



# Domestic and Family Violence Rental Laws

Submission to the 2022 review into the domestic and family violence provisions in the *NSW Residential Tenancies Act 2010*.

28 November 2022

## Acknowledgement of Country

The St Vincent de Paul Society acknowledges Aboriginal and Torres Strait Islander peoples as the Traditional Custodians of the land on which we live and work, with deep respect. May Elders, past and present, be blessed and honoured. May we join together and build a future based on compassion, justice, hope, faith, and reconciliation.

## About the St Vincent de Paul Society

The St Vincent de Paul Society (the Society) seeks to shape a more just and compassionate society by working to address the causes of poverty and injustice.

The Society is a significant provider of services to people experiencing poverty and other forms of disadvantage. We provide supported accommodation and case management services to people experiencing domestic or family violence, homelessness, or the risk of homelessness; food supply services; services to people with complex mental health diagnoses and/or behavioural support needs, people experiencing problematic alcohol or other drug use, people with disability, and young people at risk of exclusion.

Our services include 12 specialised domestic and family violence case management, supported and transitional accommodation services across Sydney and in Southern and South Western NSW. Our services support women, women with children, men and people living in lesbian, gay, bisexual, transgender, gender diverse, intersex, queer, asexual and questioning (LGBTIQ+) relationships. As a Society, we work from a person-centred framework that is supportive of the choices that individuals make, whether they decide to stay in the relationship or not. In 2021-2022 our domestic violence services supported 2,223 people dealing with domestic and family violence.

In addition to our domestic and family violence services, St Vincent de Paul Society NSW provides support to victim-survivors of domestic and family violence in our other specialist homelessness services, when people approach us for support through Vinnies shops, and through a range of other programs. Our extensive network of member volunteers also provides immediate care and assistance in the form of financial and material support: food parcels or vouchers, assistance paying energy and other bills, no-interest loans, and clothing and household items including furniture.

## Introduction

The Society appreciates this opportunity to contribute to the review of domestic and family violence provisions within the NSW Residential Tenancies Act 2010, conducted by the Department of Customer Service.

As a provider of a range of domestic violence services, we work with many men, women, and mothers with children who have had to leave their homes under duress, and who have found themselves at risk of, or experiencing homelessness. Our submission has been informed by consultation with the St Vincent de Paul Society NSW Domestic and Family Violence Network, including almost 40 managers, team leaders and caseworker staff across our domestic and family violence and broader housing and homelessness services.

It is well known and widely recognised that domestic violence is a major concern in this country. One in four Australian women have experienced physical, sexual, or emotional violence by a current or former partner<sup>1</sup> and women are nearly three times more likely to experience violence from an intimate partner than men<sup>2</sup>.

The connection between domestic violence and homelessness is undeniable and well-established, with domestic violence the main reason for women seeking support from refuges and other specialist homelessness services.<sup>3</sup> A July 2021 survey by the Real Estate Institute of Australia found that 57% of property managers have had tenants experiencing domestic violence during the last 12 months.<sup>4</sup>

The number and proportion of people renting privately continues to grow, with a 64% increase in private renting from 2001-2016, twice that of household growth.<sup>5</sup> Women are more likely than men to live in rented or public accommodation,<sup>6</sup> and many women who experience domestic violence have no choice but to rent as they do not have the means with which to buy their own home.<sup>7</sup>

It is therefore imperative to ensure that rental regulations protect the rights of victim-survivors of domestic violence whether they choose to remain in their homes or to leave. We recognise the important groundwork that the NSW Government, the domestic and family violence sector, and the broader social services sector have made over the last ten years to afford greater protection to victim-survivors of domestic violence living in rental properties. The 2019 domestic violence provisions in the *NSW Residential Tenancies Act 2010* and additional changes to the *Residential Tenancies Regulation 2019* have provided easier pathways for victim-survivors to end their lease immediately without penalty.<sup>8</sup> These legislative changes were welcomed by domestic violence advocates, caseworkers and victim-survivors across the state and have played an important role in decreasing the risk of homelessness for victim-survivors and their children.

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<sup>1</sup> Australian Bureau of Statistics (2017), Personal Safety, Australia: Statistics for family, domestic, sexual violence, physical assault, partner emotional abuse, child abuse, sexual harassment, stalking and safety, <https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>

<sup>2</sup> Ibid 4.

<sup>3</sup> AIHW (2022) Clients who have experienced family and domestic violence, *Specialist homelessness services annual report 2020-2021*, <https://www.aihw.gov.au/reports/homelessness-services/specialist-homelessness-services-annual-report/contents/clients-who-have-experienced-family-and-domestic-violence>

<sup>4</sup> <https://www.rentcover.com.au/info-centre/family-violence-laws>

<sup>5</sup> Hulse, K., Reynolds, M., Nygaard, C., Parkinson, S. & Yates, J. *The supply of affordable private rental housing in Australian cities: short-term and longer-term changes*. Final Report No. 323 (Australian Housing and Urban Research Institute Limited, 2019).

<sup>6</sup> Women's Health Goulburn North East 'Climate change affects health and wellbeing, both directly and indirectly', <https://www.whealth.com.au/climate-change/#:~:text=Both%20international%20and%20Australian%20research,appropriate%20for%20a%20changing%20climate>

<sup>7</sup> Ibid 7.

<sup>8</sup> Issues Paper – Statutory review of the domestic violence provisions in the *Residential Tenancies Act 2010* – October 2022.

While these changes were an important step forward, more work is needed. Our consultations suggest that many victim-survivors, service providers, landlords and real estate agents do not have a comprehensive understanding of the domestic and family violence provisions within the *NSW Residential Tenancies Act 2010*. We have also identified several issues that impact the application of these provisions, including:

- The types of evidence that victim-survivors are required to provide to demonstrate they meet the eligibility requirements under the domestic violence provisions
- Navigating rental arrears, damages, and bond payments
- Enabling victim-survivors to remain in their homes
- The application of 'no grounds' evictions.

In addition to the above, a range of broader factors currently impact the right to home for victim-survivors of domestic and family violence and undermine the effectiveness of laws designed to uphold this right, such as the domestic and family violence provisions within the *Residential Tenancies Act 2010*.

These include:

- **Rising rental prices:** Three quarters of all low-income households renting in the private market now live in housing stress, impacting their physical and mental health, employment prospects, children's education, and relationships with family, friends, and the broader community.<sup>9</sup> In the last year alone, the median rent across NSW has increased by 10.6%, well above inflation and much more than average wages.<sup>10</sup> Sourcing affordable and safe rental tenancy is becoming increasingly difficult and less than 1% of rentals in New South Wales are now considered affordable for a single person on the minimum wage or reliant on a government allowance.<sup>11</sup> In April 2022, of almost 46,000 rental listings across Australia, 0% were affordable for those on Jobseeker payment and 0.1% were affordable for a single parent on a parenting payment<sup>12</sup>. To better support access to housing for victim-survivors, the NSW government must make renting a viable, affordable, long-term option.
- **A lack of social housing:** As housing prices rise and more people are locked out of the housing market, the need for social housing will increase. Victim-survivors of domestic and family violence who terminate their lease often have very few housing options, especially if they have children or pets. With over 50,000 eligible households and more than 100,000 people<sup>13</sup> on the social housing waitlist, significant new investment is required to ensure options are available to victim-survivors leaving unsafe relationships.
- **Need for more funding for Specialist Homelessness Services (SHS):** The number of people experiencing homelessness is growing, and domestic and family violence is the primary reason women and children leave their homes in Australia.<sup>14</sup> Specialist Homelessness Services (SHS) are the main providers of person-centred and integrated supports for people who are homeless or at-risk of homelessness, and people experiencing domestic and family violence made up 42% of SHS clients in 2020-2021.<sup>15</sup> Unfortunately, SHS providers are having to turn away thousands of

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<sup>9</sup> St Vincent de Paul Society NSW (2022) Improve rental affordability, *Housing Justice: A home for everyone*, 2023 Election Statement

<sup>10</sup> Tenants Union NSW (2022) *What can we do about skyrocketing rents?* August 2022, Domain, <https://www.domain.com.au/research/vacancy-rates-august-2022-1164176/>

<sup>11</sup> Anglicare Australia (2022) Rental Affordability Snapshot 2022

<sup>12</sup> Anglicare rental affordability snapchat national report April 2022

<sup>13</sup> Evidence given by the Department of Communities & Justice in Budget Estimates 2019-2020 advised that multiplying the number of applicants by 2.2 gives the approximate number of people waiting for social housing

<sup>14</sup> AHURI (2021) Housing, homelessness and domestic and family violence, <https://www.ahuri.edu.au/research/brief/housing-homelessness-and-domestic-and-family-violence>

<sup>15</sup> AIHW (2021) Specialist homelessness services annual report 2020-2021

vulnerable people in need of support each year, due to lack of adequate resourcing. This leaves victim-survivors of domestic and family violence at greater risk of prolonged homelessness and risk of harm and may result in victim-survivors feeling they have no choice but to return to perpetrators. It also means they are less likely to access the support they may need in order to realise their rights under the *Residential Tenancies Act 2010*.

While recognising this broader context, our submission focuses on the understanding and application of the domestic and family violence provisions under the *NSW Residential Tenancies Act 2010*, and how these laws are or are not sufficiently upholding rental rights for victim-survivors of domestic and family violence.

## Recommendations:

To increase the effectiveness of the domestic and family violence provisions under the *NSW Residential Tenancies Act 2010*, the NSW Government should:

- resource organisations who can develop educational resources and deliver training for people who advocate with and for victim-survivors of domestic violence
- resource awareness-raising and education efforts directed at the broader community
- consider initiatives, such as mandatory training, to support landlords and real estate agents to better understand domestic violence and ensure they have the capacity to effectively implement their obligations under the Act
- expand the definition of ‘competent persons’ within the Act to include homelessness services, Aboriginal community-controlled organisations, multicultural community organisations, disability and LGBTIQ+ specialist organisations
- allow victim-survivors who end their tenancy using the domestic violence provisions to apply directly to the Rental Bond Board for their portion of the bond
- allow bonds to be transferred from one property to another, and where this is not possible, support more affordable payment methods such as incremental bond payments that can be paid off over time
- develop processes to better ensure no victim-survivors are added to tenancy databases and where they have been added, requiring that real estate agents proactively remove victim-survivors
- explore alternatives to a final apprehended domestic violence order (ADVO) that would enable victim-survivors to terminate a perpetrator’s co-tenancy and safely remain in their home
- amend Division 7 – Security and safety of residential premises, within the Act to include reasonable timeframes that landlords and real estate agents must approve changes to the property, including changes to locks or installation of security devices
- replace ‘no grounds’ evictions provisions with ‘reasonable grounds’ determined through community consultation.

## Understanding of domestic violence rental laws under the *NSW Residential Tenancies Act 2010*

Our consultation with St Vincent de Paul Society NSW domestic and family violence and housing and homelessness specialists revealed a range of levels of understanding and awareness of the domestic and family violence provisions within the *NSW Residential Tenancies Act 2010*. This includes understanding of the legislation by caseworkers, real estate agents, landlords, property managers, and victim-survivors of domestic violence.

Very few workers who participated in our consultation were able to recall significant community education, awareness-raising, or training efforts when the domestic and family violence amendments first came into effect. Of those who were aware of the amended laws, most said they heard of the changes via word of mouth, through colleagues, or pre-existing relationships with the Department of Communities and Justice. A few staff members noted that they read about the changes in the news, and a couple recalled attending a training session by Homelessness NSW.

St Vincent de Paul Society NSW caseworkers reported that some of their clients were aware of their rental rights when experiencing domestic violence, while others had no knowledge of the legislation. For victim-survivors who were aware of their rights, their ability to assert and actualise these rights were impacted by different levels of understanding across real estate agents, landlords and property managers. One participant said “it changes depending on who you are dealing with. No housing place seems to think there are the same rules”.

Some participants observed that larger real estate agents tended to be more aware of the provisions and were able to respond effectively. Other real estate agents were less aware of and/or less willing to implement the provisions, with one participant observing that real estate agents were often “out of their depth and unsure how to navigate difficult conversations about domestic violence”.

One caseworker explained how it was frustrating and time-consuming when they were required to educate real estate agents on the domestic violence provisions, particularly if they were trying to urgently remove their client from a dangerous environment at the same time. They commented that having to educate and remind real estate agents of these laws slowed down the process and resulted in back-and-forth negotiations, exacerbating the risk of harm to victim-survivors. Lack of awareness and understanding of the domestic and family violence provisions amongst real estate agents and landlords also means that caseworkers need to have a more in-depth understanding of the legislation in order to be able to effectively advocate for their clients; and requires tenants to be engaged with support services prior to terminating their tenancy.

Mixed awareness and understanding of the domestic violence provisions highlights the need for greater education and training within the community. This includes resourcing organisations who can develop educational resources and deliver training for people who advocate with and for victim-survivors of domestic violence, efforts directed at the broader community, and initiatives targeted at landlords and real estate agents to ensure they are aware of, and have the capacity to implement, their obligations under the *NSW Residential Tenancies Act 2010*.

### **Recommendations:**

*The Department of Customer Service should:*

- *resource organisations who can develop educational resources and deliver training for people who advocate with and for victim-survivors of domestic violence,*
- *resource awareness-raising and education efforts directed at the broader community,*

- *consider initiatives, such as mandatory training, to support landlords and real estate agents to better understand domestic violence and ensure they have the capacity to effectively implement their obligations under the NSW Residential Tenancies Act 2010.*

## Evidence of domestic and family violence: a burden placed on victim-survivors, and barriers to engagement with law enforcement, landlords and real estate agents

Currently, to end a tenancy using the DV provisions under the *NSW Residential Tenancies Act 2010*, the onus of proof is on victim-survivors who are required to evidence their experiences of abuse. This evidence can include a certificate of conviction of a domestic violence offence, a copy of a domestic violence order, a copy of a *Family Law Act 1975* injunction per section 68B or 114 of that Act, or a declaration by a competent person.<sup>16</sup>

Excluding the declaration by a competent person, all other forms of evidence require engagement with the legal system and likely, NSW Police. Yet many victim-survivors face significant barriers to engaging with law enforcement and others in positions of authority, including landlords and real estate agents. These barriers impact a victim-survivor's ability and/or willingness to engage with the domestic violence provisions, including issuing a termination notice to a landlord, agent, or co-tenant.

While most St Vincent de Paul Society NSW staff we consulted said they were aware of the "declaration by a competent person" as a form of evidence, the majority had never assisted a victim-survivor in completing this form, with most victim-survivors supported by our services submitting Apprehended Domestic Violence Orders as their primary form of evidence.

In 2021, during a consultation with our services on police responses to domestic and family violence, our caseworkers shared that in their experience, NSW Police are not always effectively resourced or equipped to respond to domestic and family violence.<sup>17</sup> This impacts the willingness of victim-survivors to engage with law enforcement, and in turn, their capacity to produce sufficient evidence of domestic and family violence to real estate agents when terminating their lease. Our caseworkers also observed numerous communication issues between police and victim-survivors, as well as, on occasions, a lack of cultural safety during criminal or Apprehended Domestic Violence Order (ADVO) proceedings. It is common for victim-survivors to be "left out of the loop" during ADVO court process. This not only further disempowers victim-survivors but can also impact their legal outcomes in court, and access to valuable evidence when terminating their lease.

In addition to barriers to engaging with law enforcement, broader factors limit victim-survivors' ability to realise their rights. Victim-survivors can feel immense shame about their experiences of domestic violence, some feel compelled to protect the perpetrator, and others aren't able to recognise themselves as victim-survivors at all.

The community's understanding of domestic and family violence is evolving. A 2020 survey reported that 100% of all domestic violence victim-survivors surveyed had experienced emotional and psychological abuse, and that 83.6% had experienced financial abuse.<sup>18</sup> These behaviours, alongside the use of fear and intimidation, make up a pattern of domination and control over a period of time that can

<sup>16</sup> Tenants' Union of NSW (2022) Domestic violence – ending your tenancy under the Residential Tenancies Act DV provisions, <https://www.tenants.org.au/resource/dv-amendments>

<sup>17</sup> St Vincent de Paul Society NSW (2021) Police responses to domestic and family violence, Submission to the 2021 audit conducted by the Audit Office of New South Wales, <https://www.vinnies.org.au/content/Document/NSW/Social%20Justice/Submission%20to%20the%20Audit%20on%20Police%20Responses%20to%20Domestic%20and%20Family%20Violence.pdf>

<sup>18</sup> Women's Safety NSW (2020) Criminalising coercive control position paper, 11 September 2020

be classified as coercive control.<sup>19</sup> Recent legislative changes such as the November 2022 criminalisation of coercive control in NSW<sup>20</sup> and increased investment into education, specialist services and supports<sup>21</sup> are helping the broader Australian community better understand the many nuances of domestic violence. Yet some victim-survivors still struggle to view their experiences as domestic and family violence, particularly if the abuse is more coercive in nature. This has a direct effect on help-seeking behaviours and a victim-survivors' ability to access their rights under the domestic violence provisions.

For these reasons, we recommend that the DV provisions be amended to make it easier for victim-survivors to provide evidence that they are in 'circumstances' of domestic violence' via a declaration made by a competent person. Expanding the list of competent persons is particularly important for victim-survivors from communities that face additional barriers to meeting evidence requirements.

These communities include:

- People from migrant and refugee backgrounds, particularly those from countries where there is a lack of trust in law enforcement. Victim-survivors may avoid informing others of their experiences of domestic and family violence due to language barriers, a misunderstanding of legal rights, perceived threats to cultural norms, impacts on visa status, cultural shame, and betrayal.<sup>22</sup> This in turn impedes access to the domestic and family violence provisions.
- Aboriginal and Torres Strait Islander women, who are up to 35 times more likely experience domestic and family violence than non-Aboriginal women.<sup>23</sup> Factors that contribute to this disparity – including the impact of colonisation, intergenerational trauma, displacement from traditional land and kinship groups, and the complexities surrounding the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system<sup>24</sup> - also impact help-seeking behaviours and a willingness to report domestic and family violence incidents. The over-criminalisation of Aboriginal and Torres Strait Islander peoples, fear of child removal, a lack of understanding of legal rights and options, or general mistrust in the criminal justice system may all contribute to a reluctance to engage with the police and others in positions of authority.<sup>25</sup>

Other groups who may be less likely to engage with law enforcement or inform others about their experiences of domestic and family violence include people who identify as lesbian, gay, bisexual, transgender, gender diverse, intersex, queer, asexual and questioning (LGBTIQ+), women living with disability including mental health conditions, and women experiencing problematic alcohol or other drug use.

Given significant cross-over between communities more likely to experience domestic violence and those less likely to engage with law enforcement, access to other forms of evidence should be expanded.

Community organisations such as Aboriginal community-controlled organisations, multicultural community organisations, disability and LGBTIQ+ specialist organisations may be more likely to identify and respond to people experiencing domestic and family violence, and therefore may be best placed to complete a *Declaration by a competent person* form. Expanding the 'competent persons list' to include

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<sup>19</sup> NSW Government (2020) Coercive control: Discussion paper, *October 2020*, p 5

<sup>20</sup> NSW Government (2022) NSW passes landmark coercive control reform: Media release, released by The Premier, Attorney General, Minister for Women's Safety and the Prevention of Domestic and Sexual Abuse, *16 November 2022*

<sup>21</sup> NSW Government (2022) \$20 million funding boost to help victim-survivors of domestic and sexual violence: Media release, released by Minister for Women's Safety and the Prevention of Domestic and Sexual Violence, *4 August 2022*

<sup>22</sup> Lu, M; Mangahas, X & Nimmo, J (2020) Domestic and Family Violence in Culturally and Linguistically Diverse Communities, *Pro Bono Centre – The University of Queensland*, *26 March 2020*

<sup>23</sup> Council of Australian Governments (2019) National Action Plan to Reduce Violence against Women and their Children 2010-2022; Productivity Commission (2011) *Overcoming Indigenous Advantage*

<sup>24</sup> NSW Bureau of Crime and Statistics Research (2020) *Reducing Aboriginal Overrepresentation in the Criminal Justice System 2018 - 2021*

<sup>25</sup> Australian Law Reform Commission (2018) *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (ALRC Report 133)*



staff from these organisations provides victim-survivors with a greater pool of resources to draw evidence from and minimises their need to re-tell their story to other parties.

While expanding the definition of competent persons within the Act would make it easier for victim-survivors to provide the evidence required to end their tenancy, many victim-survivors may still be required to engage with law enforcement officer or apply to NCAT, to recover their property once they have left their home. Further work is therefore needed to make it easier for victim-survivors to regain their property, and to improve the experiences of victim-survivors who do engage with the police and/or NCAT.<sup>26</sup>

**Recommendation:** *Expand the definition of ‘competent persons’ within the Act to include homelessness services, Aboriginal community-controlled organisations, multicultural community organisations, disability and LGBTIQ+ specialist organisations.*

## Damages, arrears, and bond payments

During our consultations, staff raised concerns about situations in which victim-survivors bear the costs of damages and arrears, and face barriers to reclaiming their bond payments: issues that can deter victim-survivors from terminating their lease. This also suggests that measures currently in place to protect victim-survivors, such as the exemptions from liability for property damage occurring during a domestic violence offence, are not working effectively.

Our caseworkers report that some real estate agents are not sympathetic to reports by tenants that rental arrears or damages were due to the perpetrator, as opposed to the victim-survivor. Financial abuse is a common form of control in domestic and family violence relationships, where the perpetrator uses money and resources to gain power over the victim-survivor.<sup>27</sup> Many victim-survivors are not in control of their finances, including rental payments, and therefore may not be aware that they are in rental arrears. One victim-survivor supported by the Society lost her tenancy as her partner was controlling their finances and said he was paying the rent, when in fact she was in arrears. Once this relationship broke down, the victim-survivor was left with thousands of dollars of debt.

Further complications arise when the perpetrator is not on the lease and there has been damage to the property, as the perpetrator is unable to be charged with the damages unless there is police involvement. Victim-survivors accessing St Vincent de Paul Society NSW support services are often left to rely on domestic violence and homelessness services brokerage to cover the costs of damages and arrears, especially if they are required to terminate their lease immediately due to safety concerns.

Tenants who wish to terminate their lease but are aware of property damage or rental arrears also risk a bad reference or being placed on a tenancy database.

Prospective tenants are often required to provide a tenancy ledger when applying for a new tenancy and this can pose challenges for victim-survivors still attempting to resolve disputes with a landlord or real estate agent about rental arrears or damages because of domestic violence. In an increasingly competitive rental market, this places victim-survivors and their children at greater risk of homelessness.

While the legislation states that victim-survivors should not be placed on a tenancy database such as TICA if damages or arrears result from domestic or family violence,<sup>28</sup> several St Vincent de Paul Society

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<sup>26</sup> [Our 2021 submission to the Audit Office of NSW’s audit into Police Responses to Domestic and Family Violence](#) outlines some steps the NSW Government could take to improve these responses, and we encourage the Department of Customer Service to review these recommendations.

<sup>27</sup> Good Shepherd Australia New Zealand (2022) Financial abuse: The what, who and why, <https://goodshep.org.au/financial-abuse-the-what-who-and-why/>

<sup>28</sup> Tenants’ Union of NSW (2022) Domestic violence and tenancy factsheet

NSW staff shared stories of victim-survivors who were placed on a database regardless, and as a result, have struggled to secure new rental tenancies.

Further, caseworkers shared concerns that even when victim-survivors were not placed on a bad tenants database, in some circumstances – particularly in smaller regional towns – they are informally “flagged” people as undesirable tenants. A person being supported by the St Vincent de Paul Society NSW spoke of her name being ‘tainted’ in the private rental market due to damages caused by her partner and due to no fault of her own.

The lack of understanding and empathy towards victim-survivors adds to the challenge of finding a new home. In an increasingly tight rental market, some caseworkers reported that discrimination against victim-survivors is now impacting people accessing Rent Choice Start Safety assistance, with landlords or real estate agents choosing tenants perceived as posing less of a risk.

For victim-survivors who do leave a property shared with the perpetrator, recuperating their share of the bond can prove difficult, particularly if the bond is registered under the perpetrator’s name. While a co-tenant is obligated under section 174 of the *NSW Residential Tenancies Act 2010* to repay other tenants any money paid towards the bond within 14 days<sup>29</sup> of receiving a written request, in practice, our caseworkers report this process can take much longer. While a victim-survivor can apply to the NSW Civil and Administrative Tribunal if they do not receive their share of their bond from the co-tenant within 14 days, these delays impact a victim-survivors’ ability to move on and find a new place to call home.

#### **Recommendations:**

*The NSW Government should:*

- *Allow victim-survivors who end their tenancy using the domestic violence provisions to apply directly to the Rental Bond Board for their portion of the bond*
- *Allow bonds to be transferred from one property to another, and where this is not possible, support more affordable payment methods such as incremental bond payments that can be paid off over time*
- *Develop processes to better ensure no victim-survivors are added to tenancy databases and where they have been added, requiring that real estate agents proactively remove victim-survivors.*

#### *Case Study - Monica*

*Monica was referred to St Vincent de Paul Society NSW after leaving a relationship that was physically, emotionally, and financially abusive. Monica was in rental arrears due to the financial abuse she sustained, and her ex-partner had also damaged a glass sliding door in the home during an argument. Monica was told by the real estate agent that she would be evicted if the door wasn’t fixed, and her rental arrears paid.*

*Monica sought advice from the Tenant’s Advice and Advocacy Service and a Staying Home, Leaving Violence team, who advised her that she is not responsible for the damages and arrears. They encouraged Monica to communicate this to the real estate agent, but the real estate agent did not agree, and put in an application to the NSW Civil and Administrative Tribunal (NCAT).*

*Monica was taken to NCAT and told that to remain in the rental property she had to pay the arrears and fix the door. Once referred to the St Vincent de Paul Society NSW, they assisted Monica to replace the*

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<sup>29</sup> Women’s Legal Service NSW (2018) Rental bonds: Domestic violence and housing, *A Practitioners Guide to Domestic Violence Law in NSW*, Ch. 11

*glass door, and another service agreed to pay Monica's rental arrears so she could stay in her home. Without the support of these services Monica would likely have found herself homeless as she was unable to cover the costs of the damages and arrears herself.*

## Supporting victim-survivors to remain at home

Above, we outline the experiences of victim-survivors who may wish to use the domestic violence provisions in order to end their tenancy. Yet for victim-survivors who would prefer to remain at home, it is even harder to terminate a perpetrator's co-tenancy. To do this without the perpetrator's consent, victim-survivors are required to produce a final apprehended violence order. This means that in reality, victim-survivors not willing or able to involve law enforcement have no choice but to leave their homes. Other mechanisms that would enable victim-survivors to safely terminate a perpetrator's co-tenancy should therefore be explored.

Many victim-survivors who choose to remain at home require changes to their property to remain safe, yet despite the domestic violence provisions introduced into the *NSW Residential Tenancies Act 2010*, victim-survivors still face barriers to making the changes they need.

Tenants cannot change the locks in their property without prior consent of the landlord or without a reasonable excuse.<sup>30</sup> Our caseworkers report that while some real estate agents are responsive to these requests, other real estate agents are "taking months". Approval proves even more difficult if the tenancy is not in the victim-survivor's name, creating additional delays and placing the victim-survivor in precarious and potentially dangerous circumstances.

Further, many renters may be reluctant to ask for the changes they would like due to fear of rent increases or eviction. These fears are not unfounded: under sections 84 and 85 of the *NSW Residential Tenancies Act 2010*, landlords can evict a tenant without any reason at the end of a fixed-term lease with just 30 days' notice, or during an on-going lease with just 90 days' notice.

'No grounds' evictions provide a loophole that landlords and real estate agents can use to evict tenants perceived to be 'troublesome', leaving many victim-survivors in fear of losing their homes. For victim-survivors of domestic and family violence, homes are more than just a place to sleep, they should also provide a sense of safety or refuge. Replacing the 'no grounds' evictions clauses with a list of reasonable grounds would better enable victim-survivors to realise their rights under the Residential Tenancies Act.

### **Recommendation:**

- *Explore alternatives to a final ADVO that would enable victim-survivors to terminate a perpetrator's co-tenancy and safely remain in their home*
- *Amend Division 7 – Security and safety of residential premises within the NSW Residential Tenancies Act 2010 to include reasonable timeframes that landlords and real estate agents must approve changes to the property, including changes to locks or installation of security devices*
- *Replace 'no grounds' evictions provisions with 'reasonable grounds' determined through community consultation.*

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<sup>30</sup> Tenants' Union of NSW (2022) Domestic violence and tenancy factsheet

## Conclusion

St Vincent de Paul Society NSW thanks the Department of Customer Service for the opportunity to provide input into the review of domestic and family violence rental laws.

We work with people experiencing domestic and family violence every day and recognise that the *NSW Residential Tenancies Act 2010* can have a significant impact on their right to home.

We hope that our contribution to this review will help the Department of Customer Service to better understanding the gaps in comprehension and application of the domestic and family violence provisions under the *NSW Residential Tenancies Act 2010* and will help improve responses to victim-survivors of domestic and family violence living in rental properties in NSW. Should you have any questions about this submission, please contact Rhiannon Cook, Manager, Policy and Advocacy, at [Rhiannon.cook@vinnies.org.au](mailto:Rhiannon.cook@vinnies.org.au).