

PER CAPITA CENTRE FOR EQUITABLE HOUSING SUBMISSION TO THE INQUIRY: NATIONAL HOUSING AND HOMELESSNESS PLAN BILL 2024 (NO.2)

The Centre for Equitable Housing at Per Capita welcomes the opportunity to contribute to the Parliament's inquiry into the *National Housing and Homelessness Plan Bill 2024 (No.2)*, which we understand has been developed in consultation with leading housing experts and is endorsed by housing and homelessness peak bodies the Community Housing Industry Association, Homelessness Australia, and National Shelter.

Per Capita was one of 117 signatories to an open letter written to the Housing Minister in May 2024 in support of the proposal to legislate a statutory basis to the National Housing and Homelessness Plan.

CEH Positions: National Housing and Homelessness Plan development

The Centre for Equitable Housing's [response](#) to the Department of Social Services' National Housing and Homelessness Plan Issues Paper called for a legislated Plan which sets out an "unambiguous, rights-based approach to housing" and "[centralises] the right to a secure, safe, comfortable and affordable home".¹

The Centre for Equitable Housing's submission raised several concerns about the NHHP Issues Paper, including:

- that the Issues Paper's approach to various policy issues fails to recognise the interrelationship between many policy issues affecting the Australian housing market;
- that the Issues Paper lacks any substantive consideration of the relationship between tax concessions for property investors and housing affordability and does not address the distributional impacts of these concessions;
- that the effectiveness of subsidies for private renters (Commonwealth Rent Assistance) as a primary form of housing assistance is not queried; and
- that the responsibility for the NHHP's development being held by the Department of Social Services potentially restricts Government's ability to coordinate effective housing and homelessness policy given the critical roles played by various other federal departments and the State and Territory governments and local councils.

¹ Centre for Equitable Housing, *The National Housing and Homelessness Plan: A Historic Opportunity Not to Be Missed* (October 2023) <https://centreforequitablehousing.org.au/our_work/the-national-housing-and-homelessness-plan-a-historic-opportunity-not-to-be-missed/>.

The CEH's submission endorsed the 2023 proposal by Chris Martin et al. that the Federal Government take a "mission-oriented" approach to housing policy. Setting a bold, clear and long-term societal mission, in which governments take an active role in shaping markets to achieve societal goals, is necessary to achieve the transformative change needed to ensure all Australians are securely, comfortably and affordably housed.

Consultation Summary Report

In January 2024, the Department of Social Services released a Summary Report detailing consultations on the National Housing and Homelessness Plan. The 13-page report reports on commonly raised challenges and solutions in the fields of homelessness and homelessness services, social housing, Aboriginal and Torres Strait Islander Housing, housing markets, planning, zoning and development and the impact of climate change.²

Several recommendations commonly cited within submissions to the Issues Paper were not included in the Summary Report. Legislating the Plan's key objectives was recommended in some capacity by numerous submitters, as was setting a 10-year target for the elimination of homelessness, but neither recommendation was adopted by the Summary Report. The impact of the negative gearing income tax deductions and the Capital Gains Tax Discount in driving housing investor behaviour were also not mentioned within the Summary Report.

Such omissions led many stakeholders, including the CEH, to question whether the Plan was being developed in a way that facilitated system-wide, long-lasting housing reform.

National Housing Policy in Australia

The creation of an ambitious, cohesive national housing strategy is not a new concept. A 1944 report by the Commonwealth Housing Commission (CHC), the body appointed to investigate Australia's post-war housing requirements clearly outlines a progressive foundational vision for housing in Australia, reading;

"We consider that a dwelling of good standard and equipment is not only needed by the right of every citizen- whether the dwelling is to be rented or purchased, no tenant or purchaser should be exploited by excessive profit".³

The CHC report highlighted the housing needs of low-income families and the need for public, rather than private-sector provision of housing. The report states that "private enterprise, the world over, has not adequately and hygienically housed the low-income group". The report considers that governments should "accept responsibility" for the housing of low-income earners by supplementing housing development undertaken by private enterprise. High building costs and significant undersupply was cited

² Department of Social Services, *Summary Report: Consultations on the National Housing and Homelessness Plan* (January 2024) <https://engage.dss.gov.au/wp-content/uploads/2024/01/nhhpsummary-reportfinal-4_0.pdf>.

³ Commonwealth Housing Commission, 'Final Report' <<https://nla.gov.au/nla.obj-851519579/view?partId=nla.obj-851583656#page/n0/mode/1up>>.

as key barriers to private sector supply of homes, as was the private sector's poor history of low-income housing provision.⁴

The CHC Report resulted in the creation of the first Commonwealth-State Housing Agreement (CSHA). The CSHA set a target of 70,000 dwellings to be constructed annually within the following ten years of the agreement. Despite labour and materials shortages, under the first CSHA (1945-1956) a total of approximately 100,000 homes were constructed for rent over 12 years.⁵

The CHC report represents a diagnosis of a system-wide failure to house the Australian population, and long-term planning and investment undertaken by governments to address this failure. Such actions are necessary at present day to address the current housing crisis and create an equitable housing system meeting the needs of all Australians.

National Housing and Homelessness Plan Bill 2024 (No.2) Contents

Objects of the Bill

The CEH strongly supports the Bill's objectives, which include:

- Recognition that the right to adequate housing is a fundamental human right affirmed in international law;
- Furthering of the progressive realisation of the right to adequate housing, as recognised in the International Covenant on Economic, Social and Cultural Rights 1996; and
- Furthering the progressive realisation of Indigenous self-determination in housing policy in compliance with the UN Declaration of the Rights of Indigenous Peoples.

Recognising the right to housing within a legislated Plan was recommended by numerous submitters to the National Housing and Homelessness Plan's consultation, including Homelessness Australia, the Australian Council of Social Service and Anglicare. The CEH recommended setting an "unambiguous, rights-based approach to housing", which the Centre believes will "lead to improved policy development in the interests of the Australian people and our social cohesion as a nation".⁶

Recognition of the human right to housing within the NHHP Bill brings the Bill within the Parliament's power to make laws with respect to "external affairs".⁷

⁴ Ibid.

⁵ David Hayward, 'The Reluctant Landlords? A history of public housing in Australia' (1996) 14(1) *Urban Policy and Research* 5 ('The reluctant landlords?').

⁶ Centre for Equitable Housing (n 1).

⁷ Chris Martin, 'A New Bill Is Proposing a Human Right to Housing. How Would This Work?', *UNSW Sites* (5 July 2024) <<https://www.unsw.edu.au/newsroom/news/2024/07/new-bill-proposing-human-right-to-housing-how-would-this-work>>.

A right to housing is protected in the constitutions of over 50 nations⁸ and has been invoked by governments and housing advocates worldwide to actively pursue goals of homelessness elimination, social housing access and mandatory provision of affordable housing.⁹

The Right to Adequate Housing is included in Article 11(1) of the International Covenant on Economic, Social and Cultural Rights, a global treaty signed by Australia in 1975, which states:

*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.*¹⁰

The ICESCR has previously been referenced within federal housing legislation in the establishment of the National Housing and Investment Corporation (NHFC) (now Housing Australia). A stated function of the NHFC, as established by the *National Housing Finance and Investment Corporation Act 2018*, is to give effect to the International Covenant on Economic, Social and Cultural Rights.¹¹

Comments from the United Nations Committee on Economic, Social and Cultural Rights have underlined a number of key aspects of the right to adequate housing, including;

- Freedoms from forced eviction, the right to choose one's residence, and freedom from arbitrary interference with, or destruction of, one's home;
- Entitlements, including security of tenure, housing, land and property restitution, equal and non-discriminatory access to adequate housing, and participation in housing-related decision-making; and
- Minimum criteria for adequacy of shelter, including security of tenure, availability of services, materials facilities and infrastructure, affordability, habitability, accessibility, suitable location, and cultural adequacy.¹²

The extent to which the right to housing is realised for all Australians must be interrogated.

The United Nations Committee on Economic, Social and Cultural Rights has noted that states have an "obligation to... prevent third parties from interfering with the right to adequate housing". Actions taken to prevent third party interference may include regulation of housing and rental markets "in a way that protects the right to adequate housing".¹³

⁸ Jessie Hohmann, 'Toward a Right to Housing for Australia: Reframing Affordability Debates through Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights' (2020) 26(2) *Australian Journal of Human Rights* 292.

⁹ Katrin B Anacker, Mai Thi Nguyen and David P Varady, *The Routledge Handbook of Housing Policy and Planning* (Taylor & Francis Group, 2019) <<http://ebookcentral.proquest.com/lib/unimelb/detail.action?docID=5813467>>.

¹⁰ Hohmann (n 9).

¹¹ National Housing Finance and Investment Corporation, *Sustainability Bond Framework* (May 2023) <https://www.housingaustralia.gov.au/sites/default/files/2022-10/nhfc-sustainability-bond-framework_2022_final.pdf>.

¹² Office of the United Nations High Commissioner for Human Rights, *The Right to Adequate Housing* (Fact Sheet No.21, May 2014) <https://www.ohchr.org/sites/default/files/Documents/Publications/FS21_rev_1_Housing_en.pdf>.

¹³ Ibid.

Australian concessions for property investors support investors to accumulate wealth through housing,¹⁴ while many low- and middle- income households become increasingly unable to achieve home ownership. As a result of the tax incentives for ordinary income earners to invest in residential property, the private rental market in Australia provides relatively little tenure security for tenants, a growing cohort across the country. Private tenants face unpredictable rents, low vacancies and a market dominated by rental arrangements of a year or less due to the high proportion of “hobby” landlords in the market.¹⁵

The precarious nature of hobby landlord investment, which is often highly leveraged in pursuit of capital gains rather than rental yield, is a significant cause of the historical reluctance of state and territory governments, who have the constitutional responsibility for rents and prices, to adequately protect the rights of tenants to secure and adequate housing.

Moreover, homelessness, described by the UN Committee on Economic, Social and Cultural Rights as the “most critical violation” of the human right to housing, remains present across Australian society. 122,494 individuals were experiencing homelessness in Australia on Census night in 2021.¹⁶ Homelessness is often “hidden”, particularly among women, with individuals and families taking actions such as temporarily staying with friends and family and accessing emergency shelters to avoid “sleeping rough”. It is believed that the extent of hidden homelessness is not captured by Census data, indicating that rates of homelessness is more prevalent than official numbers show.¹⁷ Actions such as setting a timeline for the elimination of homelessness, as recommended by numerous submitters to the NHHP Issues Paper in 2023, are necessary government responses to fulfilling the right to housing.

The CEH also strongly supports the inclusion of Object e): *further the progressive realisation of Indigenous self-determination in housing policy in compliance with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)*. Australia has previously been called upon to comprehensively adopt the UNDRIP,^{18,19} with adoption of the Declaration being described as “piecemeal” by the Law Council of Australia in 2022.²⁰

Content of the National Housing and Homelessness Plan

The CEH supports the Bill’s proposed overarching objectives. The CEH notes that these objectives are largely informed by a report published in 2023 by the Australian Housing and Urban Research Institute

¹⁴ Russell Solomon, ‘The Right to Housing in Australia’ in *Australia’s Engagement with Economic and Social Rights* (Springer Singapore, 2021) 113 <https://link.springer.com/10.1007/978-981-16-0033-3_3>.

¹⁵ Tanvi Pappu, ‘The Mental Health Toll of Australia’s Low-Quality Rental Housing’, *CEDA* (1 March 2024) <<https://www.ceda.com.au:443/newsandresources/opinion/economy/the-mental-health-toll-of-australia-s-low-quality-rental-housing>>.

¹⁶ Australian Institute of Health and Welfare, ‘Homelessness and Homelessness Services’ (27 February 2024) <<https://www.aihw.gov.au/reports/australias-welfare/homelessness-and-homelessness-services>>.

¹⁷ Emma Dawson, *A Home of One’s Own: Philanthropic & Social Sector Solutions for Women’s Housing* (Per Capita, October 2022) <<https://percapita.org.au/wp-content/uploads/2022/10/AIIW-Report-A-Home-of-Ones-Own-FINAL-flattened.pdf>>.

¹⁸ Australian Human Rights Commission, *Implementing UNDRIP* (2021) <https://humanrights.gov.au/sites/default/files/2020-10/implementing_undrip_-

[_australias_third_upr_2021.pdf?utm_source=miragenews&utm_medium=miragenews&utm_campaign=news](https://humanrights.gov.au/sites/default/files/2020-10/implementing_undrip_-_australias_third_upr_2021.pdf?utm_source=miragenews&utm_medium=miragenews&utm_campaign=news)>.

¹⁹ ‘UNDRIP in Australia’, *ANTAR* <<https://antar.org.au/issues/undrip/australia/>>.

²⁰ Law Council of Australia, ‘Australia Must Formally Adopt UN Declaration on Rights of Indigenous People -’ (2022) <<https://lawcouncil.au/media/media-releases/australia-must-formally-adopt-un-declaration-on-rights-of-indigenous-people>>.

(AHURI) “Towards a National Housing and Homelessness Strategy” (Martin et al., 2023). This report was prepared by several of Australia’s leading housing academics and draws on several international and domestic case studies to make its recommendations.

[In a recent article](#), co-author of the 2023 AHURI report Dr Chris Martin noted that the specific policy details of the National Housing and Homelessness Plan are not prescribed by the legislation and will be determined by the government in charge of developing the Plan. However, setting out broad objectives, which include the prevention and elimination of homelessness, universal access to adequate housing, and the improvement of housing affordability, would establish the Plan as a bold and wide-reaching program of reform.²¹

Renewal and Review of the Plan

The Bill seeks to require the Housing Minister to develop and maintain a National Housing and Homelessness Plan. It also sets out a timeline for the for renewal of the Plan. This includes the publication of the first National Housing and Homelessness Plan one year after the Act commences, and a later Plan 10 years after the day on which the Minister published the previous Plan.

The CEH has recommended legislation of the Plan to protect against “recidivist policymaking in the future”.²² Inclusion of a mandatory timeline for publication and renewal of the Plan could greatly assist in safeguarding the Plan from government inaction.

The Bill also creates a timeline for triennial reviews of the Plan and states that Housing Australia must conduct a review of the operation of each National Housing and Homelessness Plan to assist in the preparation of a new Plan. This must involve a public submission process and the development of a report of review to be given to the Minister and publicly published.

Legislating review periods for the Plan was recommended by the Australian Housing and Urban Research Institute. This is in part modelled upon the Canadian *National Housing Strategy Act 2019*. The CEH agrees with Martin et al. (2023) that legislating accountability measures “[demonstrates] commitment to the objectives of the review process”.²³

In 2023, Canada’s National Housing Council published its review of the National Housing Strategy, five years after the Strategy was first released. This review involved undertaking consultation with “over 400 experts, stakeholders and rights holders”, as well as informant interviews and a survey. Several additional research reports were also published. Detailed recommendations relating to the targets, timelines and operation of the Strategy were made.²⁴ Review of the strategy is mandated within Canada’s *National*

²¹ Law Council of Australia, ‘Australia Must Formally Adopt UN Declaration on Rights of Indigenous Peoples’ (2022) <<https://lawcouncil.au/media/media-releases/australia-must-formally-adopt-un-declaration-on-rights-of-indigenous-people>>.

²² Centre for Equitable Housing (n 1).

²³ Chris Martin et al, ‘Towards an Australian Housing and Homelessness Strategy: Understanding National Approaches in Contemporary Policy’ [2023] (401) *AHURI Final Report* <<http://www.ahuri.edu.au/research/final-reports/401>> (‘Towards an Australian Housing and Homelessness Strategy’).

²⁴ National Housing Council, *Renewing Canada’s National Housing Strategy* (April 2023) <https://cms.nhc-cn.ca/media/PDFs/NHS_Report-FINAL.pdf>.

Housing Strategy Act 2019. The CEH believes this is an important international precedent and example of best practice in addressing homelessness through legislation.

Housing Australia as the NHHP's lead agency

The CEH supports the specification of Housing Australia as the lead agency in the preparation, implementation and review of the Plan. Many experts have recommended that Housing Australia is the appropriate body for this task, given its position as the independent national housing authority.²⁵

Stakeholders including the Community Housing Industry Association have recommended that Housing Australia's existing roles be built upon to create a "rounded" national statutory housing agency.²⁶ Widening the scope of Housing Australia's role rather than creating a new body to oversee housing policy under the NHHP is justified under the grounds that Housing Australia is already operating well and has strong existing stakeholder relationships. Existing housing policy and market knowledge within Housing Australia would support the agency in strategy development and co-ordination functions.²⁷ Expanding an existing agency would also limit structural change within the housing policy sphere.²⁸

National Housing Consumer Council

The Bill also seeks to establish the National Housing Consumer Council, a nine to 16 member body to "represent the interests of housing consumers". Groups specified for membership to the Council include persons with lived experience of housing need, Indigenous people and people with disability. Membership must also "reflect a diversity of people in the housing system", including homebuyers and private and social housing tenants.

Several of Australia's leading housing scholars have charted the tendency for housing policy design and government housing expenditure to reflect the interests of private industry and property investors.²⁹³⁰³¹ To reverse this trend, the voices of those marginalised by decades of retrenchment in government responsibility for providing non-market housing must be heard.

Moreover, in the field of homelessness services, the absence of "voices of lived experiences" is linked to the development of interventions that too often misrepresent the needs of service users and therefore do

²⁵ Chris Martin et al, 'Towards an Australian Housing and Homelessness Strategy: Understanding National Approaches in Contemporary Policy' [2023] (401) *AHURI Final Report* <<http://www.ahuri.edu.au/research/final-reports/401>>

²⁶ Community Housing Industry Association, *CHIA CEO: Welcoming the Arrival of the HAFF* (20 October 2023) <<https://www.communityhousing.com.au/newsletters/chia-ceo-welcoming-the-arrival-of-the-haff/>>.

²⁷ Chris Martin et al, 'Towards an Australian Housing and Homelessness Strategy: Understanding National Approaches in Contemporary Policy' [2023] (401) *AHURI Final Report* <<http://www.ahuri.edu.au/research/final-reports/401>> ('Towards an Australian Housing and Homelessness Strategy').

²⁸ Catherine Stuart, *A National Housing Agency for Australia Position Paper* (Community Housing Industry Association, January 2023) <<https://www.communityhousing.com.au/wp-content/uploads/2023/06/CHIA-Housing-Agency-combined-position-paper-and-report-Jan-2023.pdf?x31751>>.

²⁹ Keith Jacobs and Hal Pawson, 'Introduction to the Special Edition: "The Politics of Housing Policy"' (2015) 30(5) *Housing Studies* 651 ('Introduction to the Special Edition').

³⁰ Keith Jacobs, 'The "Politics" of Australian Housing: The Role of Lobbyists and Their Influence in Shaping Policy' (2015) 30(5) *Housing Studies* 694 ('The "Politics" of Australian Housing').

³¹ Nicole Gurrán and Peter Phibbs, 'Are Governments Really Interested in Fixing the Housing Problem? Policy Capture and Busy Work in Australia' (2015) 30(5) *Housing Studies* 711 ('Are Governments Really Interested in Fixing the Housing Problem?').

not adequately address homelessness.³² Homelessness Australia, the national homelessness peak body, has emphasised the importance of embedding co-production with people with lived experience of homelessness within the Plan's development, implementation and oversight.³³

The large number of submissions received in recent inquiries into housing indicate an eagerness among the Australian public to engage with housing policy development. A recent Federal Senate Inquiry into the worsening rental crisis in Australia and a Victorian Legislative Committee inquiry into the rental and housing affordability crisis in Victoria each received hundreds of submissions, many of which were from individuals.

National Housing and Homelessness Advocate

The Bill seeks to establish a National Housing and Homelessness Advocate. Functions of the Advocate include monitoring progress in meeting the NHHP's goals, timelines and outcomes, receiving submissions with respect to systemic housing issues, and conducting reviews of systemic housing issues. Reports and advice would be submitted to the Minister.

The establishment of an Advocate, modelled upon the Canadian *National Housing Strategy Act 2019*, is recommended by Martin et al. (2023), who note that the appointment of an Advocate would "keep the Government to account" on the strategy's conduct and the broader "pursuit of Australia's housing and homelessness mission".

Canada's Federal Housing Advocate has used their position to make recommendations to the Canadian Government, the Minister of Housing, and the provinces, territories and municipalities within Canada's federated system of government. The Advocate also uses an online portal to receive public submissions from individuals with lived experiences of inadequate housing and homelessness, as well as community organisations working in front-line housing assistance.³⁴ Reports prepared address systemic issues influencing housing outcomes in Canada, including housing financialisation, the right to housing for Indigenous peoples, and barriers to housing for two-spirit, trans and non-binary people.³⁵ Reporting on systemic issues in a similar manner in Australia would greatly strengthen policy making to address homelessness and housing insecurity.

Concluding Statement

The CEH recommends that the *National Housing and Homelessness Bill 2024 (No. 2)* be passed. This legislation would enhance government accountability within housing and homelessness policy and would help ensure the Plan is a long-term, rather than momentary, endeavour. The Bill also seeks to enshrine the

³² Skye Constantine, 'Consumer Participation in Homelessness Service Delivery in Australia: What Is It For?' (2024) 59(2) *Australian Journal of Social Issues* 554 ('Consumer Participation in Homelessness Service Delivery in Australia').

³³ Homelessness Australia, *National Housing and Homelessness Plan Submission* (October 2023)

<<https://homelessnessaustralia.org.au/wp-content/uploads/2024/03/Copy-of-National-Housing-and-Homelessness-Plan-Submission.pdf>>.

³⁴ Canadian Human Rights Commission, 'A Wave of New Data: The First Year of the Advocate's Submission Tool' (2023)

<<https://housing.chrcreport.ca/hearing-directly-from-people-across-canada.html>>.

³⁵ Federal Housing Advocate, 'Federal Housing Advocate's 2022–2023 Annual Report - Amplifying Experiences of Systemic Housing Issues in Canada' (2023) <<https://housing.chrcreport.ca/amplifying-experiences-of-systemic-housing-issues-in-canada.html>>.

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human right to housing within legislation, a significant recognition of Australia’s obligations under international law.

The CEH notes that this Bill’s contents are widely supported by many stakeholders within the housing and homelessness sectors and is informed by reporting from several of Australia’s leading housing academics. The Bill is an important step in capitalising on the historic opportunity presented by the National Housing and Homelessness Plan to create a fairer housing system for all.