staff and contractors as to what the actual rights of the landlord or tenant are and consequently DHsg has relied on invalid terms when terminating tenancies without the legal right to do so;
- Invalid terms create a power imbalance between the parties, giving the DHsg the ability to benefit from the invalid term – the tenant may simply comply with the term or an already reluctant tenant may be dissuaded from exercising their rights; and
- DHsg may deliberately or unconscientiously take advantage of the tenant's weaker bargaining position.

NAAJA has continued to advocate for changes to DHsg's tenancy agreements. This has included: complaints to the Northern Territory Ombudsman; discussions with successive CEOs (Housing); and challenges in NTCAT on individual terms. Despite advising the Commonwealth Ombudsman in 2012, that 'this work has been completed', DHsg has not implemented new agreements.

Case study: Holding tenants to unlawful standards

In 2015 NAAJA made an application to the Commissioner of Tenancies on behalf of our client Ms Shine seeking, amongst other things, an order that clause 20.5.(e) of the Tenancy Agreement (contained in the DHsg Common Provisions) was invalid as it is inconsistent with the RTA.

Ms Shine had been given written warning that she was required to keep her yard in a 'neat and tidy condition' as the clause stipulated. DHsg considered that long grass in the yard was in breach of this standard. The Delegate to the Commissioner of Tenancies found that the 'neat and tidy' standard required by the Tenancy Agreement was inconsistent with the RTA standard, which states that a tenant must maintain premises in a 'not unreasonably dirty condition'. The Common Provisions clause was therefore found to be invalid.

The Delegate to the Commissioner of Tenancies, who is the President of NTCAT, Mr Bruxner found:

'By purporting to require the tenants to maintain the premises and ancillary property in a 'neat, tidy and clean state' the clause imposes an obligation of a fundamentally different order from section 51(1)(a) by which the tenant's relevant obligation is to ensure that premises are not allowed to become, or stay, unreasonably dirty'.¹³⁰

Despite the very clear expression of this decision, NAAJA is aware that DHsg continues to enter into tenancy agreements with new tenants which contain inconsistent terms – those terms are not struck out of the tenancy agreement by DHsg staff.

¹²⁹ Lee Hansen, Tenants Union of Victoria, *Unfair Terms in Residential Tenancy Contracts*, May

¹³⁰ *Rosas & Shine v Chief Executive Officer (Housing)* [2015] NTRTCmr 25 (14 July 2015) at 53.

In correspondence to the DHsg in January 2015, the Northern Territory Ombudsman's office stated:

I understand Territory Housing has gone through a significant restructure in terms of internal functions and, governance, however I cannot conclude that the time taken to develop the Tenancy agreement is reasonable.¹³¹

NAAJA has recently been advised that the new tenancy agreement would 'go live' on 8 February 2016.

Significantly, DHsg:

- has no plans on how to implement the new agreement with over 10 000 public housing tenancies;
- does not guarantee that it is not enforcing inconsistent terms; and
- envisages retaining defective agreements next to new agreements.

Recommendation 30: that DHsg prioritise the introduction of the new tenancy agreements, publish a list of inconsistent terms that it is not enforcing and immediately develop a plan for implementation of the new agreements.

Social housing – what could be done?

In addition to the ideas for possible responses presented, we recommend:

- Consult with remote public housing residents regarding their need for storage space, additional bedrooms, sheds to store possessions to ensure that upgrade work is appropriately targeted.
- Provide transparency around expenditure on remote construction, repairs and maintenance and rental income on a community level to ensure that funds are being spent equitably.
- Ensure houses are built to ensure accessible housing for people with disabilities;
- Build new stock in locations across the Northern Territory, as there is need for public housing in every remote community and urban location.
- Expands public housing stock in urban areas and remote communities;
- Conduct upgrades of existing stock in all locations on a rotational basis;
- Ensuring that the sale of low quality stock is not to vulnerable people in remote communities who may not have the ability to maintain and repair low quality housing;
- Review the rent framework and market rents in remote communities to assist those in remote communities who are not eligible for rental rebates who are paying unaffordable rent based on the private rental market for low quality housing;
- Expand the Government Employee Housing scheme to local employees; and
- Expand the number of Government Employee Housing dwellings in remote communities.

¹³¹ Letter from Northern Territory Ombudsman's office to Ms Anne Bradford, CEO (Housing) dated 6 January 2015.

NAAJA is supportive of the recommendation to 'identify Department of Housing Policies and procedures that could be improved to achieve better housing and non- housing outcomes for clients, potential clients and the community.'¹³² We consider this to be a core recommendation, and one which can be applied across the continuum. We make specific recommendations regarding this below.

¹³² *Consultation Draft* , p 28

Part four: Home Ownership

This section focuses on remote home ownership.

In March 2014, the NTG announced an 'ambitious' remote home ownership scheme called 'My house, my home, my country: your future, your decision'. It has rolled out in a small number of remote communities - Wurrumiyanga and Milikapiti on the Tiwi Islands, Umbakumba and Angurugu on Groote Eylandt and Milyakaburra on Bickerton Island.

Home ownership is only being offered to communities where the NTG has a long term head lease, such as 99 years or 40 plus 40 years. A budget allocation of \$4.5 million has been set aside over three years.¹³³ Up to half of the remote public housing stock will be available for sale.¹³⁴ Home ownership is seen by the NTG as a key part of achieving the goal of bringing jobs and development to Northern Australia.¹³⁵

The scheme aims to enable public housing tenants who meet certain criteria to purchase the dwelling from DHsg for \$80,000 to \$150,000. Indigenous Business Australia¹³⁶ is providing credit to applicants under loan terms of 30 years.¹³⁷ To be eligible, tenants must be living in the house, be a signatory to the tenancy agreement, and have two or more years of good rental and 'satisfactory property condition' history.¹³⁸

Training is provided to applicants by Indigenous Business Australia,¹³⁹ which aims to 'help applicants to understand the responsibilities of remote home ownership including maintaining monthly loan repayments, repairs and maintenance of your property, insuring your home, and paying council rates'¹⁴⁰.

DHsg provides successful applicants with a \$20,000 'remote home ownership program bonus' to enable home owners to 'to undertake improvements to their home'. First Home Owner Grants totalling \$37,000 were said to be available.¹⁴¹ DHsg has advised that the money raised from the sale of remote housing will go back into 'building more houses'.¹⁴²

NAAJA is supportive of sustainable home ownership schemes, provided they do not result in hardship for remote home owners or a reduction in the remote public housing stock.

¹³³ Northern Territory Government, Media Release, Budget 2014-2015, Chief Minister, Housing Minister "A pathway to home ownership and an economic future", 13 May 2014.

¹³⁴ Northern Territory Government, Media Release, Budget 2014-2015, Chief Minister, Housing Minister "A pathway to home ownership and an economic future", 13 May 2014.

¹³⁵ Northern Territory Government, Media Release, Budget 2014-2015, Chief Minister, Housing Minister "A pathway to home ownership and an economic future", 13 May 2014.

¹³⁶ IBA is an Australian Government statutory authority 'set up to assist and enhance Aboriginal and Torres Strait Islander self-management and economic self-sufficiency' and sits within Prime Minister and Cabinet. <http://www.australia.gov.au/directories/australia/iba>

¹³⁷ Briefing provided to NAAJA by DHsg's Director Strategic Programs and Service Quality, Darren Johnson, on 22 October 2014.

¹³⁸ http://www.housing.nt.gov.au/remotehousing/remotely_home_ownership_program

¹³⁹ http://www.housing.nt.gov.au/remotehousing/remotely_home_ownership_program

¹⁴⁰ http://www.housing.nt.gov.au/remotehousing/remotely_home_ownership_program

¹⁴¹ Briefing provided to NAAJA by DHsg's Director Strategic Programs and Service Quality, Darren Johnson, on 22 October 2014. This has since changed and the FHOG is now only available to first home buyers who enter a contract to purchase or build a new home after 1 January 2015. <http://www.treasury.nt.gov.au/TaxesRoyaltiesAndGrants/HomeOwnerIncentives/FirstHomeOwnerGrant/Pages/default.aspx>

¹⁴² Briefing provided to NAAJA by DHsg's Director Strategic Programs and Service Quality, Darren Johnson, on 22 October 2014.

We have a number of concerns with this scheme.

It is unclear what access applicants have to independent legal advice or independent advice regarding the building, including the presence of pests, and the value of the property prior to signing the contract of sale and the credit contract.

It is not certain whether 'no negative equity' clauses are included within the loan to ensure that home owners are not required to pay back more than the value of the property.

Access to repairs and maintenance services in remote communities is very limited and expensive. Many remote communities do not have a resident plumber or electrician and rely on external contractors who need to be flown in at significant cost. If repairs cannot be completed in a timely, cost effective way, the asset is likely to deteriorate;

The shift of responsibility of poor quality stock from the NTG to private individuals is very concerning - The quality of remote public housing stock is variable and generally has not been constructed in accordance with relevant building code - DHsg estimates that pre-existing remote housing dwellings that have had refurbishments or rebuilds have an asset life of 10 years,¹⁴³ whereas loans will be over 30 year terms.

Indigenous Business Australia is not subject to the same consumer protection laws that apply to other forms of consumer credit.¹⁴⁴ Specifically borrowers do not have access to the hardship provisions and those allowing the reopening of the credit contract in cases of unfairness.

Further, home owners do not have access to an appropriate dispute resolution provider, such as the Financial Ombudsman Service, or the Credit and Investments Ombudsman. Recourse for complaints against IBA sits with the Commonwealth Ombudsman, which is usually a mechanism of last resort.¹⁴⁵

The cost of replacing public housing stock will far exceed the money that will be generated by the sale of houses - the Australian National Audit Office estimated in 2011 that 'the average planned new house cost was approximately \$590 000' under the NPARIH.¹⁴⁶

¹⁴³ Northern Territory Government, Department of Housing, *2013–14 Annual Report* p. 81

¹⁴⁴ National Consumer Credit Protection Regulations 2010 – regulation 65A states that the National Credit Code 'other than sections 72 to 81, does not apply to Indigenous Business Australia.'

¹⁴⁵ Under the *Ombudsman Act 1976* (Cth), the Commonwealth Ombudsman investigates the administrative actions of Australian Government agencies and officers. An investigation can be conducted as a result of a complaint or on the initiative (or own motion) of the Ombudsman.

¹⁴⁶ ANAO Audit Report No.12 2011–12 *Implementation of the National Partnership Agreement on Remote Indigenous Housing in the Northern Territory* p 89. See further for the cost of refurbishments: N Scullion MLA: Official website <http://www.nigelscullion.com/media-hub/nt/100000-and-still-no-tiles-floor-indigenous-housing>

The consequences of a home owner defaulting on their loan are unknown – will IBA repossess and sell the property? This is extremely worrying given the likelihood of circumstances that the home owner and their family will become homeless in the absence of available public housing in remote communities.

There is little to no access to estate planning and advice regarding wills for remote home owners.

In the absence of a market, home owners are at risk of spending their lives paying off a home loan for a house that has no value and cannot be sold.

Over a 30 year term for a loan of \$150,000 at an interest rate of 5.48% per annum, fortnightly repayments would be \$392.03, the total amount payable under the loan would be \$295, 588.21.

Over a 30 year term for a loan of \$80,000 at an interest rate of 5.48% per annum, fortnightly repayments would be \$209.08, the total amount payable under the loan would be \$157, 647.04.

The eligibility criteria do not include an assessment of the quality of the house purchased. Any assessment of the suitability of the loan should also take into consideration the cost of any repairs to the premises needed at the time of sale or that are reasonably foreseeable.

There may be a number of people living in the house and contributing to mortgage payments, and therefore holding equitable rights in the premises, but it appears that the legal interest in the property will be held in the names of the 'primary and co-client only'.

The ability of home ownership to lead to economic development is compromised as there are number of significant, long-standing barriers to economic development in remote communities in the Northern Territory which affect the labour market and subsequently employment opportunities. These include major power, water and sewerage constraints and serious limitations on available serviced land. They also include the high cost of construction, the quality of infrastructure, low average incomes, the caution of mortgage lenders and a range of other market factors.¹⁴⁷ The *Pivot North* report also identified a 'significant range of obstacles to the development of Northern Australia' including;

- A small, sparsely distributed population which impacts on the development of sustainable industries;
- the absence of capital infrastructure - lack of sealed roads (80% of roads are unsealed according to the NT Cattleman's association), adequate water supply, sewerage systems and power supply networks;

¹⁴⁷ http://www.clc.org.au/files/pdf/ALRA_Tenure_paper_-_final_Nov_2013_EDIT.pdf

- absence of social infrastructure like community halls, childcare centres, sporting facilities, cultural centres and the arts; affordability—especially with regard to development costs, power costs and insurance and the cost of living, cost of housing;
- regulatory environment especially in regard to taxation, land tenure, approvals processes and air transport regulation; and
- the need for standardisation across jurisdictions.

The scheme was due to be evaluated within six months of its commencement - DHsg has not published the report of any evaluation undertaken.

Home Ownership – what could we do

- Identify the barriers to remote home ownership, including poor quality housing stock, low income, low life expectancies, minimal job availability; availability of repairs and maintenance contractors and building and repairs and maintenance materials, high costs of repairs and maintenance.
- Work with communities to address barriers to remote home ownership, such repairs and maintenance pools, bulk contracting of service providers.
- Review remote home ownership scheme.

Conclusion: a game with no winners

Housing in the Northern Territory is a game with too many snakes and nowhere near enough ladders. Nobody wins this kind of game. The snakes identified in this submission are neither isolated nor superficial. They will not be easily resolved without their underlying causes being recognised and addressed.

The most significant issues which need to be addressed are:

- The massive shortage of affordable and public housing;
- DHsg's ongoing failure to comply with the legal framework for housing in the NT;
- DHsg's failure to interpret its policies in a beneficial way or in a way which prevents homelessness;
- The complete lack of homelessness support services in remote areas and the shortage in urban areas;
- Failure to maintain adequate systems to record The DHsg's lack of oversight regarding recordkeeping and internal mechanisms in combination with its use of inflexible processes affecting the rights of tenants and applicants; and

These key problems interrelate to create what is an untenable public housing situation in the Northern Territory. Far too great a proportion of the NT population is homeless or at risk of imminent homelessness, partially as a result of these problems. While they persist, the likelihood of the NTG meeting its obligations to combat homelessness and protect the human rights of its citizens is extremely low. Furthermore, attempts to address the mistakes and consequential legal disputes caused by bureaucratic inefficiencies on a case-by-case basis will continue to cause extensive and unnecessary losses to the DHsg, the NTG and the people of the Northern Territory.

Recommendation Table

Recommendation 1: That the Northern Territory Government funds the expansion of public housing stock in remote and urban areas to meet demand, including any necessary infrastructure upgrades to facilitate this.

Recommendation 2: That the Northern Territory Government fund homelessness support services in remote communities, including emergency, shelter or crisis accommodation; tailored packages of support for people at the time they need it, day spaces; facilities to wash clothes and people; storage facilities for belongings, identification and medicines; facilities to cook and prepare meals; and casework support services, including assistance with applying for public housing, identification of need for counselling, mental health supports and money management assistance.

Recommendation 3: That the final report include the number of houses in and wait list data for every community and urban centre, so as to clarify the need for housing in the Northern Territory at a point in time.

Recommendation 4: That the Northern Territory Government undertakes a scoping study to identify the true need for public housing, transitional accommodation, supported and hostel accommodation in the Northern

Recommendation 5: That DHsg establish policy or guiding principles of interpreting its policies beneficially, particularly in circumstances where the tenants' security of tenure is at risk and homelessness will be the consequence if the policy is interpreted punitively. Staff at all levels of the DHsg need to be trained in how to apply policy beneficially with the intention of prevention homelessness.

Recommendation 6: That DHsg remove the two year ban from applying for or staying in public housing in the *Eligibility Policy* following eviction from a public housing dwelling.

Recommendation 7: The NTG should expand funding to allow an adequate level of service provision for tenants in remote communities and urban tenants to access independent legal advice regarding tenancy and housing issues.

Recommendation 8 : That the NTG direct the DHsg to immediately implement the recommendations of the Commonwealth Ombudsman's report, *Remote Housing Reforms in the Northern Territory* and to publish a biannual report of progress until the reforms are fully implemented.

Recommendation 9 a: that DHsg urgently review its contracted remote repairs and maintenance services so as to ensure that it meets its obligations under the RTA, and to ensure that its assets are not degraded through lack of cyclical maintenance.

Recommendation 9 b: that DHsg conduct an audit in line with Healthhabitat's *Housing for Health: The Guide* of its assets constructed or refurbished under NPARIH or SIHIP to identify and address systemic repairs and maintenance issues.

Recommendation 10: that DHsg publish and make widely available information regarding the contact details of contractors, their responsibilities under their contract (for example, tenancy management, repairs and maintenance), and complaints processes for when a contractor is not providing the expected services. This information should be published on DHsg's website and distributed widely in remote communities.

Recommendation 11: That DHsg immediately develop a policy to guide Beyond Economic Repair determinations, which includes:

- reasonable estimate of the cost of repairs;
- an assessment as to how removing a house from public housing stock will impact levels of overcrowding and the public housing waitlists in that community or region;
- a social impact assessment of the impact of any increase in overcrowding on school attendance, health and employment outcomes in the community;
- an assessment of the responsibility for the repairs;
- an indication of whether the house will be replaced;
- the ability of DHsg to transfer the tenants of a BER house to another premises; and
- an assessment of tenant safety.

Recommendation 12: That DHsg provide tenants living in premises that have been determined to be BER (according to objective criteria), with notices of termination which detail:

- reasons for the decision, including an explanation as to how DHsg has addressed BER policy criteria;
- a statement as to who has assessed the house to be BER;
- proposed transitional arrangements; and
- appeal rights.

Recommendation 13: That DHsg immediately publicly acknowledge that tenants of legacy dwellings/existing houses attract the protections of the RTA, and incorporate this position into policy and procedure.

Recommendation 14: That DHsg ensure there are effective and transparent mechanisms to identify, collect and record rent payments for each person paying rent and that rent information is readily available to tenants.

Recommendation 15: That DHsg continue the remote rent reconciliation process and not take any action on rent 'debts' until the reconciliation process is complete.

Recommendation 16: That DHsg reconcile remote rent payments, including poll tax, from 1 July 2008.

Recommendation 17: That DHsg communicate with tenants about the reconciliation process that it is under way, advise of any refunds to be made, and if the account is in credit, to advise the tenant of any outstanding debts and their ability to appeal those debts, and refer for legal advice, prior to applying the credit to any outstanding debts, and advise the tenant of their ability to appeal the outcome of the reconciliation processes.

Recommendation 18: That DHsg ensure that all staff are aware of the reconciliation process and do not reject applications for housing on the basis of unverified debts nor take any action on rent 'debts' until the reconciliation process is complete.

Recommendation 19: That DHsg confirm receipt of application forms in writing, and should advise applicants after each allocation meeting as to whether they have been successful and of their appeals rights and processes.

Recommendation 20: That DHsg accord with the recommendation of the NT Ombudsman to as a matter of urgency, agree on which of them is responsible for the cost of repair/replacement of meters or the share that it will absorb when no wrongdoer can be identified.

Recommendation 21 That DHsg roll out protective cages for meter boxes in communities which experience regular incidents of criminal damage to meter boxes.

Recommendation 22: That DHsg improve the quality of its decision making by implemented a rigorous compliance framework, regularly training its employees on the importance of following law and policy and procedural fairness at all levels of the organisation.

Recommendation 23: That DHsg in its role as public housing landlord and model litigant, enshrine in its policies and procedures that it will not terminate public housing tenancies using 'without grounds' notices of termination under section 89 or 90 of the RTA, except in circumstances where the tenant no longer meets eligibility criteria relating to income and assets.

Recommendation 24: That DHsg conduct rigorous procedures to examine debts prior to issuing Notice of Debts, which consider:

- whether the premises are in a reasonable state of repair and are reasonably clean-
- fair wear and tear, including a consideration of the length of the tenancy;
- the age of the assets needing to be replaced or the depreciated value;
- whether damage to the premises was intentional or negligent, or caused by people at the premises without consent;¹⁴⁸
- the reasonableness of repair cost considering how much the asset or services could be obtained for; the vicarious liability provisions of the RTA, including where damage is caused by domestic violence;¹⁴⁹ and

¹⁴⁸ Residential Tenancies Act (NT) s 51.

- a comparison of the condition of the premises on occupation or vacation, by comparing photos or condition report.

Recommendation 25: That DHsg conduct a thorough review of its policies and practices to ensure that they are being undertaken in accordance with the law and that DHsg staff at all levels are trained to understand the importance of compliance with law and policy and the costs that ensue when they are not complied with.

Recommendation 26: That DHsg staff at all levels are trained to understand the importance of compliance with law and policy and the costs that ensue when they are not complied with.

Recommendation 27: That DHsg implement a policy of not pursuing statute-barred debts, and/or ought not refuse applications or requests for transfer on the basis of the existence of statute-barred debts.

Recommendation 28: That the DHsg develop ways to support tenants to overcome antisocial behaviour problems or property maintenance sustainability issues that do not rely on de-stabilising housing.

Recommendation 29: That NTCAT have jurisdiction to review the merits of DHsg decisions.

Recommendation 30: That DHsg prioritise the introduction of the new tenancy agreements, publish a list of inconsistent terms that it is not enforcing and immediately develop a plan for implementation of the new agreements.

¹⁴⁹ *Residential Tenancies Act* (NT) s 12.