

Housing Rights

CASE STUDY

Unfair eviction and blacklisting by landlords

Nancy, a single mother of two, has been waiting for public housing for 5 years. Nancy's last landlord refused to do essential repairs, so she told him she would complain to the Tenancy Tribunal. He threatened to put her on the national tenancy database used by real estate agents that lists "problematic" tenants. Nancy was evicted. She cannot find rental housing now because she is listed on the database. Nancy and her children stayed with friends and are now living with Nancy's mother in a single-bedroom flat. She wonders if she will ever have a place of her own again.¹

CASE STUDY

Lack of affordable housing

Bert is a 70-year-old single man on a disability pension. He lives in a room in an inner-city boarding house and cannot afford to rent a house or flat on his own. He shares a kitchen and bathroom with the three others on his floor. Bert has been in the boarding house for 5 years but the building is to be pulled down for re-development. He worries about where he will go.²

CASE STUDY

Lack of emergency housing

Julie ran away from home on her 17th birthday after abuse from a family member. She went to a refuge but they didn't have any room. Tonight she'll sleep on the streets.³

Homelessness in Australia

On census night in 2001 there were at least 100,000 homeless people. Of these, 78% were single people, 13% were couples and 9% were families (including 13,401 children).⁴ Just below half (42%) of the homeless were women,⁵ and almost half (46%) were under 25 years; 26% were between 12 and 18 years, and 10% were children under 12 years.⁶

Most homeless people are sheltered somewhere at night, about half staying temporarily with friends and relatives. About 14% of homeless people sleep outside or in impoverished shelter.

Indigenous people are more likely to experience homelessness than non-Indigenous Australians. While Indigenous people make up 2% of the total Australian population, it is estimated that they make up at least 9% of the total homeless population, 19% of people in improvised housing, and 11% of the clients of supported accommodation services.⁷

The right to housing in international conventions

The *International Covenant on Economic, Social and Cultural Rights* (ICESCR)⁸ recognises the right to an adequate standard of living, including food, clothing and housing, which includes the continuous improvement of living conditions.⁹

Housing rights include:

- protection against unfair forced eviction (security of tenure);¹⁰
- access to adequate housing that enables a person to live with dignity and in peace and security; and
- access to clean drinking water; energy for cooking, heating and lighting; sanitation and washing facilities; food storage; refuse disposal; site drainage; and emergency services.

A home must also be:

- affordable – so that its cost does not threaten other basic needs;
- accessible – to everyone, without discrimination of any kind;
- habitable – an adequate space with protection against the weather;
- reasonably close to employment and social services, and not in polluted areas; and
- culturally adequate – to allow for cultural diversity.¹¹

Current Australian housing policy

Australia has put in place policies to provide some forms of housing to some people in need.

Governments provide funding for low-cost public and community housing under the Commonwealth – State Housing Agreement.¹² In the past ten years, this funding has been reduced by 54%.



There is also some funding for supported accommodation services, such as refuges.

The Federal Government's Commonwealth Rent Assistance Program provides money to people on pensions to help cover the cost of renting privately. However, Rent Assistance is not available to students over 25 receiving Austudy, or people on low wages. Also, Rent Assistance does not take into account the higher rents in city areas.¹³

The Government accepts that housing is not affordable when the cost of housing exceeds 30% of the household income. However, more than one third (330,360) of Rent Assistance recipients spend more than 30% of their income on rent, with 85,000 spending more than 50% on rent.

State and territory governments have tenancy laws setting out minimum rights and responsibilities. However, there is no national policy approach to tenancy laws.

Housing rights not protected in Australia

Australia has some legislation and policies to provide people with adequate housing. However, there are no laws that require governments to ensure that people have access to adequate housing or that allow people to complain about lack of housing.

For example, tenancy laws in most states and territories allow landlords to evict tenants without a reason, or increase rents by as much as they want. Only Queensland, South Australia and Victoria have laws that provide boarders and lodgers with basic tenancy rights.¹⁴

In August 2000, the United Nations Committee on Economic, Social and Cultural Rights expressed concern about the lack of protection against eviction and unfair rent increases, which was a particular problem in Sydney in the lead-up to the 2000 Olympic Games.¹⁵ The Committee recommended the Australian Government create a National Housing Strategy for states and

territories to establish consistent housing policies that progressively implement the right to adequate housing.¹⁶ This has not occurred.

In Darwin, there is a chronic lack of low-cost accommodation for Indigenous people. European-style housing is often culturally unsuitable. Some people are forced to live in public places, yet local council by-laws make it illegal for a person to fall asleep in a public place between sunset and sunrise. About 70% of people fined for sleeping in public in 2001 were Indigenous.¹⁷

International examples of housing rights protection

The South African *Constitutional Bill of Rights* includes a right to adequate housing. In October 2000, the Constitutional Court of South Africa found that the South African Government had breached the right to adequate housing of 900 people who had been forcibly evicted from their "illegal" homes with no alternative accommodation available.¹⁸ The Court found that the state's housing program should provide temporary relief to those in desperate need, and the government agreed to provide temporary accommodation, sanitation, basic services, and running water.

In 2001 and 2003 the Scottish Government introduced legislation requiring local authorities and agencies to provide interim, "last resort" accommodation to "roofless" people. The *Homelessness Etc (Scotland) Act 2003* states that by 2012 people will be able to take legal action to assert their right to re-housing.¹⁹

Improving housing rights in Australia

While Australia has a history of providing housing schemes that encourage housing affordability and crisis accommodation, people do not have a legally enforceable right to adequate housing, as defined under international law. There is a growing gap between the amount of affordable

accommodation available and the number of people who need it.

Protection of housing rights in line with international standards is required to ensure that everyone is guaranteed adequate and affordable housing.

"What form should the protection of human rights take?"

➡ For options about protecting human rights through a Charter or Bill of Rights see fact sheet N° 1: **Background to Human Rights**

REFERENCES

- ¹ Based on case studies in Tenants' Union of NSW, *Submission to the Residential Tenancy Database Working Party*, December 2003.
- ² Based on case studies compiled by Rough Edges, St John's Anglican Church, Darlinghurst, NSW.
- ³ As footnote 2.
- ⁴ ABS, Australian Census Analytic Program, *Counting the Homeless 2001*, November 2003, pp 2-3.
- ⁵ As footnote 4, p 3-4.
- ⁶ As footnote 4, p 3.
- ⁷ As footnote 4, p 5.
- ⁸ Other international human rights conventions also recognise the right to housing; however, the ICESCR is the broadest recognition.
- ⁹ ICESCR, Article 11.
- ¹⁰ General Comment 7 states that forced evictions are the permanent or temporary removal – against the will of individuals, families and/or communities – from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. United Nations Committee on Economic, Social and Cultural Rights, "The right to adequate housing (Art.11.1): forced evictions", 20/5/1997.
- ¹¹ United Nations Committee on Economic, Social and Cultural Rights, General Comment 4, "The right to adequate housing", 13/12/1991.
- ¹² *Housing Assistance Act 1996* (Cth).
- ¹³ National Shelter and Australian Council for Social Service, "Rent Assistance: does it deliver affordability?", September 2003.
- ¹⁴ Peter Alexander, 'Great Expectations: In Pursuit of Legislative Reform for Boarders in NSW', *Parity*, February 2004, p 77.
- ¹⁵ Concluding Observations of the Committee on Economic, Social and Cultural Rights: Australia, 1/9/2000, UN Doc E/C.12/1/Add.50, para 21.
- ¹⁶ As footnote 15, para 34.
- ¹⁷ Cassandra Goldie, "Living in public space: a human rights wasteland?", *Parity*, December 2002, p 279.
- ¹⁸ Constitutional Court of South Africa, *Government of Republic of South Africa and others v Grootboom and others*, Case CCT 11/00, 4 October 2000, www.concourt.gov.za (accessed on 24/3/2004).
- ¹⁹ Robina Goodlad, "Housing and Social Justice: the case of Scottish homelessness policy", presented at Housing Futures – the Australian National Housing Conference, 27 November 2003.