



Submission to the National Housing and Homelessness Plan Bill
2024 (No. 2)

9 August 2024

Submitted by
Amnesty International Australia

Contact: Nikita White
Email:
Phone:

Table of Contents

Table of Contents	2
About Amnesty International	3
1. Summary	4
2. Recommendations	4
3. International Legal Human Rights Framework	4
4. A culture of human rights	7
5. Additional human rights	9
6. Proceedings and remedies	10
7. Provisions relating to existing protected rights	11
8. Scrutiny of legislation and regulation by Parliament	11
9. Court and tribunal proceedings	13
11. Human rights complaints and dispute resolution	14
12. Victims rights	14
12. Conclusion	14

About Amnesty International

Amnesty International is a global movement of more than 10 million people in over 160 countries - the world's biggest human rights organisation - who take injustice personally. We campaign for a world where human rights are enjoyed by all.

We investigate and expose the facts, whenever and wherever abuses happen. We lobby governments as well as other powerful groups such as companies, making sure they keep their promises and respect international law.

By telling the powerful stories of the people we work with, we mobilise millions of supporters around the world to campaign for change and to stand in the defence of activists on the frontline.

We support people to claim their rights through education and training. Our work protects and empowers people – from abolishing the death penalty to advancing sexual and reproductive rights, and from combating discrimination to defending refugees' and migrants' rights.

We help to bring torturers to justice, change oppressive laws, and free people who have been jailed just for voicing their opinion.

We speak out for anyone and everyone whose freedom or dignity are under threat and we advocate for laws and policies that ensure peoples human rights are respected.

1. Summary

1.1 Amnesty International Australia (AIA) welcomes the opportunity to provide a submission to the *National Housing and Homelessness Plan Bill 2024 (No. 2)*.

1.2 International human rights law clearly articulates that housing is a human right. Australia has agreed to recognise housing as a human right by signing the Covenant on Economic, Social and Cultural Rights (ICESCR) in 1973 and by ratifying it in 1975.

1.3 Despite this, successive federal governments have failed to legislate protections to housing in our domestic laws. In doing so, they have failed to respect, protect, and fulfill people's rights to adequate housing, as is their obligation under the ICESCR.

1.4 These failures are evidenced by Australia's current housing crisis. In recent years, dramatic increases in house prices, a rise in rent, increasing demand for housing, alongside a cost of living crisis have created a housing crisis. In one case, Brisbane Youth Services [reported](#) an 88% increase in young people seeking crisis housing or financial assistance since 2020. According to the Report on Government Services released in May 2024, the needs of nearly 35% of people seeking Specialist Homelessness Services are not being met. 224,326 households were waiting to access housing. Nearly 43% of people on Commonwealth Rent Assistance (CRA) reported rental stress and being at risk of homelessness.¹

1.5 Marginalised groups including refugees, migrants, children, people with disabilities, elderly people, and Indigenous people are particularly impacted by this crisis. The 2021 census revealed that; 14.4% of homeless people were children under 12, 15.8% of homeless people were over the age of 55 and 1 out of 5 were Aboriginal and Torres Strait Islander people. Women are the majority of newly homeless.²

1.6 The right to adequate housing is intrinsically linked to other human rights. The right to housing allows people to realise their other human rights, including their rights to health, social security, and more. Federal human rights protections are patchwork and piecemeal, and fail to recognise many fundamental human rights. This includes the right to adequate housing but also the rights to education, to protection from degrading treatment, and many more. By protecting human rights, including the right to adequate housing, in our federal laws we can work towards an Australia where people's rights are realised, and where everyone is treated with the dignity and respect they deserve.

2. Recommendations

AIA recommends that:

- 1) Amnesty International Australia supports the *National Housing and Homelessness Plan Bill 2024*, and calls for it to be legislated.

¹ Productivity Commission, Report on Government Services, 28 May 2024.

² Australian Bureau of Statistics, Estimating Homelessness: Census, 22 March 2023.

- 2) The government accepts the Parliamentary Joint Committee on Human Rights' recommendation to legislate a Human Rights Act and commits to protecting people's human rights in our federal laws.

3. International Legal Human Rights Framework

3.1 The right to housing is enshrined in Article 25(1) of the Universal Declaration of Human Rights, which states that "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

3.2 Article 11 of the ICESCR protects the right to an adequate standard of living. It recognises the right "of everyone to an adequate standard of living for himself [or herself] and his [or her] family, including adequate food, clothing and housing, and the continuous improvement of living conditions." It requires State parties to "take appropriate steps to ensure the realization of this right, recognizing to this effect the importance of international cooperation based on free consent."

3.3 Article 2(2) requires States to guarantee the rights enshrined in the Covenant without discrimination including the right to an adequate standard of living.

3.4 Article 14 of the Convention on the Elimination of All Forms of Discrimination against Women reaffirms the right to housing for women, free of discrimination.

3.5 The Convention on the Rights of Persons with Disabilities also affirms that people with disabilities have the right to an adequate standard of living with adequate food, clothing and housing, to the continuous improvement of living conditions, and to access public housing in Article 28. Article 19 states that people with disabilities have the opportunity to choose their place of residence, and with whom they live, on an equal basis with others, and that the right to housing is interconnected with the right to independent living and full inclusion and participation in the community.

3.6 The Convention on the Rights of the Child recognises the rights of every child to an adequate standard of living in Article 27, and requires States Parties, in accordance with national conditions and within their means, to take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to housing.

3.7 Article 23 of the United Nations Declaration on the Rights of Indigenous Peoples states that Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development, including in housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

3.8 The Convention on the Elimination of Racial Discrimination obligates State Parties to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone,

without distinction as to race, colour, or national or ethnic origin, to equality before the law with regard to the right to housing in Article 5.

4. Housing as a human right

4.1 International human rights law protects not only the right to housing, but to adequate housing. The UN Committee on Economic, Social and Cultural Rights (CESCR), who are mandated to monitor the implementation of the Covenant, have stated that the right to housing should not be interpreted in a narrow or restrictive sense. The right to adequate housing is not simply the right to have a roof over one's head, but to "live somewhere in security, peace and dignity."

4.4 The CESCR have established a minimum criteria for what constitutes adequate housing. These include:

- 1) Security of tenure, that is a legal guarantee against forced evictions, harassment and other threats;
- 2) Availability of services, materials, facilities and infrastructure such as safe drinking water, adequate sanitation, energy for cooking, heating, lighting, food storage or refuse disposal;
- 3) Affordability so that cost associated with housing must not threaten or compromise the occupants' enjoyment of other human rights;
- 4) Habitability, that is housing which provides physical safety, adequate space, as well as protection against the cold, damp, heat, rain, wind, other threats to health and structural hazards;
- 5) Accessibility so that the specific needs of disadvantaged and marginalized groups are taken into account;
- 6) Location of housing that allows access to employment opportunities, health-care services, schools, childcare centres and other social facilities, and is equally not located in polluted or dangerous areas; and
- 7) Cultural adequacy so that housing respects and allows for the expression of cultural identity.³

4.5 As a signatory to the ICESCR Australia has a duty to ensure the very least, minimum essential levels of each of the rights contained in the ICESCR including the right to adequate housing. If Australia cannot do so, it must demonstrate that it has made every effort to use all available resources to satisfy, as a matter of priority, these obligations. Preventing and eliminating homelessness is a "minimum core obligation."

4.6 As a signatory Australia also cannot adopt retrogressive measures with regard to the right to housing. Steps must be taken to realise the right to housing.

Homelessness

³ CESCR, General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant).

4.4 Homelessness is a violation of the right to adequate housing and a failure of a country's obligation to protect the right to housing. The CESCR has stated that "a State party in which any significant number of individuals is deprived ... of basic shelter and housing ... is, prima facie, failing to discharge its obligations under the Covenant."⁴

4.7 People who experience homelessness often also experience other human rights violations, such as violations to the rights to life, security of the person, and to health.

4.8 The UN Special Rapporteur on adequate housing has advocated for a human rights complaint approach to homelessness which recognises the need to incorporate structural and institutional reasons for homelessness into our understanding of homelessness, noting that those experiencing homelessness are often ostracised, discriminated against, and stigmatised. Putting people who have experienced homelessness at the centre of policy development, is accordingly crucial to realising the right to housing.⁵

5. National Housing and Homelessness Bill 2024

5.1 The *National Housing and Homelessness Plan* Bill 2024 would require the Housing Minister to develop and implement a 10 year housing and homelessness plan. The Bill also enshrines the right to housing as an objective to guide the plan and policy making.

5.2 In response to the housing crisis, the Albanese Government has established the Housing Australia Future Fund – a \$10-billion fund which will support the construction of 30,000 social and affordable homes over the next five years - and the Help to Buy Scheme.

5.3 Although these developments are welcome, they have not met the scale of the housing crisis, and too many people in Australia are experiencing, or at risk of homelessness.

5.4 The Albanese Government has promised to establish a National Housing and Homelessness Plan, however has not yet done so.

5.5 The CESCR has stated that, in accordance with the obligation to take steps to realise the right to housing, this "will almost invariably require the adoption of a national housing strategy".⁶ A human-rights based housing strategy or action plan is a composition of programmes and steps, addressing all relevant housing issues, including, among other things, homelessness and availability of affordable housing. Such a strategy should aim to streamline different domestic legislations as well as to provide effective coordination between the relevant ministries and levels of government. This is particularly important because housing sits across several different jurisdictions in Australia.

⁴ Above n 4.

⁵ UN Special Rapporteur on adequate housing, *Breaking the cycle: Ending the criminalization of homelessness and poverty*.

⁶ CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant).

5.6 The CESCR also underlined that an additional key purpose of a national housing strategy should be to “reflect genuine and effective consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives.”

5.7 The Bill’s recognition of housing as a human rights, establishment of a national housing plan, and its commitment to consultation including with people with lived experience of homelessness, implements the obligations Australia has committed to as a signatory of the ICESCR. It is an important step to realising the right to adequate housing for everyone in Australia.

Recommendation 1: Amnesty International Australia supports the *National Housing and Homelessness Plan Bill 2024*, and calls for it to be legislated.

6. A federal Human Rights Act

6.1 In addition to a national housing and homelessness plan, Amnesty International Australia calls on the government to legislate a Human Rights Act that will protect the right to housing alongside the rights to health, education, protection from degrading treatment, and more.

6.2 Currently, the Australian Capital Territory, Victoria, and Queensland have Human Rights Acts that protect human rights in law and govern the conduct of public authorities in these states. These laws do not protect the right to adequate housing but people have used these Human Rights Act to realise their right to housing.

6.3 A federal Human Rights Act would impose an obligation for public authorities to act in accordance with human rights, including the right to adequate housing, and to take human rights into consideration when making decisions. For example, Port Phillip City Council used this obligation and a human rights framework to tackle rough sleeping in the city.⁷

6.4 A federal Human Rights also gives people a tool to take action through mediation, or to the federal courts, if a public authority did not act compatible with human rights. The ACT Human Rights Act has been used to secure a single mother’s priority place on the housing assistance register.⁸ When a Queensland mother and domestic violence survivor faced eviction because of the actions of her former partner, she used Queensland’s Human Rights Act to transfer the tenancy and stay in her home.⁹

6.5 Many countries around the world have Acts that protect people’s rights to adequate housing, alongside all their human rights including the United Kingdom’s Human Rights Act of 1998.

6.6 Mrs Bernard, an English woman who used a wheelchair, was placed in a home that was not accessible by the Department of Housing. She and her husband requested appropriate housing but their requests were ignored or delayed. Mrs Bernard launched a cause in which the court found that the Housing Department had broken her rights under the Human Rights Act of 1998. She was

⁷ Victorian Equal Opportunity and Human Rights Commission, Submission, Free and Equal inquiry.

⁸ Commissioner for Housing in the ACT v Y [2007] ACTSC 84.

⁹ Human Rights Act Coalition, 101 cases, The First Annual Report on the Operation of Queensland’s Human Rights Act 2019-20, p. 112.

awarded £10,000 in damages (Mrs Bernard and Mr Bernard had already been placed in suitable accommodation).

6.7 Other countries have established policies that centre housing as a human right. Finland, in compliance with its constitution, mandates public authorities to actively advocate for housing rights, resulting in a remarkable decline in homelessness to the extent that rough sleepers are nearly non-existent, making Finland the only European country to do so.

6.8 Human rights are interconnected and indivisible. It is not enough to recognise individual rights in laws. The right to housing, and having a safe and secure home, allows people to realise their other human rights, including their rights to health, social security, education, and more.

6.9 People most at risk of homelessness include children and young people, women, particularly survivors of domestic violence, Aboriginal and Torres Strait Islander people, and people with disabilities. These communities face multiple human rights abuses, and all their human rights should be protected.

6.10 Parliament must protect all our human rights in a Human Rights Act so that we can create a fairer future where people can enjoy their right to adequate housing, alongside all their human rights.

6.11 The Parliament Joint Committee on Human Rights released the report of its inquiry into the federal human rights framework on 30 May 2024. The Committee recommended legislating a Human Rights Act to protect human rights in our federal laws.

<p>Recommendation 2: The government accepts the Parliamentary Joint Committee on Human Rights' recommendation to legislate a Human Rights Act and commit to protecting people's human rights in our federal laws.</p>
--