



Australian
Human Rights
Commission

Submission on the Exposure Draft, Homelessness Bill 2012

**Australian Human Rights Commission
submission to FaHCSIA**

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1 Introduction

1. The Australian Human Rights Commission welcomes the opportunity to make this submission on the Exposure Draft of the Homelessness Bill 2012 to FaHCSIA.
2. The Commission previously made a [submission to the Inquiry into Homelessness Legislation in 2009](#), conducted by the House of Representatives Standing Committee on Family, Community, Housing and Youth. In that submission, the Commission made recommendations for how national homelessness legislation could adopt a human rights-based approach to homelessness, including the protection of basic human rights for people at risk or experiencing homelessness.¹
3. In this submission, the Commission welcomes the efforts to include some aspects of a human rights-based approach in the draft legislation. However, we consider that this approach has not been adequately incorporated and note that some aspects of the Bill undermine this approach and the protection of basic human rights. We make recommendations for how the draft legislation can be strengthened to ensure the Australian Government fulfils its human rights obligations. In summary, we recommend that:

Recommendation 1: That the notion of ‘choice’ in section 5(c) of the draft legislation be removed given that it requires subjective assessment.

Recommendation 2: That the legislation include a clear definition of adequate housing.

Recommendation 3: That the legislation explicitly state the right to adequate housing. Such a provision should include recognition that the right to adequate housing will be progressively realised.

Recommendation 4: That the legislation include provisions for independent monitoring of the progress towards the realisation of rights, in particular the right to adequate housing, and outcomes for vulnerable groups.

Recommendation 5: That the legislation specify behaviour that would constitute a violation of rights, in particular the right to adequate housing, and provide for safeguards to be implemented to ensure that this right is realised and respected.

Recommendation 6: That the legislation include, as a key principle, the meaningful and effective participation of people who have experience of homelessness in key stages of decision-making processes.

2 Definition of homelessness

4. The Commission welcomes a broad definition of homelessness. However it has concerns with the notion of ‘choice’ included in the definition in section 5(c). This section states that a person is homeless if they are not living in the described housing by ‘choice’. This requires subjective assessment and is inconsistent with previous definitions of homelessness, including the definition in the *Supported Accommodation Assistance Act 1994* (Cth).

5. We are particularly concerned about victims of domestic violence being excluded under this definition if their situation is subjectively interpreted. Domestic violence is a leading cause of homelessness² and a subjective assessment of people escaping violence is open to misinterpretation.
6. A more useful defining characteristic would be whether or not a person has access to housing which is adequate.
7. Adequate housing can be defined by the following seven key aspects as identified by the Committee on Economic, Social and Cultural Rights (CESCR):
 - legal security of tenure;
 - availability of services, materials, facilities and infrastructure;
 - affordability;
 - habitability;
 - accessibility;
 - location; and
 - cultural adequacy.³

Recommendation 1: That the notion of ‘choice’ in section 5(c) of the draft legislation be removed given that it requires subjective assessment.

Recommendation 2: That the legislation include a clear definition of adequate housing.

3 Recognition and realisation of rights

8. The right to adequate housing is a fundamental human right which Australia has committed to uphold by ratifying the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).⁴
9. The Commission is concerned that the reflection of this right in sections 7 and 13 of the draft legislation as merely an ‘aspiration’, without any binding character, does not give sufficient weight to Australia’s human rights obligations in this regard.
10. Recognition of the right to adequate housing does not mean housing on demand for all. The obligation is to ‘progressively realise’ this right. This allows for the full realisation of the right to adequate housing over a period of time, taking resource constraints into account. As a party to the ICESCR, the Australian Government is obliged to:

*take steps ... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.*⁵
11. Progressive realisation is *not* the same as an ‘aspiration’, which might never be realised. Stating this right as an aspiration is inadequate and undermines Australia’s human rights obligations.

Recommendation 3: That the legislation explicitly state the right to adequate housing. Such a provision should include recognition that the right to adequate housing will be progressively realised.

4 Accountability

12. Given the Australian Government's international human rights obligations and commitment to reducing homelessness, mechanisms for accountability should be included in the national legislation, with reference to intergovernmental frameworks.

(a) *Effective monitoring mechanisms*

13. The legislation should provide for mechanisms to ensure that Australia's progress in realising the rights of people experiencing homelessness, including the right to adequate housing, is monitored effectively.

14. It is not clear from the draft legislation how the Australian Government's duty to protect the rights of people facing homelessness, in particular vulnerable groups, will be assessed.

15. Provisions should be made to ensure both outcomes and processes are independently monitored and evaluated, with measurable goals and targets.

Recommendation 4: That the legislation include provisions for independent monitoring of the progress towards the realisation of rights, in particular the right to adequate housing, and outcomes for vulnerable groups.

(b) *Accessible and effective remedies*

16. The provision of effective remedies for breaches of human rights is a fundamental requirement of international human rights law.⁶

17. The experiences of people facing homelessness may involve violations of a wide range of basic rights, including the right to adequate housing.⁷

18. People experiencing homelessness should have access to effective remedies if their rights are violated. One such violation would be a person being arbitrarily evicted from government-funded accommodation into homelessness.

19. Where other laws violate the rights of people who are homeless, these laws should be reviewed.

Recommendation 5: That the legislation specify behaviour that would constitute a violation of human rights, in particular the right to adequate housing, and provide for safeguards to be implemented to ensure that rights are realised and respected.

5 Consultation and participation

20. The Commission welcomes the inclusion of a 'cooperative approach' to tackling homelessness in the draft legislation in section 8(2). However, this section on social inclusion fails to include the participation of people who have experience of homelessness.
21. Enabling the participation of people in decision-making that will affect them is fundamental to effective social inclusion⁸ and also a key feature of a human rights-based approach.⁹
22. National legislation on homelessness needs to ensure that those most affected and vulnerable are included in key decision-making processes, in particular in the development, delivery and assessment of policies and services.

Recommendation 6: That the legislation include, as a key principle, the meaningful and effective participation of people who have experience of homelessness in key stages of decision-making processes.

¹ Australian Human Rights Commission, *Submission to the Inquiry into national homelessness legislation*, Sept 2009, at: http://www.humanrights.gov.au/legal/submissions/2009/20090901_homelessness.html (viewed July 2012)

² Australian Institute of Health and Welfare, Specialist Homelessness Services Collection: December quarter 2011, p. 7, 9, 13, at <http://www.aihw.gov.au> (viewed July 2012).

³ UN Committee on Economic, Social and Cultural Rights, *General Comment 4: The Right to Adequate Housing*, para 8, at <http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/469f4d91a9378221c12563ed0053547e?Opendocument> (viewed 23 July, 2012)

⁴ *International Covenant on Economic, Social and Cultural Rights* (ICESCR), 1966, art 11(1). At <http://www2.ohchr.org/english/law/cescr.htm> (viewed July 2012). The right to adequate housing is also reflected in other human rights treaties, including the *Convention on the Rights of the Child* (CRC), 1989, note 42, art 27(3). At <http://www2.ohchr.org/english/law/crc.htm> (viewed July 2012); the *International Convention on the Elimination of all forms of Racial Discrimination* (CERD), 1965, art 5(e)(iii) at <http://www2.ohchr.org/english/law/cerd.htm> (viewed July 2012) and the *Convention on the Elimination of all forms of Discrimination against Women* (CEDAW), 1979, art 14(2)(h) at <http://www2.ohchr.org/english/law/cedaw.htm> (July 2012).

⁵ ICESCR, art 2(1).

⁶ UN Committee on Economic, Social and Cultural Rights, *General Comment No 9: The domestic application of the Covenant*, UN Doc E/C.12/1998/24 (1998), para 2. At [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/4ceb75c5492497d9802566d500516036?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/4ceb75c5492497d9802566d500516036?Opendocument) (viewed July 2012).

⁷ Further explanation on the range of rights that could be violated for people facing homelessness is included in the Commission's *Submission to the Inquiry into national homelessness legislation*, Sept 2009, para 24, at:

http://www.humanrights.gov.au/legal/submissions/2009/20090901_homelessness.html (viewed July 2012)

⁸ Australian Government, [Social Inclusion Principles Explained](http://www.socialinclusion.gov.au/resources/asib-publications); at <http://www.socialinclusion.gov.au/resources/asib-publications> (viewed July 2012).

⁹ Kirkemann Boesen, J and Martin, T, [*Applying a Rights-Based Approach: An Inspirational Guide for Civil Society*](#), The Danish Institute for Human Rights (2007), p.30 (viewed July 2012) and in Australian Human Rights Commission, *Submission to the Inquiry into national homelessness legislation*, Sept 2009, para 37 at: http://www.humanrights.gov.au/legal/submissions/2009/20090901_homelessness.html (viewed July 2012)