



# THE RIGHT TO HOUSING IN AUSTRALIA

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### **Acknowledgement of Country**

This report was written and researched on the lands of the Gadigal People of the Eora Nation, and on the lands of the Dharawal Nation. Displacement from land continues to cause homelessness and perpetuate inadequate housing conditions for Aboriginal and Torres Strait Islander Peoples. A right to housing requires self-determined Aboriginal and Torres Strait Islander housing solutions. I pay my respects to elders, past, present and emerging, and honour their struggles for the recognition of their rights and their homes.

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# EXECUTIVE SUMMARY

## HOUSING PROVIDES AND PROTECTS SOME OF OUR MOST FUNDAMENTAL HUMAN NEEDS.

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Adequate housing shields us from the elements and from external threats and pressures. It gives us a base from which we can take part in the life of the community, and from where we can build a livelihood, take part in education, and contribute to society. Housing also provides a space where the private aspects of our lives are fostered and supported. The way people are housed reflects a social and political agreement about what standards of living, levels of inequality and social exclusion we tolerate or condone. Thus, housing provides not just material shelter, but helps set physical boundaries of belonging and community.<sup>1</sup>

Yet too many Australians are homeless, live in inadequate, insecure or unsafe housing, or need to sacrifice other necessities – from food to school uniforms – to keep a roof over their heads. The most recent Australian census showed that over 120,000 people were experiencing homelessness, a 5% increase over the previous census.<sup>2</sup> Many more people are at risk of homelessness, with 273,600 people seeking assistance from homelessness agencies in 2022-23.<sup>3</sup>

Violence in the home is a leading cause of homelessness, particularly for women and children, young people under 23, Aboriginal and Torres Strait Islander people, and people over 55 are overrepresented among the homeless.<sup>4</sup> Growing housing inequality feeds other inequalities – such as in health, social and economic participation, and contact with the criminal justice system. Too many people, particularly children and young people, are forced into exploitative and dangerous situations to find shelter.

For this reason, we need to enshrine a right to housing as a human right in Australian law. Recognising a right to housing acknowledges and protects the importance of housing to safety, dignity, privacy and autonomy. It recognises housing's role in providing the material goods that make these things possible, and its inclusion in our laws can lead to a fairer and more equal Australia now and into the future.



# WHAT IS THE RIGHT TO HOUSING?

The human right to housing is the right of each person to a place to live in peace, dignity and security. It is more than a right to mere shelter – it is a right to adequate housing, and reflects an aspect of the broader right to an adequate standard of living.

## The Right as an International Human Right

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Housing as a right is included in the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>5</sup> in Article 11(1):

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions ...

During the development of the ICESCR, Australia championed the inclusion of the right to an adequate standard of living as a human right, reflecting Australia's longstanding recognition of the importance of fairness and equality.<sup>6</sup>

The Australian Government has accepted its international obligations under the ICESCR, and indeed relies on those obligations to underpin its power in the sphere of housing policy.

For example, the federal government grounds the functions of the National Housing Finance and Investment Corporation in the external affairs power, to give 'effect to the International Covenant on Economic, Social and Cultural Rights ... particularly Article 11 of that Covenant.'<sup>7</sup>

However, it has not made it possible for Australians to claim their right to housing in domestic law. This contrasts with other international human rights. The International Covenant on the Elimination of All Forms of Racial Discrimination, for example, has been incorporated into federal law via the Commonwealth Racial Discrimination Act, meaning that it is possible for Australians to enforce their right to be free from discrimination on the basis of race before an Australian court.

## Understanding the Right to Housing in International Law – Interpretation and Obligations

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In international law, the right to adequate housing comprises seven elements.<sup>8</sup> Each of these elements must be present for housing to be adequate. They have been clearly described by the Committee on Economic, Social and Cultural Rights (CESCR), the body responsible for monitoring states' compliance with the ICESCR.<sup>9</sup>

# The Seven Essential Elements of Adequate Housing as a Right:

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## 1. Legal Security of Tenure

- » Is the cornerstone of the right to housing – without security of tenure, people can be arbitrarily removed from their housing at any time.
- » Applies to people living in all tenures: owners, social and private renters, those living in rooming houses, and land lease communities for example. All must have appropriate legal safeguards governing the terms of their residence in a property.
- » Strictly limits evictions: they cannot take place in an arbitrary or discriminatory fashion or as a punitive measure; due process must be followed; they must be a last resort and carried out with a minimum of force; and should not breach the evictee's other human rights or render the evictee homeless.<sup>10</sup>

## 2. Availability of Services, Materials, Facilities and Infrastructure

- » Requires that housing must contain facilities essential for health, security, comfort and nutrition such as access to safe drinking water, sanitation, energy sources, and emergency services.

## 3. Affordability

- » Paying for housing should not threaten or compromise a person or household's ability to satisfy other basic needs.

## 4. Habitability

- » Housing must meet basic standards of safety and quality, protecting the occupants from physical threats (such as heat, damp, or structural hazards).
- » As habitability requires safety, residents must be safe from domestic and family violence for the condition of habitability to be satisfied.<sup>11</sup>

## 5. Accessibility

- » Linked to the requirement of non-discrimination in the enjoyment of human rights.<sup>12</sup>
- » Housing should be accessible for marginalised and disadvantaged groups (such as people with disability, unaccompanied children and young people, or older persons). Reasonable accommodations (both physical and in the application of laws and policies) are an immediate obligation when such accommodations do not impose a disproportionate or undue burden, as is the requirement of barrier free design in new residential construction.<sup>13</sup>
- » Accessibility is also linked to access to land, an element particularly relevant for Aboriginal and Torres Strait Islander people.

## 6. Location

- » Housing is not adequate if it is located where dwellers are isolated from opportunities to work, learn and take part in society. Minority communities should not be 'ghettoised' including in resettlement or relocation. Moreover, housing is not adequate if built on polluted or dangerous sites.

## 7. Cultural Adequacy

- » The cultural dimensions of housing must not be sacrificed and must be preserved. The right to housing, particularly of Aboriginal and Torres Strait Islander people, must be exercised in a self-determined way to effectively guarantee the right to housing.<sup>14</sup>



Image: Gary Radler

The international legal framework for the right to housing recognises that for some countries, immediately realising adequate housing for everyone would not be possible. This reflects the situation when the UN human rights charters were drafted, when Europe was rebuilding after the devastation of World War II and many countries were only emerging as independent. It therefore requires states to fulfil the 'minimum core' of each element of the right, and then to take concrete steps toward the full realisation of the right (the obligation of progressive realisation).

However, the option of progressive realisation only applies where states cannot afford, or do not have the logistical and infrastructural capacity, to realise the right to housing in the short term. It was not intended to defer full enjoyment of the right in advanced economies like Australia, which have the financial and logistical power to fully realise the right. Thus the immediate obligations for the right to housing in Australia are all obligations that the government can afford to fulfil within its substantial available resources, which include the budget, financial policy, and human and technological resources.<sup>15</sup>

While the ICESCR is the main international human rights document protecting the right to housing, the right is also recognised in a number of other regional human rights treaties, such as the European Social Charter.<sup>16</sup> In some regions, it has been implied into human rights law from the existence of other human rights. This is the case under the African Charter of Human and Peoples' Rights where the right to property, the right to the protection of the family, and the right to health were considered to give rise to an implied right to housing.<sup>17</sup>

## National Legislation Including Constitutional Rights to Housing

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A right to housing is also frequently included in Constitutions. In fact, more than 50 constitutions protect a right to housing,<sup>18</sup> including those of South Africa and France. In addition, there is increasing protection of the right to housing as a human right in legislation. For example, Canada recently legislated a National Housing Strategy that recognises the right to housing as a human right, and a right to housing lies at the heart of Scotland's Human Rights Action Plan.

### SOUTH AFRICA

Perhaps the most well known Constitutional right to housing is that found in South Africa. It has been a powerful tool to hold the South African government to account for the promises of reform in its post-Apartheid Constitution, including the commitment to human dignity, the achievement of equality, and the advancement of human rights and freedoms. In South African housing rights cases claimants have been largely successful, and the constitutional right to housing has proven an important avenue for redress.<sup>19</sup>

Under the Constitution, everyone has a right to have access to adequate housing, the state must take reasonable measures – including through legislation – to achieve this right, and no arbitrary evictions are permitted.<sup>20</sup> In the foundational Grootboom case,<sup>21</sup> the Constitutional Court held that the state had breached its obligations for the right to housing.

The case concerned a community who were living in crisis conditions after having been evicted from the informal settlement they had occupied while waiting for the provision of public housing.<sup>22</sup>

Examining the state's housing policy, the Court held that the policy failed to take account of the needs of those worst off and was thus unreasonable.<sup>23</sup>

In later cases the Court has held that as aspects of a reasonable housing policy, the Constitution requires that the state consult with those who will be affected by housing policy in a process of 'meaningful engagement'.<sup>24</sup> It must also provide alternative accommodation in cases of forced eviction, as eviction, even of 'unlawful' occupiers, should not lead to homelessness.<sup>25</sup> In some cases, the courts have refused to grant an eviction order;<sup>26</sup> or imposed conditions that ultimately made the eviction impossible, leading to negotiated solutions outside the courtroom.<sup>27</sup> Both the Constitutional provision, and the standard of 'reasonableness review' have been highly influential in advancing understanding of how economic, social and cultural rights, including the right to housing, can be enforced by courts within a framework that remains appropriately deferential to the elected branch of government.



## FRANCE

In 2010, France introduced an enforceable right to housing: the *Droit au logement opposable* (DALO). Previously, the French Constitution included a right to housing, but this right could not be enforced as it only required ‘best efforts’ by the authorities, and effectively allowed them to avoid responsibility for housing. The backdrop to the new legislation was sustained activism and media attention around issues of homelessness and substandard housing in France, including tent cities on the banks of the Seine and fires in Paris’ low-cost residential hotels which resulted in the tragic deaths of residents. A coalition of over 50 civil society organizations pushed for an enforceable right. The DALO created an enforceable right to social housing for those in priority categories, later extended to all applicants who had been waiting for social housing for a substantial period. The law also aimed to drive construction of suitable, affordable housing.<sup>28</sup>



## SCOTLAND & THE UNITED KINGDOM

Scotland, like other UK jurisdictions, has imposed a legal duty on local government to house those in ‘priority need’ who find themselves homeless or at risk of homelessness since the 1970s. In 2012, Scotland broadened the duty, extending it to all people who find themselves homeless through no fault of their own.<sup>29</sup> The strengthening of Scottish legislation on housing has been informed by the principle of housing as a human right, which is central to plans for a new human rights framework in Scotland.<sup>30</sup> A proposed bill would incorporate four human rights treaties into Scottish law, including the ICESCR and thus the right to housing as a human right. In 2024, the UN Convention on the Rights of the Child was brought into Scottish Law, significantly strengthening children’s rights

in Scotland.<sup>31</sup> While the ICESCR has not yet been incorporated, the Government has introduced a 2024 Housing Bill which strengthens the rights of tenants, part of its ‘Housing to 2040’ strategy.<sup>32</sup>

The Scottish National Action Plan on human rights lists as its first priority ‘to achieve a decent standard of living’, including through realising the right to housing. The legislation will include the standard of progressive realisation to ensure movement toward full realisation of the right. Those experiencing poverty are identified as those most in need of the right to housing.<sup>33</sup> The new framework will significantly strengthen the legal protection of the right to housing in Scotland.

## CANADA

In 2019, Canada introduced a new National Housing Strategy, built on a human rights approach to national housing policy and designed to progressively realise the right to housing as a human right. The Strategy aims to increase affordable rental housing as its main tool to advance fulfilment of the right.<sup>34</sup> Canada's housing policy landscape is similar to Australia's: Canada is an advanced economy with high levels of home ownership and low levels of social housing. The federal government historically played a weak role in housing provision, and while Canada has international obligations for the right to housing under ICESCR, it has not incorporated those into domestic law where they can be claimed by Canadians.<sup>35</sup>

The new National Housing Strategy does not turn the right to housing into one that can be litigated before a Canadian court, but the 2019 National Housing Act creates a National Housing Council, which has a quasi-judicial power to review housing rights violations referred to it by the Federal Housing Advocate, and the new bodies are legally committed to oversee the implementation of the National Housing Strategy and thus the progressive realisation of the right to housing in Canada.<sup>36</sup> Advocates in Canada have noted the potential of the plan, but criticised the lack of funding behind it, which has weakened its impact for those in housing need.<sup>37</sup>



Image: FatCamera on iStock



## What the Right to Housing is Not

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There is often misunderstanding about what the right to housing entitles people to, and what it requires of governments. The right to housing does not mean any of the following, despite common misperceptions on these points:

- A right of everyone to be given a home or housing by the state. Rather, the right provides a sophisticated mix – of negative and positive; immediate and longer-term obligations<sup>38</sup> – which aim to improve peoples' living conditions in connection with their housing.
- A right to home ownership – all forms of tenure are equally deserving of protection, although the methods by which they are protected may differ, and realising the right to housing might both inspire, and require, creative thinking about new forms of housing and housing tenure.
- A right to take another person's home. The right to housing would not change the Constitutional position with respect to the Commonwealth's right to acquire private property on just terms.<sup>39</sup>
- A right to invest in or make money out of housing. The right to housing protects the 'use value' of housing, (housing as a place to live in peace, dignity and security), while recognising that housing may also be a major form of savings for individuals and families.<sup>40</sup> However, the right focuses squarely on, and prioritises, housing as a place to live rather than an investment strategy or asset class.



Image: Pat Whelen

# AUSTRALIA'S EXISTING HUMAN RIGHTS FRAMEWORK

## AUSTRALIA DOES NOT CURRENTLY PROTECT A RIGHT TO HOUSING AS A HUMAN RIGHT.

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This is the case both in federal law and in every State and Territory (including those that have Human Rights Acts or Charters). At the federal level, the Parliamentary Joint Committee on Human Rights, established in 2012, examines draft laws for compatibility with human rights, and the government is required to make a formal statement of 'compatibility' or 'incompatibility' with human rights of all its proposed laws. Nevertheless, in domestic law, the Federal Government is free to introduce legislation that limits rights,<sup>41</sup> and it has chosen not to make it possible for Australians to claim their international human right to housing before Australian courts.

Some elements of peoples' housing are protected in domestic law. This occurs through property, planning, taxation, child protection, social security, and pensions laws. Protection in the courts takes place through existing anti-discrimination laws, through state level human rights protections, and through judges interpreting Australia's laws in conformity with its international human rights obligations, as the below case studies demonstrate. However, these current protections are patchy, may only be available in some states or territories, and are often weak or limited, as the examples below demonstrate.

## Anti-Discrimination Law

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Anti-discrimination laws ensure non-discrimination in the application of the law on the basis of certain characteristics, such as gender or sex, race or ethnicity, or marital status. Anti-discrimination laws should ensure that everyone has access to accommodation on equal terms.<sup>42</sup> The law applies not only to public authorities like community housing providers or the government but also the acts of private parties, such as the owners of boarding houses or backpacker accommodation, landlords and real estate agents.

## CASE STUDY

### Anti-Discrimination Law and Discrimination in the Private Rental Market

An Aboriginal woman sought the services of a local real estate agency in Casino, NSW, to find a rental property for herself and her family. She was advised that there were a number of properties suiting her needs, and she filled in an application form and provided a reference. The real estate agency informed her she would hear back from them within a few days, but despite numerous follow ups, the agency did not contact her with any properties.

A short time later, two of the woman's relatives, who were non-Aboriginal, approached the real estate agency.

Both were offered the details of suitable properties, but when the woman returned later that same day, the agency told her there were no properties available. The woman approached the NSW Anti-Discrimination Tribunal, arguing that she had been discriminated against on the basis of race. The Tribunal found that the agency had treated her less favourably than others on the basis of her race. She was entitled to compensation for the discrimination.<sup>43</sup>

The disadvantage of anti-discrimination law is that it only protects people when they are discriminated against on the basis of some prohibited ground, such as race or sex. It cannot assist people where everyone is treated the same, but in a way that disadvantages some people.

For example, if keeping pets in rental accommodation is prohibited for everyone, then there is no claim in anti-discrimination law for pet owners. Consequently, discrimination law claims can result in a benefit or protection being withdrawn from everyone, rather than extended to the group discriminated against, removing the discrimination but leaving everyone worse off.





## Protection of Housing through Related Domestic Legislation

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Housing rights are also protected in state and territory residential tenancies legislation, and by the provision of social or public housing. However, there is an important distinction between housing rights, and the right to housing as a human right.<sup>44</sup> A right to housing as a human right should be understood as codified, or implied, in international law or in domestic law, where it will be protected in legislation or through a constitution.

Crucially, a human right is based on the recognition of human beings as entitled to certain standards of dignity and respect, by virtue of their humanity. Housing rights, on the other hand, refer to legal rights codified into or arising from the ordinary domestic law. These rights refer to entitlements from national social welfare legislation to property law. Human rights impose binding obligations of special status, over and above the everyday legal entitlements to social welfare which are 'essentially discretionary in nature.'<sup>45</sup>

In fact, many Australians' social entitlements have been weakened by successive governments and policies. This includes sharp reduction in public housing supply over the decades, falls in social security and income support, and stagnation in wages and wage protection,<sup>46</sup> all of which impact on the ability to access safe and secure housing. Housing legislation has not been strong enough to ensure the right to housing in Australia.

Above Image: Kaan Sezer

## Protection Through State and Territory Human Rights Acts

State Human Rights Acts and Charters in Victoria, the ACT and Queensland include a right not to have one's home and family life unlawfully or arbitrarily interfered with.<sup>47</sup> This right can provide important protections for those who find that public authorities have infringed on existing rights in or to their home. It applies only in two states and one territory in Australia, thus demonstrating that human rights protection is uneven across the country.

## CASE STUDY

### The Right to Enjoy a Home Without Arbitrary and Unlawful Interference.

The case<sup>48</sup> concerned the home of an older man named PJB in the Court proceedings, who had experienced mental illness and had been living – involuntarily – in a hospital mental health unit for a decade. He wished to return to his home, which he owned, in a Melbourne suburb.<sup>49</sup> The hospital staff, however, thought it was in his best interests for him to move into supported accommodation in a hostel. Because the hospital team thought this would be more likely if their patient did not own his own home, they applied for a guardianship order which would have led to his home being sold without his consent.<sup>50</sup> To contest this order PJB brought a case to the courts where he argued that the order allowing the sale of his home unjustifiably interfered with his human right to privacy and home. Article 13(a) of the Victorian Charter of Human Rights and Responsibilities Act (2006) (Victorian Charter) provides: “A person has the right – (a) not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with”.<sup>51</sup> The Court found that people suffering from a mental illness are at particular risk of interference with their right to privacy and home, and that an

important purpose of the Victorian Charter was to protect against that interference when it is arbitrary or unlawful.<sup>52</sup> It found that the human rights in question were of the highest importance,<sup>53</sup> and had been breached by the decision to appoint an administrator to sell the home. The Court's ruling meant that the applicant retained his home and his ability to return to it upon his recovery.<sup>54</sup> The case is a remarkable victory, but also underlines the limits of the right not to be deprived of one's home: it protects existing property rights to a home. When PJB was finally able to go home, the home he owned was waiting for him. However, many people leaving institutional settings, from immigration detention to prison to mental health facilities, will be released into homelessness.<sup>55</sup>

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A second example where existing human rights protections under State level human rights legislation have proven powerful is in the discriminatory lockdown orders on Melbourne's public housing towers during the COVID-19 Pandemic.

# CASE STUDY

## Melbourne Public Housing Tower Covid Lockdown

During the COVID-19 Pandemic, the Victorian Government imposed a lockdown order on 9 public housing towers in inner-Melbourne. The lockdown was imposed suddenly and without warning amid a heavy police presence. Residents were forced to remain within their buildings (most for five days, but some for a further nine) without the ability to organise access to food, medicines or other basic goods. They were unable to access fresh air or exercise.<sup>56</sup> The sudden lockdowns applied only to the residents of the public housing towers. Different measures were imposed on residents in individual, private sector, homes merely on the other side of the street, who were given warning and time to prepare.<sup>57</sup>

Thus the lockdowns discriminated against people based on their housing tenure, stigmatising public housing residents. In an important investigation into the lockdown and its compatibility with human rights, the Victorian Ombudsman reported that the actions were taken amid stereotypical perceptions that the Towers were ‘a hotbed of criminality and non-compliance’. She found it ‘unimaginable that such stereotypical assumptions, which led to the “theatre of policing” that followed would have accompanied the response to an outbreak of COVID-19 in a luxury apartment block.’<sup>58</sup>

In investigating the human rights breaches involved in the lockdown under the Victorian Charter, the Victorian Ombudsman found that the human rights of the Towers’ residents were not

considered, and crucially, that failure came with a ‘deep human cost.’ She continued: ‘In a just society, human rights are not a convention to be ignored during a crisis, but a framework for how we will treat and be treated as the crisis unfolds.’<sup>59</sup>

While the rights of the residents were not taken into account before the lockdown was imposed, those rights were valuable in vindicating the denial of liberty, and the highly stigmatising and discriminatory treatment they received. Ultimately, after reviewing the evidence and listening to the Tower residents the Ombudsman found that their human right to humane treatment when deprived of liberty and their right to have their human rights considered by public authorities, were breached. The Tower residents were later able to access compensation for the violation of their rights.<sup>60</sup>

However, the Ombudsman was only able to consider those rights set out in the Victorian Charter, not the full range of human rights that Australians have in international law. This meant that any broader consideration of violations of the right to housing as a human right could not be taken into account, including issues such as habitability or accessibility (including of disadvantaged groups, for example the elderly or those with health vulnerabilities) impacted by the lockdown. Only a small slice of the harms experienced was captured by existing human rights laws.

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# HOUSING IN AUSTRALIA WITHOUT A HUMAN RIGHT TO HOUSING

## AUSTRALIA IS CURRENTLY EXPERIENCING A WIDELY ACKNOWLEDGED AND DEEPLY FELT HOUSING CRISIS.

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Levels of homelessness are very high, and are rising particularly among people from disadvantaged parts of the community such as older women, women and children escaping family violence, and those on fixed incomes.<sup>61</sup> To take just one state, in Victoria, one in 57 residents presented to a homelessness service in 2018-19,<sup>62</sup> but it is likely that about two thirds of people who experience homelessness do not seek assistance from homelessness service providers.<sup>63</sup> Street homelessness and rough sleeping are the visible manifestations of homelessness, but represent only one facet of the experience.

The Australian Bureau of Statistics includes within homelessness those who lack one or more of the elements that represent a home. This includes those rough sleeping and housed in temporary accommodation; those housed in inadequate housing; those who have no tenure or tenure that is short or not extendable; those who do not experience personal living space where they have privacy and safety – including those in overcrowded dwellings and who are experiencing domestic violence.<sup>64</sup>

The lack of access to adequate and affordable long term housing is major impediment to overcoming homelessness.<sup>65</sup> The experience of homelessness represents a major trauma<sup>66</sup> and is often accompanied by the loss of enjoyment of other rights, for example the rights to privacy, freedom of association, health and family life.<sup>67</sup>

The background context to homelessness includes rapidly increasing housing prices, underinvestment in public and affordable housing, real-terms reduction in welfare benefits, the epidemic of domestic and family violence, and the lack of options outside the market for those on low incomes. The results of a leading rental affordability study have found that rents have never been less affordable, increasing by 11% in 2022-23.<sup>68</sup> Surveying all properties listed on the leading online rental platforms, they found that across the country 'a mere four rentals were affordable for a single person receiving JobSeeker across Australia. None were affordable for someone on Youth Allowance.



Couples out of work, single parents relying on Centrelink, and people in Australia receiving the Disability Support Pension must all contend with a rental market where 0.2 percent of rentals are affordable.<sup>69</sup> But the issues are so deep and widespread that homelessness and housing insecurity are also increasing across middle income groups. No fault evictions in the private rental sector push individuals into homelessness, at the same time demonstrating the weakness of tenure protections for renters across Australia. Australian household debt is some of the highest in the world, largely driven by mortgages.<sup>70</sup> Meeting housing costs is a major factor in poverty in Australia, across tenure types.<sup>71</sup>

High levels of homelessness, and inequality in access to adequate housing, contradict the common perception of equality in Australia. Inequality in access to adequate housing for Aboriginal and Torres Strait Islander people is particularly egregious, as the example of the Santa Teresa community, and their fight for adequate housing, shows.



Image: Christopher Freeman



# CASE STUDY

## Fighting for Humane Housing in Aboriginal Communities: The Santa Teresa Cases

In September 2020, public housing tenants in the remote Aboriginal community of Santa Teresa (Ltyentye Apurte) in the central Australian desert won a significant Supreme Court case against the Northern Territory government, their landlord. Several years prior, the government had taken over their housing, scrapping previous community management. But upon assuming control, the government had failed to provide adequate maintenance or repairs, leaving housing to deteriorate to uninhabitable conditions.

The Community brought evidence that their landlord's neglect meant that their housing lacked safe or functioning sanitation. They showed where external doors had not been installed, and where windows had been barred up and air conditioners malfunctioned, making housing unliveable in the Central Australian desert. At the same time they also detailed the daily struggle for dignified and adequate housing in the face of these conditions.<sup>72</sup> Their legal argument was that the government breached the Residential Tenancies Act by failing to provide them with habitable housing, a basic standard required of all landlords under Australian Law. The Santa Teresa community won: the tribunal agreed that the Residential Tenancies Act's definition of habitability must be read as ensuring humane housing.<sup>73</sup> But the government appealed – arguing that the residents in this remote Northern Territory Aboriginal Community were entitled only to 'safe' housing.

After years of litigation the residents were vindicated. In the course of these appeals, the Parties used the right to housing as a human right to clarify the acceptable meaning of habitability in Australian law.<sup>74</sup> The cases demonstrate how a right to housing can strengthen housing standards.

However, enshrining the right to housing as a human right in Australian domestic law would have immeasurably strengthened the Santa Teresa residents' case, would have had the potential to prevent the conditions arising in the first place, and could strengthen the likelihood of enforcement. Enshrining a right to housing would have placed positive obligations on the government to ensure minimum standards of housing, including sanitation, and adequate physical security. It would also have required the government to give thought to the cultural adequacy of housing, the connection between the realisation of housing for Aboriginal and Torres Strait Islander people and self-determined housing, particularly as the Federal and NT government had scrapped community managed housing in Santa Teresa as part of the NT Intervention.

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Recognising housing as a right – a place to live in dignity, peace and security – can help underpin policy changes that can respond to homelessness and provide a foundation for a fairer housing system.

# WHY WE NEED THE RIGHT TO HOUSING PROTECTED AT THE NATIONAL, STATE AND LOCAL LEVEL

## WHY A FEDERAL HUMAN RIGHTS ACT?

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Numerous studies have shown that Australians overwhelmingly support the protection of human rights at the Commonwealth level.<sup>75</sup> With respect to the right to housing, national level protection is important at the level of practice and of principle.

Ensuring that all Australians have adequate housing that provides them with a safe and dignified place to live requires coordinated action. Housing and homelessness problems are complex in nature, and they cut across policy areas.<sup>76</sup> We might first think of the right to housing as a matter for the states. However, national governments can often act most effectively to ensure the right to housing at the macro level, including through a national housing strategy or plan, fair distribution of resources, development of national standards, financing, mortgage and credit regulation, the appropriate support of other social rights (e.g. the right to social security in the form of income support).<sup>77</sup>

This points to the fact that the right to housing is not only realised through the provision of housing units, as essential as that is, or even through housing policy per se, but can be realised through a number of other government initiatives, many of which the national government has direct responsibility for. These include:

- Taxation policy – which can include subsidies or advantageous policies for renters, home owners, organisations or businesses/non-profits providing housing as appropriate to protect or further the right to housing;
- Regulation – for example of the construction industry, banking and credit industries, and real estate industries;
- Direct investment in social supports needed to prevent and respond to homelessness, including in homelessness programs, in health, disability, mental health, emergency responses, aged care and social security;
- Resource allocation to the states.

The federal government already intervenes in either realising the right to housing, or failing to do so, through its constitutional responsibility for policy in these areas, and it is in many of these areas where a Federal Human Rights Act would give Australians the opportunity to hold the government to account for the right to housing.

In addition, with human rights based on the inherent equality of all human beings, the extent to which people have their rights protected should not be contingent on where in Australia they happen to live.

## Why State/Territory and Local Protection?

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Under international law, obligations for international human rights extend to all levels of government, from federal to local. The federal government bears ultimate responsibility for ensuring the rights in international law at the domestic level,<sup>78</sup> but it is very common in federal systems that all the levels of government will have some competence or responsibility for housing, and this has not prevented the successful protection of the right to housing at the national level. It is up to Australia to decide how to allocate responsibilities through its constitutional and other frameworks for its compliance with the human right amongst the federal, state/territory and local levels.<sup>79</sup>

As the UN Special Rapporteur on Housing noted in a 2015 report, local and sub-national governments are crucial to realising the right to housing: ‘forced evictions and discriminatory exclusion from housing often result from decisions or policies adopted at the local or subnational level.’ Meanwhile, subnational governments have ‘increasingly critical responsibilities’ for the right to housing including in infrastructure development,

land-use planning, and development and administration of housing and social programmes. For the right to housing to be given effect at the sub national level, both statutory and administrative remedies must be timely and effective.<sup>80</sup>

In Australia, the constitutional framework will continue to govern which level of government takes on which role. States and territories will remain primarily responsible for law and policy reform that will strengthen security of tenure and lift habitability standards, which is particularly relevant for tenants in low-income and social housing. Currently, state and territory laws for security of tenure are ‘seriously deficient’<sup>81</sup> while much rental housing is poor quality.<sup>82</sup> The Australian Constitution is silent on responsibility for housing, and in practice investment in social housing has been a shared responsibility since 1945. Thus federal, state and territory governments are responsible for increasing the supply of social and affordable housing, which is desperately needed.<sup>83</sup>

Under the South African Constitution, discussed earlier, cases have clarified that a reasonable housing policy must clearly allocate responsibilities to the different levels of government, from the national to the local, backed by appropriate financial and human resources.<sup>84</sup> The Court has also noted that local government cannot wholly escape responsibility for its obligations for the right to housing by claiming dependence on funding from other levels of government.<sup>85</sup> These considerations are also relevant in the Australian context, and the South African example clarifies that all levels of government bear responsibilities for safe, secure and adequate housing for all.

However, the responsibility ultimately falls to the national government to ensure that subnational governments have the financial, human and other resources to effectively fulfil their responsibilities.<sup>86</sup> A national Human Rights Act enshrining the right to housing can guide all levels of government and be used by ordinary people to contest the violation of their right to housing. States and territories with human rights legislation can amend their Acts to include a right to housing on the same terms as the proposed federal Human Rights Act, and may even choose a stronger model.



Image: Chanvit Huatsri

## From Laggard to Leader: Opportunities for an Australian Right to Housing – Climate and Self-Determination

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Australia has long been an outlier when it comes to human rights protections. It is the only liberal democracy without federal human rights legislation. When it has accepted international human rights obligations, it has often not brought those rights into Australian law, and the federal government has often resisted even cautious efforts to expand human rights through the common law. States and territories, however, have begun to recognise the need for human rights protections, even if they also remain well behind in their recognition of economic, social and cultural rights.

However, the fact that Australia has not yet created a Human Rights Act gives us the opportunity to move from laggard to leader, protecting a right to housing that is fit for the many challenges of the future.

Two areas where this is particularly pressing are in responding to climate change, and in recognising Aboriginal and Torres Strait Islander people's rights to self-determination in housing.

Climate has an impact on housing, and housing has an impact on climate. As the UN Special Rapporteurs on the Right to Housing have been noting for several decades, the climate crisis is already impacting access to safe, adequate housing across the globe.<sup>87</sup> Australia is no exception. Increasingly frequent and severe weather events, from fire to flood, are significantly exacerbating existing risks.<sup>88</sup> Marginalised, racialised, and vulnerable communities remain the most impacted by climate change events.<sup>89</sup>

At the same time that climate change is making access to adequate housing in conditions of stability and safety more difficult, it is a cruel reality that the construction of new dwellings, as well as the way we use our existing dwellings, contributes to the very problem of anthropogenic climate change.

Building accounts for 18% of Australia's direct carbon emissions, and globally the building and construction sector contributes over 20% of greenhouse gas emissions.<sup>90</sup> To put this in context, globally, aviation accounts for 2.5%, while the carbon footprint from livestock is 14.5%.<sup>91</sup> Energy consumption for cooking, heating, cooling and lighting meanwhile, comprises nearly 40% of all energy-related carbon dioxide emissions.<sup>92</sup> All phases of the construction cycle - extracting the required resources, manufacturing, transport, construction and demolition - contribute to greenhouse gas emissions, while energy inefficient housing, and the impacts of housing (eg urban sprawl and deforestation) all play their part in climate change.<sup>93</sup> For these reasons, the UN Special Rapporteur on Housing has called for sustainability to be considered the 8th element of the right to housing in international law.<sup>94</sup>

Australia's interpretation of the right to housing must be in light of the right to a healthy environment. Only when housing is sustainable, and its whole life cycle is considered with sensitivity to the impacts on the environment, can its realisation contribute to the realisation of the right to a healthy environment and a sustainable future for everyone. Fortunately, Aboriginal and Torres Strait Islander communities are pointing the way.



Aboriginal and Torres Strait Islander people have finely honed knowledge and expertise of Country, including of what adequate housing requires for each community, and of how it responds to climatic needs. This knowledge has been accumulated over thousands of years, and provides a rich resource for Aboriginal and Torres Strait Islander people in creating and sustaining self-determined housing for their communities.

Both sustainability as an 8th element of the right to housing, and self-determination as a necessary underpinning for housing to meet the definition of adequacy have been developed by the UN Special Rapporteurs on housing,<sup>95</sup> and Australia has the opportunity to be a world leader in these interlaced aspects, enshrining a right to housing that recognises both the link with a right to a healthy and sustainable environment, and with self-determination, helping to protect and foster efforts like the work of Wilya Janta.



Image: Tash Khan

# CASE STUDY

## **Self-Determined and Climate-safe Housing with Wilya Janta**

In the remote Barkly Region of the Northern Territory where housing standards are among the worst in the country, one Aboriginal community is asserting its right to self-determined, culturally appropriate and climate-safe housing. The Wilya Janta (Standing Strong) Housing Collaboration is a grassroots Aboriginal organisation from Tennant Creek working to build agency and capacity at the community level to enable and realise the design and construction of homes that reflect cultural values and protect people from the worsening impacts of climate change.

Like many Aboriginal people of his age, Wilya Janta founder and Warumungu Elder Norman Frank Jupurrurla was the first generation in his family to be born into European-style housing. Like most Aboriginal and Torres Strait Islander people across Australia, Norman has never had the opportunity to define what his home looks and feels like.

In places like Tennant Creek where Norman and his family live, remote government housing is built with little effective community consultation. Governments ignore historic displacements and the need for cultural and environmental design considerations. This neglect, combined with inadequate government investment in First Nations housing, drives poor outcomes for Aboriginal and Torres Strait Islander people in remote communities. The result is that Norman, like most Aboriginal people living in remote communities, has never lived in a house that reflects his culture and protects him from the elements.

Wilya Janta is working with community and industry to change this by designing and building culturally and environmentally appropriate homes for Aboriginal people in Tennant Creek. The organisation's approach involves deep community consultation to ensure homes are culturally appropriate, liveable, and supportive of community well-being.

Wilya Janta partners with designers, architects, scientists, and construction groups to provide Aboriginal people with the tools and resources to design their own homes. By doing so, Wilya Janta aims to build homes that facilitate Aboriginal cultural practices such as sleeping arrangements, avoidance relationships, outdoor living, and ritual smoking practices. Co-design with Aboriginal people also incorporates thousands of years of accumulated knowledge and wisdom of how best to live in harsh climates. By combining traditional knowledge of country with modern technologies and design techniques, Wilya Janta aim to build homes with leading levels of thermal comfort and energy efficiency.

Through its model, Wilya Janta aims not only to provide high quality housing to community in Tennant Creek but also to demonstrate for the first time the feasibility of empowering First Nations people to build culturally appropriate and climate-safe housing in an affordable manner and on scale.

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# HOW CAN THE RIGHT TO HOUSING BE A REALITY FOR EVERYONE IN AUSTRALIA?

The examples discussed above, including international exemplars in France, South Africa, Canada and Scotland, demonstrate that there are numerous ways to enshrine and protect a right to housing. Human rights protection provides strength, stability, and an important statement of principle about the type of society we want to live in. What we protect in our Human Rights Acts tells us about the Australia we aspire to: whether equal or unequal, fair or unfair. The exact terms of the right to housing in a future Australian Human Rights Act should be carefully considered,<sup>96</sup> but they should not fall below the international standards contained in Article 11(1) of the ICESCR. The Australian Constitution and political system allows for harmonising legislation, bringing state laws into line with a Federal Human Rights Act, while federal laws would enable leadership as well as accountability.

States and territories with human rights legislation should reform them to include a right to adequate housing, reflecting at a minimum, the right to housing in international law. In fact, one recommendation of the Victorian Legislative Inquiry into Homelessness was precisely to include a right to housing in the Victorian Charter.<sup>97</sup>

## What Difference Would it Make?

A human right to safe, dignified and adequate housing for all, included in an Australian Human Rights Act, would provide important protections.

### I. GUIDING POLICY AND REMEDYING VIOLATIONS

A right to housing can inform the core principles of housing policy and housing laws. These should be structured around the seven elements of the right to housing (see Part I above), and around the core value that housing is a place for each person to live in peace, dignity and security. We should be asking for, and expecting, that housing policy does conform to these international obligations. Human rights play a crucial role before policies and laws are made, and once they have been enacted. At policy proposal and implementation stages, the right to housing should inform and guide the types of policies we make and the specifics of how they will be applied. The right to housing provides a framework of principles to ensure that all action is guided by the right to have access to adequate housing, following the seven elements of adequate housing. Once laws are made, the right provides a basis to hold the government to account for its failures. As such, any proposed human rights protections at the federal level must include adequate remedies.

### II. HOLDING THE GOVERNMENT TO ACCOUNT

Under human rights law, the government has ultimate responsibility for the wellbeing of its citizens. Enacting a human right to housing points to the government's role in ensuring a fair housing system for all people in Australia. The government cannot shift the blame for poor housing conditions, unaffordability, or homelessness onto private parties like the real estate or construction industry, private landlords, or the 'state of the economy'. When housing is expressed as a right, the government's role in respecting, protecting and ensuring the right is made clear.

### III. REALISING THE RIGHT TO HOUSING IS ECONOMICALLY EFFICIENT

For a long time, the presumed cost of ensuring housing as a right has been used as a reason not to recognise it, or to avoid the full range of state obligations for it.<sup>98</sup> However, ensuring the right to housing may actually be cheaper than failing to do so. Recent research in Wales has mapped the economic cost of realising the right to housing compared with the costs to the country of poor housing conditions.<sup>99</sup> It found that the costs of inadequate housing to health services, educational performance (leading to lower levels of economic productivity and activity), the criminal justice system, frontline homelessness services, and even energy efficiency over 30 years were £11.5 billion, while the costs for ensuring housing adequacy and ending homelessness over the same period were only £5 billion.

Similarly, Australian analysis of the economics of homelessness reveal the significant costs savings in early intervention and homelessness prevention, compared to high financial costs of homelessness itself. For example, a 2016 study found that annual spending on specialist homelessness support for young people experiencing homelessness was more than seven times the cost of supporting a long-term unemployed young person who remained housed, even without counting broader costs to the community such as the additional impact on education.<sup>100</sup>

## IV. FROM PASSIVE WELFARE RECIPIENTS TO EMPOWERED

Framing housing as a right helps to recognise the deeply personal costs and traumas associated with inadequate housing and homelessness. But it frames people experiencing homelessness or inadequate housing not as victims, but as empowered rights holders, entitled to full participation and inclusion in the social goods that enable everyone to live a decent life in Australia. In doing so, a right to housing can help reframe debates about equality, deservingness, and inclusion in ways that reach toward a fairer Australia.

## V. A RIGHT TO HOUSING UNDERPINS AND HELPS TO REALISE

Lack of safe, secure and adequate housing impacts on other human rights. These impacts can breach the human rights recognised in Australian law in the current state and territory human rights legislation, as well as Australia's obligations in international law. For example, homelessness and inadequate or unsafe housing are associated with poor mental and physical health, leave people without privacy, make it difficult or impossible to fully take part in public life, can disrupt schooling and may impact on the ability to avoid coerced or forced work. Being homeless or in inadequate housing can result in the removal of children from their families, can impair the exercise of religious freedoms or cultural rights. On the flip side, protecting the right to housing as a human right protects these vital human rights, and can help realise other human rights goals. To take just one example, as the Wilja Janta case study demonstrates (on page 23), a right to housing can also strengthen the right to a healthy environment and the right to self-determination.



Image: Ketut Subiyanto



# FINAL CONCLUSIONS AND RECOMMENDATIONS

For too long, Australian governments have relied on an assumption that Australians don't need a right to housing to ensure an adequate standard of living and a place to live in peace, dignity and security. The current housing crisis shows us otherwise and puts the spotlight on the need to better protect these this crucial right.

## Recommendations

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1. Passage of a federal Human Rights Act that includes both a right to housing, as well as associated rights such as a right to a clean, healthy, safe and sustainable environment.
2. Passage of state and territory Human Rights Acts or Charters that include both a right to housing and a right to a clean, healthy, safe and sustainable environment and amendment of existing state and territory Human Rights Acts and Charters to incorporate the same.
3. Reforms to state and territory legislation to strengthen security of tenure and improve accessibility, habitability, climate-resilience and energy performance for social and affordable housing.
4. Action from governments across Australia to improve housing supply and affordability, including to accessible, climate-resilient, and energy efficient social and affordable housing.

# ENDNOTES

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- 5 UNGA Res 2200A (XXI) (adopted 16 Dec 1966, entered into force 3 Jan 1976).
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- 7 See the National Housing Finance and Investment Corporation Act (NHFIC) 2018 s 10(1)(b)(i) and discussion in Martin et al, 'Towards an Australian Housing and Homelessness Strategy: understanding national approaches in contemporary policy' (AHURI Final Report No 401, June 2023), 28.
- 8 UN CESCR, General Comment No 4: (1991) E/1992/23.
- 9 See in particular UN CESCR General Comment No 4 (note vii), UN CESCR General Comment No 7: (1997) E/1998/22 Annex IV.
- 10 See CESCR General Comment No 7 (ix); Michel Vols and Erna Dyah Kusumawati, 'The International Right to Housing, Evictions and the Obligation to Provide Alternative Accommodation: A Comparison of Indonesia and the Netherlands' (2020) 21(2) *Asia-Pacific Journal on Human Rights and the Law*, 237.
- 11 Gulia Paglione, 'Domestic Violence and Housing Rights: A Reinterpretation of the Right to Housing' (2006) 28(1) *Human Rights Quarterly*, 120; Leilani Farha, 'Is There a Woman in the House-Re/conceiving the Human Right to Housing' (2002) 14 *Canadian Journal of Women and the Law*, 118.
- 12 Art 2(2) of ICESCR states: The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- 13 UN 'Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, A/72/128 (12 July 2017) paras 37 and 41.
- 14 UN 'Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to nondiscrimination in this context' A/74/183 (17 July 2019). See also Thalia Anthony and Jessie Hohmann, 'Indigenous Housing Rights and Colonial Sovereignty: Self-Determination and Housing Rights beyond a White Possessive Frame (2023) *Social and Legal Studies* <https://doi.org/10.1177/09646639241227120>
- 15 See D Elson, R Balakrishnan and J Heintz, 'Public Finance, Maximum Available Resources and Human Rights' in A Nolan, R O'Connell, and C Harvey (eds) *Human Rights and Public Finance* (2014, Hart) 14; Robertson 'Measuring State Compliance with the Obligation to Devote the Maximum Resources to Realizing Economic, Social and Cultural Rights' (1994) 16 HRQ 693. Devote the Maximum Resources to Realizing Economic, Social and Cultural Rights' (1994) 16
- 16 European Social Charter (Revised), (w1999) CETS no 163, Art 31.

- 17 See SERAC and CESR v Nigeria, African Commission on Human and Peoples' Rights, Comm. No 74/92 (1995) (Ogoni Case); *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*, African Commission on Human Rights, Comm. No 276/03 (2010) (Endorois case).
- 18 See Michelle Oren, Rachelle Alterman and Yaffa Zilbershats 'Housing Rights in Constitutional Legislation: A Conceptual Classification' in P Kenna, (ed) *Contemporary Housing Issues in a Globalized World* (Ashgate, 2014) 141.
- 19 As Wilson, Dugard and Clark note, in all the cases under s 26, the claimants were ultimately granted 'substantially what they approached the court to ask for' Stuart Wilson, Jackie Dugard and Michael Clark, 'Conflict Management in an Era of Urbanisation: 20 Years of Housing Rights in the South African Constitutional Court' (2015) 31(3) *South African Journal on Human Rights* 472, 472.
- 20 The relevant section of the *South African Constitution* is 26:
  - 1) Everyone has the right to have access to adequate housing.
  - 2) The state must take reasonable and other legislative measures, within its available resources, to achieve progressive realisation of this right.
  - 3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.
- 21 *Government of the Republic of South Africa Grootboom* [2001] 1 SA 46 (Constitutional Court).
- 22 Ibid [4].
- 23 Ibid [66].
- 24 *Occupiers of 51 Olivia Road, Berea Township, and 197 Main Street, Johannesburg v City of Johannesburg and others* (2008) (3) SA 208 (Constitutional Court); *Melani v City of Johannesburg* 2016 (5) SA 67 (High Court).
- 25 *Residents of Joe Slovo Community, Western Cape Thubelisha Homes and others* 2010 (3) SA 454 (Constitutional Court); *Port Elizabeth Municipality v Various Occupiers* (2005) (1) SA 217 [16] (Constitutional Court); *Mathale v Linda* 2016 (1) SA 461, [50] (Constitutional Court).
- 26 See, eg, *Ekurjuleni Metropolitan Municipality and Another v Various Occupiers, Eden Park Extension 5* 2014 (3) SA 23 (Supreme Court of Appeal).
- 27 *Joe Slovo* (n xxv).
- 28 Julie Clauzier, 'the DALO law: a step towards making the right to housing a reality' Housing Rights Watch (July 6 2017) at <https://www.housingrightswatch.org/content/dalo-law-step-towards-making-right-housing-reality>; Marie Loison, 'The Implementation of an Enforceable Right to Housing in France' (2007) 1 *European Journal of Homelessness* 185.
- 29 Homelessness etc. (Scotland) Act 2003, s 2.
- 30 Isobel Anderson, 'Responding to Homelessness: Making the Human Right to Housing a Reality in Scotland' in Joanne Bretherton and Nicholas Pleace (eds) *The Routledge Handbook of Homelessness* (Routledge 2023), 52.
- 31 United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024.
- 32 See Housing (Scotland) Bill at <https://www.parliament.scot/bills-and-laws/bills/s6/housing-scotland-bill-session-6> and Scottish Government 'A New Deal for Tenants – draft strategy – at <https://www.gov.scot/publications/new-deal-tenants-draft-strategy-consultation-paper/>.

- 33 Scottish Human Rights Commission, Scottish National Human Rights Action Plan (SNAP) 2 2023-2030 (30 March 2023), at <https://www.snaprights.info/wp-content/uploads/2023/03/SNAP-2-March-2023-FINAL-PDF.pdf>, 21-23.
- 34 National Housing Strategy Act S.C. 2019, c. 29, s. 313 (Canada).
- 35 See Sharon Chisholm and David Hulchanski, 'Canada's Housing Story' in Duncan MacLennan et al, (eds) *Shaping Futures: Changing the Housing Story*, (University of NSW, University of Glasgow, University of Toronto 2019).
- 36 National Housing Act (n xxxiv) ss 6- 16.
- 37 Gahagan and Thomas 'Canada's National Housing Strategy: Is it really addressing homelessness and affordability? The Conversation, Nov 17th 2022 available at <https://theconversation.com/canadas-national-housing-strategy-is-it-really-addressing-homelessness-and-affordability-193261>.
- 38 Stemming from ICESCR Article 11(1), Article 2(1) – the obligations clause - and Article 2(2) on nondiscrimination.
- 39 Section 51(xxxi) of the Constitution provides that the Commonwealth Parliament may make laws with respect to: 'the acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws.'
- 40 CESCR General comment 4 (n viii).
- 41 Human Rights (Parliamentary Scrutiny) Act 2011.
- 42 Unfortunately, despite the protection of anti-discrimination law, research documents pervasive discrimination, particularly in the private rental system. See Maalsen et al 'Understanding Discrimination Effects in Private Rental Housing' (AHURI Final Report No. 362, September 2021) available at <https://www.ahuri.edu.au/sites/default/files/documents/2021-09/AHURI-Final-Report-363-Understanding-discrimination-effects-in-private-rental-housing.pdf>
- 43 *King v John McMahon Stock & Realty Pty Ltd* [2005] NSWADT 260. Summaries of the case, and other similar discriminatory treatment in access to accommodation are included in WA Equal Opportunity Commission 'Accommodating Everyone' at <https://www.wa.gov.au/system/files/2020-09/Accommodating%20Everyone.pdf> In two of the cases, the decision makers referred to the importance of the right to housing as a fundamental human right.
- 44 See Hohmann 2013 (n 1) p 5-7 on this distinction.
- 45 Paul O'Connell *Vindicating Socio-Economic Rights: International Standards and Comparative Perspectives* (OUP 2016), 6.
- 46 Detailing these reductions see Lesley Chenoweth, 'Redefining Welfare: Australian Social Policy and Practice' (2008) 2(1) *Asian Social Work and Policy Review*, 53; Beth Goldblatt, 'Social (In)Security and Inequality in Australia: The Limited Role of Human Rights in the Policy Debate' in Andrea Durbach, Brendan Edgeworth and Vicki Sentas (eds) *Law and Poverty in Australia 40 Years after the Poverty Commission* (Federation Press, 2017) 183; Fatemeh Aminpour et al 'Getting off the Waiting List? Managing Housing Assistance Provision in an Era of Intensifying Social Housing Shortage' (AHURI Final Report no 422 (June 2024) 16-17; Jim Stanford 'Charting Wage Stagnation in Australia' in Andrew Stewart et al (eds) *The Wages Crisis in Australia* (Adelaide University Press, 2018).
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- 50 Ibid [1]-[4].



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- 54 See Kevin Bell, *Housing: The Great Australian Right* (Monash University Publishing, 2024), 44 (recounting the applicant’s recovery and successful return to his home).
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- 66 Kathleen M Guarino, ‘Trauma-Informed Care for Families Experiencing Homelessness’ in Mary E Haskett, Staci Perlman, and Beryl Ann Cowan (eds) *Supporting Families Experiencing Homelessness: Current Practice and Future Directions* (Springer, 2014), 121.
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