

Housing and homelessness

Right to adequate housing

Suggested Question

How does Australia give comprehensive legislative and practical effect to the right to adequate housing?

Background

Australia does not have national legislation that protects the right to adequate housing. In December 2008, the Australian Government released its White Paper on Homelessness, *The Road Home: A National Approach to Reducing Homelessness*, which recommended the enactment of national legislation to ensure that people who are homeless or at risk of homelessness receive quality services, adequate support to meet their needs and are treated with dignity and respect. Further, in 2009, a bi-partisan Parliamentary Committee recommended the enactment of a national Homelessness Act which enshrines the right to adequate housing.

Despite this, Australia has to date failed to specifically recognise the right to adequate housing in domestic law. The lack of a comprehensive legal framework to respond to homelessness prevents the progressive realisation of the right to adequate housing in Australia.

Proposed Recommendation

That Australia enact national legislation which:

- contains a clear definition of adequate housing and explicitly recognises a justiciable right to adequate housing;
- recognises Australia's international human rights obligations in relation to adequate housing; and
- establishes core minimum standards for homelessness services and the availability, accessibility, acceptability and quality of housing.

Recommendations of UN Special Rapporteur

Suggested Question

In 2007 the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Miloon Kothari, reported "a serious national housing crisis in Australia" and concluded that "Australia has failed to implement the human right to adequate housing".¹ What are the causes of this situation?

Background

On Census night in 2006, the Australian Bureau of Statistics calculated that 105,000 Australians were homeless.² The causes of homelessness in Australia are multiple and interrelated and include an acute shortage of affordable housing, unemployment, poverty, discrimination, structural inequalities and family violence, as well as individual hardships such as physical and mental health issues, contact with the criminal justice system and experiences with state care and child protection systems.

The shortage of housing is a key cause of homelessness in Australia. There are 173,000 households on waiting lists for public housing in Australia³ and the wait can be up to 15 years. In 2009, there was a deficit of 493,000 affordable dwellings for people with the lowest incomes.⁴

¹ Miloon Kothari, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Mission to Australia* (11 May 2007) A/HRC/4/18/Add.2 p 3.

² See Chris Chamberlain and David MacKenzie, Australian Bureau of Statistics, *Australian Census Analytic Program: Counting the Homeless* (2006) available at www.abs.gov.au.

³ Productivity Commission, *Report on Government Services 2010* (2010) available at <http://www.pc.gov.au/gsp/reports/rogs/2010>.

⁴ National Housing Supply Council, Australian Government, *National Housing Supply Council – 2nd State of Supply Report* (2010) p 103.

Recent Government initiatives have made significant investments in social and affordable housing, but this does not offset the decline in stock over preceding decades. The fact that the number of homeless Australians continues to rise indicates that Australia has failed to implement the right to adequate housing.

Proposed Recommendation

That Australia (1) commit sustained funding for public and community housing which is considerate of the population increase expected in Australia over the next two decades; (2) provide a greater range of emergency, transitional and public and community housing and relevant support services which recognise the needs of particular groups who are disproportionately affected by homelessness (including Aboriginal and Torres Strait Islander peoples, people in rural and remote areas, people suffering mental illness, victims of domestic violence, asylum-seekers, immigrants and people released from detention); and (3) reconsider the current home ownership model (including tax incentives such as negative gearing and capital gains tax) in regards to its contribution to diminished availability and affordability of housing.

A human rights framework for homelessness

Suggested Question

Does Australia recognise homelessness as a human rights issue?

Background

Australia has not acknowledged Australia's homeless situation as a human rights issue. It does not recognise that 105,000 homeless Australians represent a failure to protect the human right to adequate housing; or that these Australians also face other human rights breaches, including of their rights to privacy, health, education, public participation, liberty, security, freedom from inhuman and degrading treatment, access to justice, exercise of civil and political rights and freedom from discrimination.

The failure to address homelessness within a human rights framework, and to acknowledge the interconnectedness of the right to adequate housing with other human rights, means that there are significant gaps in the Government's response to the housing crisis.

Proposed Recommendation

That Australia: (1) recognise Australia's obligations to progressively implement the right to adequate housing in legislation and policy; (2) review residential tenancy laws in order to ensure compliance with international human rights standards, particularly with respect to guaranteeing minimum acceptable accommodation standards and providing protection against eviction and unfair rent increases; and (3) develop minimal acceptable accommodation standards based on the definition of adequate housing in international law, which includes: security of tenure; availability of services; affordability; habitability; accessibility; proximity and cultural appropriateness.⁵

⁵ Committee on Economic, Social and Cultural Rights, *General Comment 4: The Right to Adequate Housing* E/1992/23 (1991).