



**Australian
Human Rights
Commission**

everyone, everywhere, everyday

Submission No. 90
(homelessness legislation)
A.O.C. | Date: 02/09/09

Inquiry into national homelessness legislation

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Australian Human Rights Commission Submission
to the House of Representatives Standing
Committee on Family, Community, Housing and
Youth

1 September 2009

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1 Introduction

1. The Australian Human Rights Commission (the Commission) welcomes the opportunity to make this submission to the House of Representatives Standing Committee on Family, Community, Housing and Youth (the Committee) in its Inquiry into national homelessness legislation.
2. The Commission is Australia's national human rights institution. It is established under the *Australian Human Rights Commission Act 1986* (Cth).
3. The Commission has previously made a Submission to the Australian Government's Green Paper on Homelessness, *Which Way Home?*¹ At that time, the Commission recommended that the Australian Government take a human rights based approach to reducing homelessness in Australia.
4. On 21 December 2008, the Australian Government released its White Paper, *The Road Home: A National Approach to Reducing Homelessness* (the White Paper).²
5. The White Paper included a commitment by the Australian Government to 'enact new legislation to ensure that people who are homeless receive quality services and adequate support.'³ The White Paper also incorporates a number of the features of a 'human rights based approach' to reducing homelessness.⁴
6. On 16 June 2009, the Australian Government referred this Inquiry to the Committee. The Terms of Reference for the Inquiry are as follows:

The House of Representatives Standing Committee on Family, Community, Housing and Youth shall inquire into and report on the content of homelessness legislation.

The Committee will make inquiries into the principles and service standards that could be incorporated in such legislation, building on the strengths of existing legislation, particularly the *Supported Accommodation Assistance Act 1994*.

The Committee shall give particular consideration to:

1. The principles that should underpin the provision of services to Australians who are homeless or at risk of homelessness.

¹ Human Rights and Equal Opportunity Commission, *Submission to the Australian Government's Green Paper: Which Way Home?* (2008). At www.hreoc.gov.au/legal/submissions/2008/20080704_homelessness.pdf (viewed 26 August 2009).

² Department of Families, Housing, Community Services and Indigenous Affairs (FAHCSIA), *The Road Home: A National Approach to Reducing Homelessness* (2008) (the White Paper). At www.fahcsia.gov.au/sa/housing/progserv/homelessness/whitepaper/Documents/the_road_home.pdf (viewed 2 August 2009).

³ FAHCSIA, note 2, 44.

⁴ See Section 5.

2. The scope of any legislation with respect to related government initiatives in the areas of social inclusion and rights.
 3. The role of legislation in improving the quality of services for people who are homeless or at risk of homelessness.
 4. The effectiveness of existing legislation and regulations governing homelessness services in Australia and overseas.
 5. The applicability of existing legislative and regulatory models used in other community service systems, such as disability services, aged care and child care, to the homelessness sector."
7. This Inquiry is a crucial stage in implementing the Australian Government's White Paper.
 8. In this Submission, the Commission makes specific recommendations about how the national homelessness legislation can incorporate protection of basic human rights, and entrench the commitment of the Australian Government to progressively reduce homelessness as a national priority.
 9. The Submission highlights:
 - a. the relevance of human rights to reducing homelessness;
 - b. the key features and principles that underpin a human rights based approach to public policy development; and
 - c. the connection between such an approach, and pursuing the Australian Government's social inclusion agenda.
 10. The Submission then makes recommendations about how a human rights based approach to reducing homelessness can be incorporated into:
 - a. national homelessness legislation; and
 - b. related measures linked to the homelessness legislation which will enhance the effectiveness of efforts to reduce homelessness in Australia.

2 Summary

11. The Commission has strongly welcomed the Government's decision to make the reduction of homelessness in Australia a national priority.⁵ The Commission wholly agrees that this is a 'once in a generation' opportunity to address this important area of human rights.⁶

⁵ See Human Rights and Equal Opportunity Commission, *Submission to the Australian Government's Green Paper: Which Way Home?* (2008), note 1.

⁶ FAHCSIA, note 2, 1.

12. The Commission has also welcomed the Australian Government's White Paper which incorporates key features of taking a human rights based approach to addressing homelessness in Australia.⁷
13. New homelessness legislation is an important opportunity to improve protection of the basic rights of people facing homelessness in Australia, and ensure the reduction of homelessness in Australia becomes a reality.
14. The homelessness legislation will be a primary mechanism for ensuring that people facing homelessness move into adequate housing. The meaning of 'adequate housing' is particularly important. Internationally, it is now well recognised that all people should have housing which:
 - a. provides enough security of tenure to protect people from being evicted into homelessness;
 - b. contains facilities essential to health, security, comfort and nutrition;
 - c. costs no more than a person can afford so that people still have enough money to meet other essential needs;
 - d. provides adequate space and protection from cold, damp, heat, rain or other threats to health, structural hazards and disease;
 - e. accommodates the specific needs of people who experience particular disadvantage;
 - f. enables access to employment, health services, schools, child care and other social facilities, and is not near polluted areas; and
 - g. is constructed and supported by policies which enable the expression of cultural identity and diversity of housing.⁸
15. The Commission recommends that the homelessness legislation should make a commitment to progressively realising the right to adequate housing. It should incorporate a human rights based approach to the provision of services to people who facing homelessness, based on well-developed, internationally recognised principles of:
 - a. Accountability and the rule of law;
 - b. Universality, non-discrimination and equality;
 - c. Participatory decision-making processes; and
 - d. The recognition of the interdependence of rights.⁹

⁷ See Section 5.

⁸ See Section 7.2(c).

⁹ See Section 5.

16. There is a strong connection between the above principles and the Australian Government's social inclusion agenda.
17. To give practical effect to these principles, the homelessness legislation should incorporate the following features:
- a. objectives which include the protection and promotion of human rights and an interpretation clause that requires the legislation, decisions made under it and services to protect and promote basic rights;
 - b. a definition of homelessness which is linked to adequacy of housing;
 - c. clear benchmarks, targets and data systems to track progress made in reducing homelessness, including amongst groups who are particularly affected by homelessness, including women and their children, youth and older persons, Aboriginal and Torres Strait Islander peoples (Indigenous peoples),¹⁰ people from culturally and linguistically diverse groups, migrants and refugees, people with disability, people with mental health issues, and people leaving correctional facilities;
 - d. a requirement that all intergovernmental arrangements include targeted measures so that the specific needs of particularly vulnerable groups are addressed;
 - e. entrenchment of participatory mechanisms in decision-making processes at both national and service levels;
 - f. effective individual complaint mechanisms; and
 - g. strong independent monitoring mechanisms to ensure that current and future Australian Governments comply with the duty of progressive realisation of the right to adequate housing.
18. In addition to the content of homelessness legislation, there are important additional reforms that are needed to ensure that efforts under the homelessness legislation are coordinated and complement other systems and services.
19. In particular, the Commission urges the Australian Government to:
- a. ensure that other national reforms are integrated with action under the White Paper, including the National Plan to Reduce Violence Against Women and their Children, which is currently being developed;

¹⁰ The Commission recognises the diversity of the cultures, languages, kinship structures and ways of life of Aboriginal and Torres Strait Islander peoples. Aboriginal and Torres Strait Islander peoples are primarily referred to as 'Indigenous peoples' in this Submission. This is because the term carries a meaning in international law. In particular, the use of 'peoples' with an 's' (and not people singular) reflects the human rights instruments that refer to the collective right of self-determination as one enjoyed by 'peoples'. For a more detailed explanation on the use of the terms see: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2008*, Commonwealth of Australia, Canberra, 2008).

- b. review residential tenancy and public spaces laws which either exacerbate the rate of homelessness, or operate to further exclude people who are homeless from Australian society;
 - c. develop a long-term National Housing Strategy which incorporates benchmarks and time-bound targets, including a focus on new and emerging groups who may be increasingly at risk of homelessness in future years; and
 - d. strengthen domestic and international human rights protections for people facing homelessness, including through a Human Rights Act which includes the right to adequate housing, stronger anti-discrimination laws, increased capacity for the Australian Human Rights Commission in respect of the *International Covenant on Economic Social and Cultural Rights* (ICESCR), and adoption of the Optional Protocol to the ICESCR which enables individuals to lodge complaints about housing to the United Nations.
20. The Commission considers that the adoption of these measures would place Australia at the forefront of countries around the world in:
- a. treating every person facing homelessness with dignity and respect;
 - b. using legislation to achieve a national result by all governments for people facing homelessness;
 - c. ensuring accountability to the Australian public for action taken, and funding spent, in order to reduce homelessness; and
 - d. showing international leadership in how to protect human rights in a practical and effective way through dedicated homelessness legislation.

3 Recommendations

21. The Australian Human Rights Commission makes the following recommendations in this submission:

Recommendation 1: Homelessness legislation should include as one its objectives the protection and promotion of the human rights of people facing homelessness.

Recommendation 2: Homelessness legislation should include as one of its objectives: to ensure that the specific needs of individuals and groups vulnerable to homelessness are met.

Recommendation 3: Homelessness legislation should include an interpretative clause which requires that the legislation be interpreted consistently with human rights, so far as it is possible to do so consistently with the purpose of the legislation.

Recommendation 4: Homelessness legislation should expressly require that the obligation to promote and protect human rights be enshrined in any

intergovernmental arrangements between Australia governments, and, consequently, in funding and service delivery frameworks with third party service providers.

Recommendation 5: Homelessness legislation should include the obligation to progressively realise the human right to adequate housing as a key objective, and clearly set out the elements of this human right.

Recommendation 6: Homelessness legislation should include legislative safeguards to ensure progressive realisation of the right to adequate housing, including: (1) substantive provisions which set out key benchmarks and time-bound targets; and (2) provisions which require intergovernmental mechanisms to increase funding and services in order to meet targets on time.

Recommendation 7: Homelessness legislation should include minimum standards of adequacy that housing must meet. Funding for services must be sufficient to ensure these standards are met.

Recommendation 8: The definition of homelessness in homelessness legislation should refer to whether the person has access to adequate housing in accordance with international standards, and should build upon the *Supported Accommodation and Assistance Act 1994* (Cth) (SAA Act) definition.

Recommendation 9: Homelessness legislation should include a substantive provision which prohibits ‘forced evictions’ (in other words, evictions into homelessness) from services funded under the legislation, and ensure institutional and funding arrangements under the legislation support services to meet this government obligation.

Recommendation 10: Homelessness legislation should include participation by people who are to benefit from the legislation as a key objective.

Recommendation 11: The National Council on Homelessness could be set up in the homelessness legislation as an independent, transparent consultation mechanism and be required to establish participation mechanisms for people with direct experience of homelessness.

Recommendation 12: Homelessness legislation should require that national, state and territory and service level decision-making processes incorporate participatory mechanisms for people who have experience of homelessness, including representation from particularly vulnerable groups. Specific funding should be made available for services to develop and sustain these participatory processes.

Recommendation 13: Homelessness legislation should require that all research, reporting, monitoring and evaluation frameworks include disaggregated data collection and analysis of the outcomes being achieved for vulnerable groups. Vulnerable groups include women and their children, youth and older persons, Indigenous peoples, people from culturally and linguistically diverse groups, migrants and refugees, people with disability, people with mental health issues, and people leaving correctional facilities.

Recommendation 14: Homelessness legislation should require that intergovernmental frameworks include provision for how the specific needs of vulnerable groups will be addressed to achieve substantive equality in reducing homelessness, including specific benchmarks and time-bound targets.

Recommendation 15: Homelessness legislation should provide for transparent and independently verifiable mechanisms to monitor progress on the Australian Government's targets for reducing homelessness and efforts to progressively realise the right to adequate housing.

Recommendation 16: Homelessness legislation should provide for individuals receiving services to have access to: (a) internal complaint mechanisms; (b) an external independent complaint mechanism; and (c) adequate advice, advocacy and legal representation to ensure complaints mechanisms are accessible and people have adequate support.

Recommendation 17: The Australian Government should ensure that action under the White Paper is coordinated and integrated with other relevant major national reforms, including the National Plan to Reduce Violence against Women and their Children, which is currently being developed through COAG.

Recommendation 18: The Australian Government should consider developing a National Housing Strategy, which sets clear benchmarks and time-bound targets for all measures of the progressive realisation of the right to adequate housing.

Recommendation 19: The Australian Government should give a high priority to establishing a national review of public space laws that impact on the rights of people who are homeless.

Recommendation 20: The Australian Government should ensure the conduct of a national review of tenancy laws which has minimum rights protection as a key term of reference. In particular, tenancy laws should be reviewed to ensure that there are safeguards to prevent evictions into homelessness.

Recommendation 21: The Australian Parliament should enact a national Human Rights Act that protects civil, political, economic, social and cultural rights, including the right to adequate housing.

Recommendation 22: The Australian Government should refer to the Australian Law Reform Commission for inquiry and report the question of how best to strengthen, simplify and streamline national anti-discrimination laws. The inquiry should specifically consider expanding the grounds of protection from discrimination to include homelessness or social status.

Recommendation 23: The Attorney-General should give consideration to declaring the ICESCR under section 47(1) of the Australian Human Rights Commission Act.

Recommendation 24: The Australian Government should ratify the *Optional Protocol to the ICESCR*.

4 What is the relevance of human rights to reducing homelessness?

22. The White Paper recognises that homelessness is not just a housing problem. It recognises that there are many drivers and causes of homelessness, including the shortage of affordable housing, long term unemployment, mental health issues, substance abuse and family and relationship breakdown. For women in particular, domestic and family violence is the main reason for seeking help from specialist homelessness services.¹¹

23. The White Paper acknowledges that a person experiencing homelessness is likely to experience poor health and difficulty participating in employment or education. The White Paper further recognises that a stable home provides safety and security as well as connections to friends, family and a community.¹²

24. When a person faces homelessness, their human rights are at stake. A person who does not have a secure place to live may be hurt or sexually assaulted, have nothing or little to eat, and be unable to go to school or work. At the heart of being homeless is a lack of control over daily life¹³ and an absence of the essential necessities to live a dignified life. In human rights terms, the experiences of people facing homelessness may involve violation of a wide range of basic rights, including:

- the right to an adequate standard of living, including the right to housing, food, clothing and to the continuous improvement of living conditions;
- the right to the highest attainable standard of physical and mental health;
- the right to social security;
- the right of everyone to an education;
- the right to liberty and security of person;
- the right to vote;
- the right to respect to private and family life;
- the right to freedom of opinion and expression;

¹¹ FAHCSIA, note 2, 1.

¹² FAHCSIA, note 2, 1.

¹³ Coleman, A, *Five Star Motels: Spaces, Places and Homelessness in Fortitude Valley, Brisbane*, PhD Thesis, School of Social Work and Social Policy, University of Queensland, 2000, 167: 'Homelessness is having no legitimacy or control over the spaces in which you live, and no legitimated role within the community in which you live.'

- the right to enjoy culture and take part in cultural life;
- the right to work;
- the right to vote;
- the right to non-discrimination; and
- the right not to be subjected to cruel, inhuman or degrading treatment.¹⁴

25. All of these basic rights are recognised internationally as human rights.

Australia is a party to a number of international human rights instruments, including the *International Covenant on Civil and Political Rights* (ICCPR) and the ICESCR, which set out these rights. The Australian Government has an obligation to protect, respect and fulfil its international human rights treaty obligations.¹⁵ See Appendix 10.1 for a full list of all relevant international human rights instruments.

26. By ratifying these international human rights treaties, Australia has undertaken legal obligations to ensure that everyone in Australia enjoys those human rights. The Australian Government has a domestic commitment to enhance the protection of human rights, as evidenced by its current National Human Rights Consultation.¹⁶

27. Relevant United Nations bodies have expressed concern that Australia has failed to meet its ongoing obligations to people facing homelessness.

28. In May 2009, Australia's human rights record was reviewed by the United Nations Committee on Economic, Social and Cultural Rights (CESCR). The CESCR reviews the extent to which the Australian Government has met its obligations under the ICESCR, including the obligation to progressively realise the right to adequate housing for all people in Australia.

29. The CESCR expressed concern that the incidence of homelessness has increased in Australia in the past decade. The CESCR recommended that the Australian Government take effective measures to address homelessness,

¹⁴ For a more detailed explanation of the human rights violations which may be experienced by a person facing homelessness, see Lynch and Cole, 'Homelessness & Human Rights: Regarding and responding to homelessness as a human rights violation' (2003) 4(1) *Melbourne Journal of International Law* 139.

¹⁵ For more detailed discussion of the human rights implications of homelessness, see Australian Human Rights and Equal Opportunity Commission, 'Homelessness is a Human Rights Issue' (2008). At www.humanrights.gov.au/Human_Rights/housing/homelessness_2008.html (viewed 4 August 2009).

¹⁶ UN Human Rights Committee, *General Comment No 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc CCPR/C/21/Rev.1/Add.13 (2004), para 13. At www.unhcr.ch/tbs/doc.nsf/0/58f5d4646e861359c1256ff600533f5f?Opendocument (viewed 25 August 2009).

including implementing the recommendations made by the UN Special Rapporteur on Adequate Housing in 2006.¹⁷

30. In 2006, the UN Special Rapporteur on Adequate Housing, Miloon Kothari, visited Australia and conducted an intensive investigation into the extent to which people had adequate housing. The Special Rapporteur found that there was a 'serious national housing crisis in Australia, especially given that Australia is one of the wealthiest developed countries with a comparatively small population'.¹⁸ He criticised Australia for failing to put in place effective measures to eliminate homelessness and for failing to address its housing crisis. In his Report to the United Nations Human Rights Council in May 2007, the Special Rapporteur said that

Australia has failed to implement its international legal obligation to progressively realize the human right to adequate housing to the maximum of its available resources, particularly in view of its possibilities as a rich and prosperous country.¹⁹

31. The Special Rapporteur recommended that Australian governments should address homelessness and its causes as a priority.²⁰

32. Accordingly, the Commission congratulates the Australian Government for:

- a. making the reduction of homelessness in Australia a national priority;
- b. appointing a national Minister for Housing;
- c. developing the White Paper which sets two 'headline goals' or targets for reducing homelessness in Australia, as follows:
 - i. Halving homelessness by 2020; and
 - ii. Offering accommodation to all rough sleepers who need it by 2020; and
- d. committing to specific measures to achieve these targets within the time frames set.

33. This Submission sets out recommendations to the Australian Government about how to meet our human rights obligations when developing homelessness legislation.

¹⁷ UN Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Australia*, UN Doc E/C.12/AUS/CO/4 (2009) (Advanced Unedited Version), para 26. At www2.ohchr.org/english/bodies/cescr/docs/AdvanceVersions/E-C12-AUS-CO-4.doc (viewed 2 August 2009).

¹⁸ Special Rapporteur on Adequate Housing as a component of the right to an adequate standard of living, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living: Mission to Australia (31 July to 15 August 2006)*, UN Doc A/HRC/4/18/Add.2 (Annex) (2007), summary. At <http://daccessdds.un.org/doc/UNDOC/GEN/G07/125/72/PDF/G0712572.pdf?OpenElement>.

¹⁹ Special Rapporteur on Adequate Housing, note 18, para 126.

²⁰ Special Rapporteur on Adequate Housing, note 18, para 132.

34. The Submission urges the Australian Government to take a ‘human rights based approach’ to the legislation and associated efforts to reduce homelessness in Australia. As explained further below, implementing a human rights based approach in this area of national public policy will directly contribute to the Australian Government’s social inclusion agenda.

5 What is a ‘human rights-based approach’ to reducing homelessness?

35. There is growing recognition globally of the effectiveness of a human rights-based approach to addressing disadvantage. In particular, the connection between human rights, development and poverty reduction is well understood. For example, CESCR recognises that, ‘anti-poverty policies are more likely to be effective, sustainable, inclusive, equitable and meaningful to those living in poverty if they are based upon international human rights’.²¹ There is a range of literature and research which provides evidence of the effectiveness of using a human rights-based approach to addressing disadvantage.²²
36. A human rights-based approach to homelessness implements the principles of empowerment, equality, dignity and accountability in all stages of legislation, policy design and service delivery.
37. Key features of a human rights-based approach to public policy to address disadvantage include:

Accountability and the Rule of Law: The duties to respect, protect and fulfil human rights must be supported by accountability mechanisms which are accessible, transparent and effective.²³ Both outcomes and processes should be monitored and evaluated, with measurable goals and targets.²⁴ Where governments fail to comply with human rights, people are entitled to an effective remedy for appropriate redress.²⁵

²¹ UN Committee on Economic and Social Rights, *Substantive Issues arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights*, UN Doc E/C.12/2001/10 (10 May 2001), para 13. At www2.ohchr.org/english/bodies/cescr/docs/statements/E.C.12.2001.10Poverty-2001.pdf (viewed 6 August 2009).

²² See, for example, United Nations Development Program (UNDP), *Indicators for Human Rights Based Approaches to Development in UNDP Programming: A Users’ Guide* (March 2006), and references. At <http://www.undp.org/oslocentre/docs06/HRBA%20indicators%20guide.pdf>. See, also, United Nations Education, Scientific and Cultural Organization (UNESCO): *Undertaking a Human Rights-Based Approach: A Guide for Basic Programming* (2008) and references. At http://www2.unescobkk.org/elib/publications/232_233/HRBA.pdf. For discussion of a human rights based approach in the Australian context see: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, HREOC Sydney 2005, 138-146.

²³ Office of the High Commissioner on Human Rights (OHCHR), *Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation*, United Nations, 2006, available online at: http://ohchr.org/english/about/publications/docs/FAQ_en.pdf (Viewed 5 October 2007). 24.

²⁴ UNESCO, note 22, 28,

²⁵ OHCHR, note 23, 36.

Universality, non-discrimination and equality: Laws and institutions that foster discrimination against specific individuals and groups must be eliminated. Laws and institutions need to pursue measures to ensure particularly disadvantaged groups enjoy equality of outcomes. Programmes must include focus on marginalized, disadvantaged, and excluded groups.²⁶

Participatory decision-making processes: A human rights-based approach requires active and informed participation by individuals affected in the formulation, implementation and monitoring of laws, policies and services. People should be recognised as key actors in their own development, rather than passive recipients of commodities and services.²⁷

The recognition of the interdependence of rights: Recognition that the enjoyment of some right may be dependent on, or contribute to, the enjoyment of others.²⁸

38. The White Paper sets out a strong basis for implementing a human rights-based approach to reducing homelessness.

39. For example, the White Paper recognises that:

a. individuals experiencing homelessness, or individuals at risk of homelessness, need to be involved in the planning and delivery of services²⁹ (Participatory Decision-Making Processes);

b. that the rights and responsibilities of individuals and families need to be protected³⁰ (Accountability and the Rule of Law); and

c. the 'response to homelessness will be underpinned by legislation that guarantees that people who are homeless are treated with dignity and respect, and receive quality services'.³¹ (Accountability and the Rule of Law).

40. In the Commission's view, a human rights approach to homelessness is the most effective means of helping 'break the cycle' of homelessness.

41. Further, as explained in the next section, using a human rights-based approach to the development and implementation of new national homelessness legislation and related laws and policies will directly contribute to the Australian Government's social inclusion agenda

²⁶ UNESCO, note 22, 13.

²⁷ UNESCO, note 22, 13.

²⁸ OHCHR, note 23, 2.

²⁹ FAHCSIA, note 2, 19.

³⁰ FAHCSIA, note 2, 19.

³¹ FAHCSIA, note 2, 12.

6 What is the connection between social inclusion and human rights to addressing homelessness?

42. In the White Paper, the Australian Government states that it 'is committed to using the framework of social inclusion to tackle disadvantage'.³² Addressing the incidence of homelessness is one of the Australian Government's Social Inclusion Priorities.³³
43. There is a significant degree of overlap between social inclusion and a human rights-based approach to tackling disadvantage. There is a particularly strong correlation between the principles guiding social inclusion and the minimum standards for the enjoyment of human rights. The 60 years of experience in applying human rights principles to addressing disadvantage offer practical and clear standards for addressing homelessness.
44. Human rights principles focus on the empowerment of individuals to participate in their community and to control their own lives. They also focus on ensuring that all people enjoy minimum standards of treatment consistent with their inherent dignity and entitlement to respect. This approach is particularly important when public policy is endeavouring to support people experiencing extreme disadvantage.
45. Similarly, the Australian Government's Social Inclusion Principles set out three 'Aspirational Principles':
- addressing disadvantage
 - increasing social, civil and economic participation
 - giving people a greater voice, combined with greater responsibility.³⁴
46. A human rights-based approach recognises that some people will have significant challenges in pursuing social, civil and economic participation due to disadvantage or discrimination, yet at all times each and every person must be treated with respect and allowed to maintain their dignity.
47. Well-established human rights standards can provide policy makers with ready-made benchmarks when developing and implementing policy to prevent and address homelessness in Australia.
48. For example the basic standards of adequacy for housing³⁵ and the basic tenets of effective participation³⁶ can assist policy makers to develop, implement and monitor homelessness legislation and policy.

³² FAHCSIA, note 2, 19.

³³ Australian Government, *Social Inclusion Priorities*, Social Inclusion website, at www.socialinclusion.gov.au/Priorities/Pages/default.aspx, (viewed 6 August 2009).

³⁴ Australian Government, *Social Inclusion Principles for Australia*, Social Inclusion website, www.socialinclusion.gov.au/Principles/Documents/SIPrinciples.pdf, (viewed 6 August 2009).

³⁵ See Section 7.2(c).

49. Thus this Submission highlights how the integration of human rights principles and standards can simultaneously bolster the Australian Government's social inclusion agenda and help create a stronger national homelessness legislative and policy framework.

7 How can national homelessness legislation adopt a human rights-based approach?

50. This section of the Commission's submission sets out recommendations for how a human rights-based approach can be implemented within new national homelessness legislation.

51. In summary, homelessness legislation can implement a human rights-based approach to homelessness by:

- including the protection and promotion of human rights as a legislative objective, and an interpretative clause;
- implementing the right to adequate housing;
- providing for the effective participation of people with experience of homelessness in the development, delivery and assessment of policies and services;
- ensuring that measures are in place to address the specific needs of people who are particularly vulnerable to homelessness;
- establishing and funding mechanisms to effectively monitor progress in achieving the goals of the White Paper; and
- providing accessible and effective remedies for breaches of human rights.

7.1 *Incorporating human rights objectives and an interpretative clause*

52. The White Paper gives a priority to protecting the rights of individuals and families.³⁶ The recognition of people experiencing homelessness as rights-holders is an important step towards ensuring dignity and respect, and that people are empowered to participate in community life. There is a growing consensus that responses to homelessness need to be grounded in respect for rights rather than in notions of charity or welfare.

53. In the view of the OHCHR:

The most fundamental way in which empowerment occurs is through the introduction of the concept of rights itself. Once this concept is introduced into the context of policymaking, the rationale of poverty reduction no longer derives

³⁶ See Section 7.3.

³⁷ FAHCSIA, note 2, 19.

merely from the fact that the people living in poverty have needs but also from the fact that they have rights - entitlements that give rise to legal obligations on the part of others.³⁸

54. The recognition of basic rights needs to be included in the national homelessness legislation.
55. Currently, certain international human rights standards are recognised in the preamble to the *Supported Accommodation Assistance Act 1994* (Cth) (SAA Act). The Act also provides that a form of Supported Accommodation Assistance Program (SAAP) agreement should establish 'the means by which the civil, political, economic and social rights of people who are homeless may be preserved and protected by service providers'.³⁹
56. New homelessness legislation should build and improve upon the SAA Act. Homelessness legislation should explicitly recognise the human rights of people facing homelessness.
57. In particular, the legislation should recognise the promotion and protection of human rights, including equality and non-discrimination, as one of its key objectives and as a guiding principle for the development and delivery of policy and services.
58. Where appropriate, the legislation should recognise the rights of importance to specific individuals and groups who may be particularly vulnerable to homelessness.⁴⁰ For instance, article 3 of the *Convention on the Rights of the Child* requires that in 'all actions concerning children, whether undertaken by private or public social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration'.⁴¹
59. In order to protect the interests of children, it is important that homelessness legislation require that 'the best interests of the child' guide the development of policy and the delivery of homelessness services that affect children.
60. As another example, the *Declaration of the Rights of Indigenous Peoples* is particularly important. For instance, article 21 provides that

Indigenous people have the right, without discrimination, to the improvement of their ... [housing] conditions' and that the government must 'take effective measures, and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall

³⁸ OHCHR, note 23, para 19.

³⁹ *Supported Accommodation Assistance Act 1994* (Cth), s 8(g). The SAAP V Agreement between the Australian Government and the states and territories was replaced by the National Affordable Housing Agreement on 1 January 2009.

⁴⁰ FAHCSIA, note 2, 19. See also Human Rights and Equal Opportunity Commission, *Submission to the Australian Government's Green Paper: Which Way Home?* (2008), note 1.

⁴¹ *Convention on the Rights of the Child* (CRC), 1989. At www2.ohchr.org/english/law/crc.htm (viewed 2 August 2009).

be paid to the rights and special needs of indigenous elders, women, youth and persons with disabilities.⁴²

61. The Commission sets out in section 7.4 how homelessness legislation can ensure that the specific needs of particularly vulnerable groups are met.
62. In order to protect rights, homelessness legislation should also include an interpretative clause that requires the legislation to be interpreted in accordance with Australia's international human rights obligations. This interpretative clause would be similar to the clause proposed by the Commission for a Human Rights Act in its Submission to the current National Human Rights Consultation.⁴³
63. The interpretative clause would mean that, when decisions are made under the homelessness legislation, decision-makers will be required to protect people's human rights, so far as it is possible to do so consistently with the legislation. This clause would be an important way for the Australian Government to foster a human rights culture in this field of public policy as it would require that human rights be considered at every level of government decision-making under the legislation.
64. Homelessness legislation should also include a clause which requires that the obligation to promote and protect human rights be included in any intergovernmental arrangements between Australian governments.
65. This clause would mean that relevant bodies delivering services under homelessness legislation would need to demonstrate that, for example, adequate funding is available for services in order to enable basic rights to be respected, and appropriate complaints mechanisms exist (see section 7.5, below, about complaint mechanisms). The clause would mean that governments would need to ensure that any client charters of rights and service standards for service delivery under homelessness legislation comply with minimum rights standards.
66. Importantly, Australian governments would need to ensure that they have a mechanism for program and service evaluation which will identify where policies, procedures and funding arrangements for services need to be altered in order to protect rights.

Recommendation 1: Homelessness legislation should include as one its objectives: the protection and promotion of the human rights of people facing homelessness.

⁴² *United Nations Declaration of the Rights of Indigenous Peoples*, 2007. At <http://daccessdds.un.org/doc/UNDOC/GEN/N06/512/07/PDF/N0651207.pdf?OpenElement> (viewed 25 August 2009).

⁴³ Australian Human Rights Commission, *Submission to the National Human Rights Consultation* (2009), par 368. At www.humanrights.gov.au/legal/submissions/2009/200906_NHRC_complete.pdf (viewed 25 August 2009).

Recommendation 2: Homelessness legislation should include as one of its objectives to ensure that the specific needs of individuals and groups vulnerable to homelessness are met.

Recommendation 3: Homelessness legislation should include an interpretative clause which requires that the legislation be interpreted consistently with human rights, so far as it is possible to do so consistently with the purpose of the legislation.

Recommendation 4: Homelessness legislation should expressly require that the obligation to promote and protect human rights be enshrined in any intergovernmental arrangements between Australia governments, and, consequently, in funding and service delivery frameworks with third party service providers.

7.2 ***Implementing the right to adequate housing***

67. The above section of this Submission recommends that homelessness legislation should include the promotion and protection of human rights as a key objective.

68. The Commission considers that homelessness legislation should use the key elements of the human right to adequate housing as the legislative framework for pursuing the human rights objects of the legislation.

(a) *Key elements of the right to adequate housing*

69. The right to adequate housing is outlined in article 11(1) of the *International Covenant on Economic Social and Cultural Rights* (ICESCR)⁴⁴

70. 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.⁴⁵

71. The first element therefore is the obligation to 'progressively realise' this human right. This allows for the full realisation of the right to adequate housing over a period of time, taking resource constraints into account. This is very

⁴⁴ *International Covenant on Economic, Social and Cultural Rights* (ICESCR), 1966, art 11(1). At www.unhchr.ch/html/menu3/b/a_ceschr.htm (viewed 22 May 2009). The right to adequate housing is also reflected in other human rights treaties, including the the *Convention on the Rights of the Child* (CRC), 1989, note 42, art 27(3). At <http://www.unhchr.ch/html/menu3/b/k2crc.htm> (viewed 29 May 2009); the the *International Convention on the Elimination of all forms of Racial Discrimination* (CERD), 1965, art 5(e)(iii) at www2.ohchr.org/english/law/cerd.htm (viewed 2 August 2009) and the the *Convention on the Elimination of all forms of Discrimination against Women* (CEDAW), 1979, art 14(2)(h) at www2.ohchr.org/english/law/cedaw.htm (viewed 2 August 2009).

⁴⁵ ICESCR, note 45, art 2(1).

important, recognising that ‘the right to adequate housing’ does not mean that every person has a right to a house immediately.

72. A second element of the obligation is that housing must be ‘adequate’. The notion of adequacy is also very important, and is explained in further detail at section 7.2(c).
73. Thirdly, the ICESCR contains some ‘immediate obligations’. This includes the obligation to take ‘deliberate, concrete and targeted’ steps towards progressively realising the rights recognised in the ICESCR.⁴⁶ The White Paper is an excellent example of implementing this obligation.
74. Similarly, the obligation to ensure that rights are enjoyed without discrimination is of immediate effect.⁴⁷ This Submission deals in section 7.4 with the ways in which homelessness legislation can secure the principle of non-discrimination, ensuring that the specific needs of particular groups are addressed.
75. The ICESCR also imposes a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights contained in the ICESCR. This includes basic shelter and housing.⁴⁸ See section 7.2(e).
76. To justify a failure to meet these minimum core obligations on the grounds of a lack of available resources, the Australian Government must ‘demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations’.⁴⁹
77. Importantly, a fourth element of the obligation on the Australian Government is to protect people from ‘forced evictions’ or, in other words, evictions into homelessness. This requires that individuals and families are not evicted into homelessness, except as a last resort. When an eviction into homelessness cannot be avoided and the person is unable to secure alternative housing, the Australian Government must ensure that all appropriate measures are taken, to the maximum of available to resources,’ to ensure that adequate alternative housing is made available.⁵⁰

Recommendation 5: Homelessness legislation should include the obligation to progressively realise the human right to adequate housing as a key objective, and clearly set out the elements of this human right.

⁴⁶ UN Committee on Economic, Social and Cultural Rights, *General Comment 3: The nature of States parties obligations (Art. 2, para. 1 of the Covenant)*, UN Doc E/1991/23, annex III at 86 (1991), para 2. At [www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/94bdbaf59b43a424c12563ed0052b664?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/94bdbaf59b43a424c12563ed0052b664?Opendocument) (viewed 2 August 2009).

⁴⁷ UN Committee on Economic, Social and Cultural Rights, *General Comment 3*, above, para 2.

⁴⁸ UN Committee on Economic, Social and Cultural Rights, *General Comment 3*, above, para 10.

⁴⁹ UN Committee on Economic, Social and Cultural Rights, *General Comment 3*, above, para 9.

⁵⁰ UN Committee on Economic, Social and Cultural Rights, *General Comment 7: Forced evictions*, UN Doc E/1998/22 (1997), para 9. At [www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+Comment+7.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+Comment+7.En?OpenDocument). (viewed 2 August 2009).

The rest of this section sets out how to insert the elements of the right to adequate housing into substantive provisions of homelessness legislation.

(b) *Progressive realisation of the right to adequate housing*

78. As noted above, the Australian Government is under an obligation to progressively realise the right to adequate housing for all people in Australia. This means taking positive, concrete, targeted steps to reduce homelessness and increase adequate housing in Australia.

79. The Australian Government recognises in its White Paper that homelessness services are under-funded to meet demand.⁵¹ In order to reduce homelessness in Australia, the Commission recommends that a framework of progressive realisation of the right to adequate housing be set out in the substantive provisions of the homelessness legislation. The obligation of progressive realisation requires governments to demonstrate they are incrementally contributing to the realisation of human rights. Failure to act or provide incremental funding increases which are needed to reduce homelessness is not in compliance with the principle of progressive realisation.

80. As part of a legislative framework of progressive realisation, the Commission recommends that homelessness legislation include key benchmarks and targets, including the 'headline goals' set out in the White Paper. Legislation would set out the concrete targets that the Australian Government has agreed to meet, and by when. Further, homelessness legislation should include provisions which require intergovernmental arrangements to include mechanisms to ensure, first, that existing funding and services are not be reduced and, secondly, that mechanisms are in place to expand funding to progressively reach the benchmarks and targets which have been set.

81. In this respect, the Australian Government could have regard to the legislative model which has been developed in Scotland. Under the *Housing (Scotland) Act 1987* (UK), local authorities are under an obligation to provide particularly vulnerable individuals with emergency accommodation.⁵² In 2003, the Act was amended to implement a 10-year goal of requiring local authorities to provide all persons who are homeless with temporary accommodation (ie by 2012).⁵³

Recommendation 6: Homelessness legislation should include legislative safeguards to ensure progressive realisation of the right to adequate housing, including: (1) substantive provisions which set out key benchmarks and time-bound targets; and (2) provisions which require intergovernmental mechanisms to increase funding and services in order to meet targets on time.

⁵¹ FAHCSIA, note 2, 40.

⁵² See *Housing (Scotland) Act 1987* (UK), s 29(1). The duty to provide emergency housing to a person with a 'priority need' (see s 25) is subject to the individual satisfying a requirement of having a 'local connection' (see s 27) and not being 'intentionally homeless' (see s 26).

⁵³ *Homelessness Act (Scotland) 2003* (UK), s 3.

(c) *Adequate housing – how to assess ‘adequacy’*

82. The CESCR has provided clear guidance in assessing whether housing meets the required standard of adequacy. Specifically, the CESCR states that the following factors must be taken into account in that assessment:

- **Legal security of tenure:** People should possess a degree of security of tenure which guarantees legal protection against forced evictions, harassment and other threats, regardless of the type of tenure
- **Availability of services, materials, facilities and infrastructure:** To be adequate, housing must contain certain facilities essential for health, security, comfort and nutrition.
- **Affordability:** Housing costs should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised.
- **Habitability:** Housing must provide adequate space and protection from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors.
- **Accessibility to disadvantaged groups:** Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Housing law and policy should take their special housing needs fully into account.
- **Location:** Housing must be located as to allow access to employment options, health-care services, schools, child-care centre and other social facilities, and must not be built on or near polluted sites or sources of pollution.
- **Cultural adequacy:** The construction of housing, including the building materials used and supporting policies must appropriately enable the expression of cultural identity and diversity of housing.⁵⁴

83. These international standards of adequacy are an important measure for the development and implementation of services and responses under homelessness legislation.

84. In the White Paper, the Australian Government has committed to developing national accreditation, service standards and service charters for people who are homeless.⁵⁵ Homelessness legislation would require that standards of housing adequacy be embedded within national service standards, accreditation criteria and evaluation mechanisms.

⁵⁴ UN Committee on Economic, Social and Cultural Rights, *General Comment 4: The Right to Adequate Housing*, para 8, At [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/469f4d91a9378221c12563ed0053547e?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/469f4d91a9378221c12563ed0053547e?Opendocument) (viewed 2 August 2009).

⁵⁵ FAHCSIA, note 2, 44.

85. Further, the definition of homelessness should be directly linked to whether the person has access to adequate housing. The current definition in the SAA Act should be considered as a basis for developing a definition which reflects international standards regarding adequate housing:
86. The SAA Act defines a person as being homeless ‘if and only if he or she has inadequate access to safe and secure housing’. It states that a person is taken to have inadequate access to safe and secure housing if the only housing to which he or she has access:
- a. damages, or is likely to damage a person’s health; or
 - b. threatens a person’s safety; or
 - c. marginalises the person through failing to provide access to adequate personal amenities or the economic and social supports that a home normally affords; or
 - d. Places the person in circumstances which threaten or adversely affect the adequacy, safety, security and affordability of that housing.⁵⁶

Recommendation 7: Homelessness legislation should include minimum standards of adequacy that housing must meet. Funding for services must be sufficient to ensure these standards are met.

Recommendation 8: The definition of homelessness in homelessness legislation should refer to whether the person has access to adequate housing in accordance with international standards, and should build upon the *Supported Accommodation and Assistance Act 1994 (Cth)* (SAA Act) definition.

(d) *Prohibition on ‘forced evictions’ (in other words, evictions into homelessness)*

87. As noted in the Green Paper, forced evictions can be a key factor in leading people into homelessness.⁵⁷ The Commission notes that forced evictions are considered to be a violation of a wide range of human rights under international law. Forced evictions usually affect the poorest and most economically vulnerable and marginalised people in society.⁵⁸ The CESCR has identified forced evictions, in particular, as a violation of the right to adequate housing.⁵⁹
88. As recommended in the Commission’s submission to the Green Paper, homelessness legislation should provide that evictions into homelessness from accommodation services only occur as a matter of last resort, and that where an eviction occurs all appropriate measures are taken to secure

⁵⁶ *Supported Accommodation Assistance Act 1994 (Cth)*, s 1(4).

⁵⁷ Australian Government Green Paper on Homelessness, ‘Identifying the Problem’, *Which way home: new approaches to homelessness* (2008).

⁵⁸ Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, note 18, para 67.

⁵⁹ UN Committee on Economic, Social and Cultural Rights, *General Comment 7*, note 51, para 16.

alternative accommodation. Funding would need to be made available to meet this human rights standard.

Recommendation 9: Homelessness legislation should include a substantive provision which prohibits ‘forced evictions’ (in other words, evictions into homelessness) from services funded under the legislation, and ensure institutional and funding arrangements under the legislation support services to meet this government obligation.

(e) *Immediate obligations in respect of the provision of adequate housing*

89. It is arguable that, in the Australian context, the provision of emergency housing to people who are homeless is an immediate obligation, noting that the obligation to progressively realise adequate housing is about providing housing that meets all the standards of adequacy. Emergency housing is about meeting the most immediate basic requirements of shelter and essential necessities such as power and water.⁶⁰

90. At a minimum, the homelessness legislation should incorporate the headline goal of the White Paper and insert additional key targets for tracking progress on being able to offer emergency accommodation to every homeless person. See earlier **Recommendation 6**, above.

7.3 ***Effective participation by people with experience of homelessness***

91. Enabling the participation of people in decision-making that will affect them is a key feature of a human rights-based approach.⁶¹ The Australian Government’s Social Inclusion Principles⁶² and the White Paper⁶³ acknowledge that the participation of people in decisions which affect them is an important part of achieving social inclusion.

92. The Commission attaches to this Submission additional key international standards and sources that set out the importance of participation from a development, poverty reduction and international human rights perspective (see **Appendix 9.3**).

93. The United Nations Office of the High Commissioner of Human Rights has identified key stages of the decision-making processes in public affairs when participation by people affected should be incorporated. These stages are:

- assessing what people want to improve or change;

⁶⁰ For authority on the nature of a government’s immediate obligation to meet most basic housing needs, see *Government of South Africa and Others v Grootboom* 2001 (1) SA 46, which interprets the constitutional right to adequate housing under the South African Constitution.

⁶¹ See section 5.

⁶² Australian Government, ‘Social Inclusion Principles for Australia’, Principle 3. At www.socialinclusion.gov.au/Principles/Documents/SIPPrinciples.rtf (viewed 3 August 2009).

⁶³ FAHCSIA, note 2, 19.

- choosing policy responses, when decisions are made regarding the allocation of resources and conflicts of interest (or disagreement as to how those resources are allocated) are solved;
 - implementing agreed policies;
 - monitoring, assessment and accountability.⁶⁴
94. A human rights-based approach to homelessness would therefore involve the effective participation of people who are facing homeless at each stage of policy development and service delivery.
95. There are a number of ways in which homelessness legislation can enhance the effective participation by people with experience of homelessness in the development, implementation, monitoring and evaluation of services and policies.
96. The principle of meaningful and effective participation should be included within homelessness legislation, with the objective of ensuring that this principle is implemented at all four policy stages outlined above.
97. National policy making, implementation, monitoring and evaluation process should also incorporate mechanisms for participation by people who have experienced homelessness. For example, the National Council on Homelessness, which will play a key role in providing advice to the Australian Government about the ongoing implementation of the White Paper, could be funded to establish participatory mechanisms to inform its work.
98. Further, to implement this principle at the level of service delivery, services established and funded under homelessness legislation should be required to include participatory processes in their governance and evaluation arrangements, with funding specifically identified for sustaining the meaningful participation by people who have been homeless.
99. These participatory processes should allow input from a variety of people with experience of homelessness and representatives of groups that are particularly vulnerable to homelessness.
100. Models for such engagement mechanisms at service delivery level already exist. These include consumer advisory groups, consumer fora and other consumer participation strategies such as surveys and organisational development.⁶⁵

⁶⁴ Office of the United Nations High Commissioner for Human Rights, *Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies* (2006), UN Doc HR/PUB/06/12, 14. At http://www.undg.org/docs/7659/poverty_strategies.doc#_ARTICIPATION (viewed 29 July 2009).

⁶⁵ See Council to Homeless Persons, *Consumer Participation Resource Kit – Information Sheet #3: Benefits of Consumer Participation* (2008). At www.chp.org.au/cpkit/items/2008/02/196987-upload-00001.pdf (viewed 30 July 2009).

101. For example, in Victoria, the PILCH Homeless Persons' Legal Clinic has had a Consumer Advisory Group (CAG) since 2006. Comprised of up to 8 people who have all experienced homelessness, the CAG's role is 'to provide guidance and advice, and make recommendations, to the Clinic to enhance and more effectively target its service delivery, law reform, advocacy, education and community development activities'.⁶⁶
102. Similarly, the Homeless Advocacy Advisory Group, established in NSW by the Homeless Persons' Legal Service, provides advice to the Homeless Persons' Legal Service on how best to ensure that people experiencing homelessness can effectively participate in policy decisions that involve them.⁶⁷
103. In a further example, the Council to Homeless Persons has developed a Consumer Participation Resource Kit for housing and homelessness assistance services. It provides these services with 'information on ways to engage with service users, to listen to their views, and to develop strategies based on their advice with the aim of improving services'.⁶⁸ The Kit comprises factsheets on the various stages of consumer participation, including consumer participation plans and Consumer Advisory Groups.
104. To ensure that people experiencing homelessness are able to fully participate, Australian governments must adequately fund mechanisms for participation. This should include reimbursement for the time and expertise offered by participants in ongoing consultative processes.⁶⁹ It may also be appropriate to provide development and training support for services regarding effective participatory mechanisms.

Recommendation 10: Homelessness legislation should include participation by people who are to benefit from the legislation as a key objective.

Recommendation 11: The National Council on Homelessness could be set up in homelessness legislation as an independent, transparent consultation mechanism and be required to establish participation mechanisms for people with direct experience of homelessness.

Recommendation 12: Homelessness legislation should require that national, state and territory and service level decision-making processes incorporate participatory mechanisms for people who have experience of homelessness, including representation from particularly vulnerable groups. Specific funding should be made available for services to develop and sustain these participatory processes.

⁶⁶ PILCH (Vic) Homeless Person's Legal Clinic, *Consumer Advisory Group (CAG)* (2008). At <http://www.pilch.org.au/CAG/> (viewed 30 July 2009).

⁶⁷ C Hartley, 'Never for Us, Without Us: The Involvement of Homeless People in the Implementation of the White Paper' (2009) 22(1) *Parity* 30, 30.

⁶⁸ Council to Homeless Persons, note 66, 17.

⁶⁹ Hartley, note 68, 30.

7.4 Meeting the specific needs of people who are vulnerable to homelessness

105. In the White Paper, the Australian Government recognises that '[t]he homelessness response needs tailored measures for different groups such as children, older people, younger people and Indigenous people'.⁷⁰
106. Similarly, the Australian Government's Social Inclusion Principles acknowledge that '[f]or some members of the Australian population experiencing, or at immediate risk of, significant exclusion, mainstream services may not be sufficient or appropriate to mitigate against exclusion'.⁷¹
107. The obligation to put in place measures to address specific needs is a key component of a human rights-based approach to reducing homelessness. Homelessness policy must secure universality, non-discrimination and equality of rights for all peoples affected.
108. One of the immediate obligations on Australia as part of the right to adequate housing is to ensure that legislative and policy responses do not discriminate against people who are particularly vulnerable to homelessness.⁷²
109. In order to ensure that rights can be exercised without discrimination, Australia should eliminate discrimination both formally and substantively.
110. 'Formal' equality assumes that equality is achieved if a law or policy treats all people in a neutral manner. 'Substantive' equality:,
is concerned, in addition, with the effects of laws, policies and practices and with ensuring that they do not maintain, but rather alleviate, the inherent disadvantage that particular groups experience.⁷³
111. There are several ways in which homelessness legislation could be framed to ensure that measures address the specific needs of particularly disadvantaged groups.
112. First, homelessness legislation should require that all research, reporting, monitoring and evaluation frameworks include disaggregated data collection and analysis of the outcomes which are being achieved for vulnerable groups.
113. Secondly, the legislation should require that intergovernmental frameworks under the legislation include provision for how the specific needs of vulnerable groups will be addressed to achieve substantive equality in reducing

⁷⁰ FAHCSIA, note 2, 14.

⁷¹ Australian Government, note 35, Principle 6.

⁷² ICESCR, note 45, art 2(2); *International Covenant on Civil and Political Rights* (ICCPR), 1966, art 2(1). At http://www.unhchr.ch/html/menu3/b/a_ccpr.htm (viewed 22 May 2009),

⁷³ UN Committee on Economic Social and Cultural Rights, *General Comment No 16 - The equal right of men and women to the enjoyment of all economic, social and cultural rights*, UN Doc E/C.12/2005/4 (2005) para 7. At [www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/7c6dc1dee6268e32c125708f0050dbf6/\\$FILE/G0543539.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/7c6dc1dee6268e32c125708f0050dbf6/$FILE/G0543539.pdf) (viewed 3 August 2009).

homelessness. The Commission has previously highlighted specific needs of some vulnerable groups in relation to housing and homelessness in its Submission to the Green Paper.⁷⁴ Vulnerable groups include women and their children, youth and older persons, Indigenous peoples, people from culturally and linguistically diverse groups, migrants and refugees, people with disability, people with mental health issues, and people leaving correctional facilities. The White Paper also recognises the differential experiences of particular groups and the need for measures to meet their specific needs.⁷⁵ For example, lower levels of retirement savings, a likelihood of early retirement and longer life expectancy places women at greater risk of poverty and a sharp decline in their standard of living during retirement.⁷⁶

114. It is outside the scope of this Submission to set out the full measures required to achieve equality in outcomes under homelessness legislation. However, the Commission emphasises that it is crucial that homelessness legislation actively promotes a substantive equality approach to reducing homelessness, so that vulnerable groups receive specific appropriate services and support. For example, homelessness legislation or intergovernmental arrangements should:

- recognise children and young people as a specific group within homelessness legislation, distinct from their parents and carers. In addition, Australian governments should fund child and youth-specific services.⁷⁷
- fund safe, secure and affordable housing, as well as refuges and crisis services, for women. This recognises the particular vulnerability of women to homelessness and inadequate and exploitative housing due to their susceptibility to violence and economic insecurity.⁷⁸
- ensure that housing and support services are fully accessible for people with disabilities and people with mental health issues.⁷⁹
- ensure that government-funded housing and support services meet the requirements of cultural adequacy for Indigenous peoples, and people from culturally and linguistically diverse backgrounds, migrants and refugees.⁸⁰

⁷⁴ Human Rights and Equal Opportunity Commission (2008), Note 1.

⁷⁵ FAHCSIA, note 2, viii.

⁷⁶ Diana Warren, *Aspects of Retirement for Older Women* (2006), 44. At www.ofw.facsia.gov.au/downloads/pdfs/Aspect_of_Retirement%20_report_final.pdf (viewed 9 February 2009).

⁷⁷ For further detail of the particular housing needs of children and youth, see Human Rights and Equal Opportunity Commission, *Submission to the Green Paper on Homelessness – Which Way Home?* (2008), 18-21.

⁷⁸ For further detail of the particular housing needs of women, see Human Rights and Equal Opportunity Commission, *Submission to the Green Paper on Homelessness – Which Way Home?* (2008), 16-17.

⁷⁹ For further detail of the particular housing needs of people with disabilities and people with mental health issues, see Human Rights and Equal Opportunity Commission, *Submission to the Green Paper on Homelessness – Which Way Home?* (2008), 28-31. See also *Convention on the Rights of Persons with Disabilities*, 2006, arts 6(1), 9, 11, 19, 28. At www.un.org/disabilities/documents/convention/convoptprot-e.pdf (viewed 14 August 2009).

- ensure minimum standards of acceptable and adequate housing need to accommodate the often larger size of Indigenous or migrant families.
- support holistic and culturally adequate responses to homelessness for Indigenous peoples. This includes supporting community-controlled services that provide culturally appropriate accommodation support and assistance to Aboriginal and Torres Strait Islander women and children experiencing, or at risk of, family violence.⁸¹
- ensure that the housing needs of persons leaving detention facilities and corrective services are addressed, and that people are not leaving detention facilities or corrective services into homelessness.⁸²

Recommendation 13: Homelessness legislation should require that all research, reporting, monitoring and evaluation frameworks include disaggregated data collection and analysis of the outcomes being achieved for vulnerable groups. Vulnerable groups include women and their children, youth and older persons, Indigenous peoples, people from culturally and linguistically diverse groups, migrants and refugees, people with disability, people with mental health issues, and people leaving correctional facilities.

Recommendation 14: Homelessness legislation should require that intergovernmental frameworks include provision for how the specific needs of vulnerable groups will be addressed to achieve substantive equality in reducing homelessness, including specific benchmarks and time-bound targets.

7.5 *Effective monitoring mechanisms*

115. In section 7.2(c), above, the Commission has recommended that key benchmarks and targets, including the headline goals in the White Paper, be inserted into homelessness legislation.

116. CESCR regards effective monitoring of the situation with respect to housing as an obligation of immediate effect under the ICESCR.⁸³ Homelessness 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.

⁸⁰ For further detail of the particular housing needs of peoples from culturally and linguistically diverse backgrounds, migrants and refugees, see Human Rights and Equal Opportunity Commission, *Submission to the Green Paper on Homelessness – Which Way Home?* (2008), 31-34.

⁸¹ For further detail of the particular housing needs of Indigenous peoples, see Human Rights and Equal Opportunity Commission, *Submission to the Green Paper on Homelessness – Which Way Home?* (2008), 21-28. For examples of promising community practices to address family violence, including safe houses, see: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007* (2008), chapter 2. At www.humanrights.gov.au/social_justice/sj_report/sjreport07/index.html (viewed 14 August 2009).

⁸² For further detail of the particular housing needs of Indigenous people exiting the corrective systems of juvenile justice institutions, see Ogilvy, E., 'Prisoners Post Release'-release', *Parity - Post Release-release and Homelessness Issue*, vol 14, no 10, November 2001, 16.

⁸³ UN Committee on Economic, Social and Cultural Rights, *General Comment 4*, note 56, para 13.

117. The monitoring mechanisms should be transparent, independently verifiable and linked to our international human rights obligations. In particular, the mechanisms should measure Australia's progress in implementing the right to adequate housing for particularly vulnerable groups.
118. The Prime Minister has indicated that the National Council on Homelessness (the Council) 'will take a leadership role through independently monitoring the White Paper goals and targets'.⁸⁴
119. To ensure that it is able to hold the Australian government accountable for its commitments to reducing homelessness, the Council should be permanent, transparent and supported by legislation. It should also be adequately resourced.
120. The Council is to report annually to the Prime Minister'.⁸⁵ To promote transparency and accountability, the findings, reports or recommendations of the Council should be made public. Homelessness legislation should require that reports of the Council be tabled in Parliament within a set period after they are received by the Prime Minister. Homelessness legislation should further require Parliament to respond to the reports within a set period.
121. Further, monitoring of progress to reduce homelessness in Australia should not be limited to the role of the Council.
122. Homelessness legislation could provide for the appointment of a specialist independent Commissioner on Homelessness and Adequate Housing who is resourced to monitor and report on the enjoyment of human rights by people experiencing homelessness or at risk of homelessness.
123. Alternatively, or in addition, the mandate and resources of the Australian Human Rights Commission could be expanded to enable the Commission to actively monitor the promotion, protection and fulfilment of the human right to adequate housing (for further discussion, see section 8.3(e), below).
124. Any monitoring processes should be informed by timely and disaggregated data. Data collection and analysis is essential for assessing the progressive realisation of rights, including the ability of marginalised and excluded groups to enjoy their rights.⁸⁶ As noted above in section 7.4, data collection and analysis needs to ensure that the outcomes for particularly vulnerable groups are tracked.
125. The White Paper acknowledges that Australia's national data collection and analysis systems are inadequate to monitor progress towards achieving the Government's targets for reducing homelessness. The White Paper sets a

⁸⁴ Prime Minister of Australia, 'Prime Minister establishes independent Council on Homelessness', (Media Release, 8 August 2009). At <http://www.pm.gov.au/node/6099> www.pm.gov.au/node/6099 (viewed 14 August 2009).

⁸⁵ FAHCSIA, note 2, 66.

⁸⁶ UN Economic and Social Council, *Report of the High Commissioner for Human Rights on implementation of economic, social and cultural rights*, UN Doc E/2009/90 (2009), 8.

foundation for a promising national research strategy.⁸⁷ It is imperative that Australian governments move quickly to address the gaps in data collection, analysis and research which are essential for tracking progress.

126. As noted above in section 7.3, it is also important that those who are directly affected by policies are able to participate in monitoring and evaluation processes.⁸⁸ This could be done by incorporating measurements of client satisfaction with services and client outcomes into the case management practices of services. Past pilot studies conducted or commissioned by the Commonwealth Department of Family and Community Services found general support among Supported Accommodation and Assistance Program (SAAP) clients and SAAP agencies for the introduction of client satisfaction measures into SAAP and positive feedback on the value of outcome measurement.⁸⁹

Recommendation 15: Homelessness legislation should provide for transparent and independently verifiable mechanisms to monitor progress on the Australian Government's targets for reducing homelessness and efforts to progressively realise the right to adequate housing.

7.6 ***Accessible and effective remedies***

127. The provision of effective remedies for breaches of human rights is a fundamental requirement of international human rights law.⁹⁰ The failure to provide adequate remedies 'may itself amount to a violation of international obligations regarding economic, social and cultural rights'.⁹¹

128. However, the major human rights treaties that Australia has agreed to uphold have not been fully implemented into Australian law.⁹² This includes the ICESCR.

129. In some circumstances, remedies may be available for breaches of the right to adequate housing in Australia. For example, an eviction conducted without proper process may be challenged in a court or residential tenancies tribunal. However, in many instances, processes for seeking effective remedies for breaches of economic, social and cultural rights have not yet been established.

⁸⁷ FAHCSIA, note 2, 57-63.

⁸⁸ See section 7.3.

⁸⁹ See L Craze, 'Measuring Client Satisfaction: The National Project to Design and Trial Client Satisfaction Measures for use in the Support Accommodation Assistance Program (SAAP)' (2005) 18(10) *Parity* 51; C Talbot and J Baulderstone, 'Accountability and Practice: The Measurement of Client Outcomes in SAAP' (2005) 18(10) *Parity* 55.

⁹⁰ 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 2 August 2009).

⁹¹ UN Committee on Economic, Social and Cultural Rights, *General Comment No 9*, note 90, 29.

⁹² Australian Human Rights Commission, Submission to National Human Rights Consultation, (2009), para 106, note 44.

130. The CESCR has commented upon the failure of Australia to wholly implement the ICESCR into domestic law, such that 'its provisions cannot be invoked before a court of law'.⁹³

131. Individuals should be able to make complaints and enforce entitlements in respect of the provision of housing and housing-related assistance. The system of enforceable rights should include provision for remedies where those rights have not been complied with.

132. Additional funding should be provided to ensure that people who need it have access to adequate advice, advocacy or legal representation, including through community legal centres, legal aid bodies and other advocacy services.

(a) *Internal complaint procedures*

133. The SAA Act provides that a key feature of a formal SAAP agreement is to safeguard clients' rights and deal with clients' responsibilities. The SAA Act requires this to be achieved through the following measures:

- a. development of grievance and appeals procedures; and
- b. development of charters of clients' rights and responsibilities.⁹⁴

134. It is important that homelessness legislation provides for grievance and appeals procedures that are accessible and provided free of charge to people experiencing homelessness.

135. Further, the Australian Government should ensure that services that advocate on behalf of people experiencing homelessness are adequately funded.

(b) *External complaint procedures*

136. In addition to internal complaints mechanisms, homelessness legislation should provide for an individual to have access to an external independent complaint mechanism.

137. The Commission does not make a specific recommendation about the preferred form of external independent complaint mechanisms. Options may include making a complaint to: a state and territory ombudsman; the proposed Commissioner for Homelessness and Adequate Housing; or to the Australian Human Rights Commission.

⁹³ UN Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights: Australia*, UN Doc E/C.12/1/Add.50 (2000), paras 14, 24, at <http://www.unhcr.ch/tbs/doc.nsf/0/693c56f3d2694130c12569580039a1a2?Opendocument> (viewed 2 August 2009), paras 14, 24. See also UN CESCR, *Concluding Observations* (2009), note 96, paras 29-30.

⁹⁴ *Supported Accommodation Assistance Act 1994* (Cth), s 5(4)(f)(i) and (ii).

Recommendation 16: Homelessness legislation should provide for individuals receiving services to have access to: (a) internal complaint mechanisms; (b) an external independent complaint mechanism; and (c) adequate advice, advocacy and legal representation to ensure complaints mechanisms are accessible and people have adequate support.

8 What else needs to be done? Additional reforms for achieving an integrated, holistic response to homelessness

138. This section proposes ways in which action under the White Paper, including proposed homelessness legislation, can be integrated and coordinated with other relevant legal, policy and institutional arrangements to ensure a coordinated, holistic response to reducing homelessness based on protection of rights.

139. It highlights where reforms may be required in other areas of public policy in order to complement action under the White Paper, and contribute to reducing homelessness in Australia.

8.1 Existing National Reforms

140. The Commission welcomes the White Paper's commitment to coordinate action under the White Paper with other relevant national reforms, including the Closing the Gap Package for Indigenous Australians, the National Mental Health and Disability Employment Strategy, and the National Child Protection Framework.⁹⁵

141. The Commission notes that the Australian Government is also currently developing its National Plan to Reduce Violence against Women and their Children. The Australian Government has referred development of the National Plan to the Council of Australian Governments (COAG). The National Plan will draw on the work of the former National Council to Reduce Violence against Women and their Children, and that Council's Report to the Australian Government, *A Time for Action*.⁹⁶

142. The Commission has strongly welcomed this important national reform agenda to reduce violence against women and their children. It has also urged Australian Governments to ensure through COAG that adequate funding for the National Plan is secured. Commissioner Broderick has said:

It is critical that the implementation of the National Plan to Reduce Violence against Women and their Children is regularly monitored to make sure it is

⁹⁵ FAHCSIA, note 2, ix.

⁹⁶ The National Council to Reduce Violence against Women and their Children, *Time For Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009-2021* (2009). At http://www.fahcsia.gov.au/sa/women/pubs/violence/np_time_for_action/national_plan/Documents/The_Plan.pdf (viewed 25 August 2009).

working, and that targets and benchmarks are set to measure progress in the reduction of violence against women.

State and territory governments must also make a strong commitment to working collaboratively with the federal government to deliver the report's recommendations.⁹⁷

143. The Commission welcomes the White Paper's inclusion of action to support women and their children who have experienced violence.⁹⁸

144. The Commission urges Australian Governments to ensure that action under the White Paper is coordinated with the national reform process to develop, implement and monitor the proposed National Plan to Reduce Violence against Women and their Children.

145. For example, safe and secure housing is crucial to efforts to support women and their children to stay at home, rather than leave following violence. At the present time, there is no national funding arrangement for security upgrades to the homes of women and their children who have experienced violence and remain at risk.⁹⁹ The White Paper has made a welcome commitment to developing access to security measures to enable women to stay in their homes.¹⁰⁰ This measure needs to be integrated with action under the National Plan to Reduce Violence Against Women and their Children that will also be needed to enable women to stay at home.

Recommendation 17: The Australian Government should ensure that action under the White Paper is coordinated and integrated with other relevant major national reforms, including the National Plan to Reduce Violence against Women and their Children, which is currently being developed through COAG.

8.2 *The Need for a National Housing Strategy*

146. The Commission welcomes the White Paper's framework for a national homelessness response, which sets clear benchmarks and targets to 2020. However, it considers that the Australian Government should now develop a National Housing Strategy which also sets benchmarks and targets for expanding affordable housing options in Australia.

⁹⁷ Australian Human Rights Commission, *Leadership in reducing violence against women welcomed*, Media release 1 May 2009, www.humanrights.gov.au/about/media/media_releases/2009/29_09.html (viewed 25 August 2009).

⁹⁸ FAHCSIA, note 2, p 33-34, 36

⁹⁹ Australian Domestic and Family Violence Clearinghouse, *Response to Which Way Home? A new approach to homelessness*, Australian Government Green Paper, 2008, 2. At www.austdvclearinghouse.unsw.edu.au/PDF%20files/Homelessness%20Green%20Paper%20submission.pdf (viewed 25 August 2009).

¹⁰⁰ FAHCSIA, note 2, p 33: 'brokerage funds that could be used to stabilise housing or increase home security for women and children, for example by installing deadlocks, screen doors, security lighting and home alarms, or by providing short-term rental subsidies or mortgage top ups'.

147. A National Housing Strategy would provide a comprehensive framework for securing adequate housing for all people in Australia, incorporating action under the White Paper.

148. In the Commission's view, there has historically been a lack of coordination between housing public policy and homelessness services and support systems in Australia. Whilst the causes of homelessness are complex and multi-faceted, one key driver is a lack of affordable housing.

149. In 2006, the UN Special Rapporteur on Adequate Housing found that

Australia lacks a clear consistent, long-term and holistic housing strategy. There is no national legislative and policy framework against which the outcomes of government programmes and strategies can be evaluated to assess to what extent Governments are progressively realising the human right to adequate housing for all. Current indicators from diverse sources show regressive results: reductions in public housing stock, soaring private rental rates, and acknowledged housing affordability crisis and no real reduction in the number of homeless.¹⁰¹

150. The UN Special Rapporteur recommended that

Australia should adopt a comprehensive and coordinated national housing policy, and develop a clear, consistent, long-term and holistic housing strategy that addresses structural problems, is efficient, and embodies an overarching human rights approach, with the primary task of meeting the needs of the most vulnerable groups.

All interested parties should be genuinely consulted in designing policies, strategies and planning in housing. To this end, the Government should engage in a constructive manner with the civil society and advocacy groups.¹⁰²

151. The Australian Government is to be congratulated for the White Paper, and appointing a Minister for Housing in 2007. Initiatives to expand the capacity for home ownership and access to affordable rental properties are also welcome.

152. The White Paper now provides for some action to expand social housing, assistance to people in the private rental market, support and accommodation for people who are homeless and assistance with home purchasing.¹⁰³

153. However, Australia still lacks clear benchmarks and targets for progressively expanding affordable housing, developed through an evidence-based assessment of current and future housing needs in light of Australia's demographic change.

154. For example, older women are likely to increasingly be at risk of homelessness, and this situation may only become worse in future decades with the aging population in Australia.¹⁰⁴

¹⁰¹ Special Rapporteur on adequate housing, note 18, para 2.

¹⁰² Special Rapporteur on adequate housing, note 18, para 127.

¹⁰³ FAHCSIA, note 2, ix

Recommendation 18: The Australian Government should consider developing a National Housing Strategy, which sets clear benchmarks and time-bound targets for all measures of the progressive realisation of the right to adequate housing.

8.3 ***Integrating other legal and human rights systems with the homelessness legislation***

155. This Submission has already addressed how protection of the basic rights of people facing homelessness can be incorporated into proposed homelessness legislation.

156. This section of the Submission sets out other required legislative and human rights reforms to better protect the basic rights of people facing homelessness and ensure that measures under homelessness legislation are 'linked up' with other laws and human rights frameworks.

157. For example, people requiring services provided under homelessness legislation will often have just been evicted from a private tenancy. People who cannot get emergency accommodation may be living in public places. People who are homeless may be dealing with Centrelink and federally-funded health, education, training and employment services.

158. It is vital that all public authorities – not just specialist homelessness services – operate together to help to reduce homelessness in Australia.

159. To create an integrated, holistic response to reducing homelessness whilst protecting basic rights, the Australian Government should:

- review existing laws that impact upon people experiencing homelessness, including eviction laws and public space laws, to ensure that uniform minimum standards of treatment are secured;
- enact a Human Rights Act;
- prohibit discrimination on the grounds of homelessness or social status;
- ratify the *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights* (Optional Protocol to the ICESCR);¹⁰⁵ and
- expand the mandate and capacity of the Australian Human Rights Commission.

¹⁰⁴ Sharam A, 'Going it alone: Single Low-Needs Women and Hidden Homelessness' Women's Information, Support and Housing in the North, Melbourne, 2008, p 30 .At www.wishin.org.au/GoingItAloneFINAL.pdf (viewed 25 August 2009).

¹⁰⁵ *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, 2008. At <http://www2.ohchr.org/english/bodies/cescr/docs/A-RES-63-117.pdf> (viewed 2 August 2009).

(a) *Review of public space laws*

160. A strong commitment to reducing homelessness in Australia is a promising start. But eliminating homelessness will not be easy or quick.
161. While primary homelessness continues to occur,¹⁰⁶ public space laws have a disproportionate impact on persons people living 'rough' or sleeping in public places.
162. Commonly referred to as 'quality of life' laws,¹⁰⁷ these laws criminalise activities like sleeping, sitting, storing personal belongings, urinating and standing in public spaces – activities which, in and of themselves, are not criminal activities. 'Move on' powers have a similar effect. The enforcement of these laws tends to discriminate against homeless individuals because they criminalise conduct which people experiencing homelessness generally have no choice but to conduct in public places because of their homeless status.¹⁰⁸ These laws have the effect of criminalising homelessness and thus violate their right to freedom from cruel, inhuman or degrading treatment. Public space laws have a disproportionate impact on people who are particularly vulnerable to homelessness, including Indigenous people and young people
163. For example, in Darwin, the Darwin City Council has a by-law which prohibits sleeping in public space between sunset and sunrise. The by-law is enforced on a daily basis, typically involving people being woken up and 'moved on'. Yet, Darwin also has the highest rate of homelessness of any capital city in Australia. Indigenous people are disproportionately represented in this population.¹⁰⁹
164. At the present time, the Alice Springs Town Council is proposing to introduce further public space by-laws which are likely to have a disproportionate impact on people experiencing primary homelessness.¹¹⁰ Alice Springs has a high

¹⁰⁶ 'Primary homelessness includes all people without conventional accommodation, such as people living on the streets, sleeping in parks, squatting in derelict buildings, or using cars or railway carriages for temporary shelter.' Australian Bureau of Statistics, Australian Census Analytic Program, *Counting the Homeless, Australia, 2006*, ABS Catalogue No. 2050.0, At [www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/57393A13387C425DCA2574B900162DF0/\\$File/20500-2008Reissue.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/57393A13387C425DCA2574B900162DF0/$File/20500-2008Reissue.pdf) (viewed 25 August 2009).

¹⁰⁷ National Law Center on Homelessness & Poverty, "Homes Not Handcuffs," 14 July 2009. At www.nlchp.org/news.cfm?id=108 (viewed 25 August 2009).

¹⁰⁸ C Goldie, 'Why government is treating us like animals: Legal and Human Rights Perspectives on Living in Public Space' (2003) 16(9) *Parity* 16.

¹⁰⁹ ABC News, "Territory has highest homelessness rate," 9 July, 2009. At www.abc.net.au/news/stories/2009/07/09/2621184.htm.

¹¹⁰ Alice Springs Town Council, *Alice Springs Town Council, Alice Springs (Management of Public Places) By-Laws July 2009 (Draft)*. At www.alicesprings.nt.gov.au/.../DRAFT_Public_Places_Bylaws_July2009.pdf (viewed 25 August 2009).

rate of homelessness¹¹¹ and lacks adequate low cost culturally appropriate housing options.¹¹²

165. Regrettably, the White Paper is silent on the need to protect people experiencing homelessness from policing of public space laws.

166. The UN Special Rapporteur on Adequate Housing expressed concern about the use of public space laws in Australia against people living in public places, and called for these laws to be reviewed to ensure that adequate human rights protections are in place.¹¹³

167. The Government's homelessness strategy needs to include a commitment to the review of public space laws and their impact on people who are homeless.¹¹⁴ For example, public space laws could be amended to include defences for homeless individuals which allow them to avoid the imposition of criminal sanctions. The defence could provide that a person who is homeless is entitled to use public space without interference unless there is a reasonable risk that the person's conduct will cause harm to another person.¹¹⁵ In addition, a 'Charter of Rights' could be established to limit police powers, allowing for the protection of the rights of public space users to access public spaces without fear of intimidation or harassment by police officers.¹¹⁶

Recommendation 19: The Australian Government should give a high priority to establishing a national review of public space laws that impact on the rights of people who are homeless.

(b) *Review of tenancy legislation*

168. As noted in section 7.2(d), the right to adequate housing includes a prohibition from 'forced evictions' or evictions into homelessness. In Australia,

¹¹¹ Alice Springs Town Council, *Alice Springs Town Council, Alice Springs (Management of Public Places) By-Laws July 2009 (Draft)*. At www.alicesprings.nt.gov.au/.../DRAFT_Public_Places_Bylaws_July2009.pdf (viewed 25 August 2009).

¹¹² Similar concerns have been expressed regarding the disproportionate impact of the Adelaide City Council dry area by-laws on homeless people, in particular those from Aboriginal and Torres Strait Islander backgrounds. According to the National Drug Research Institute, the by-laws are causing people to move away from the inner city area and subsequently from critical support services. See National Drug and Research Institute, *Restrictions on the Sale and Supply of Alcohol Report: Evidence and Outcomes*. At:

http://www.google.com/search?q=restrictions+on+the+sale+and+supply+of+alcohol&rls=com.microsoft:*&ie=UTF-8&oe=UTF-8&startIndex=&startPage=1 (viewed 1 September 2009). The dispersal of homeless people has made it more difficult for services to locate them and provide required support.

¹¹³ *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living*, Miloon Kothari, Mission to Australia, A/HRC/4/note 18/Add.2 (2007), para 47.

¹¹⁴ House of Representatives, Parliament of Australia, House Standing Committee on Family, Community, Housing and Youth, *Inquiry into homelessness legislation* (2009)

<http://www.aph.gov.au/house/committee/fchy/homelessness/index.htm> at (viewed on 19 June 2009).

¹¹⁵ T Walsh, 'No vagrancy: An examination of the impact of the criminal justice system on people living in poverty in Queensland' (2007) 10, 74.

¹¹⁶ *Ibid*, 11, 75. For detailed discussion of the procedural and substantive rights to be afforded to people facing forced evictions, including people living in public places, in accordance with international human rights standards, see also C Goldie, 'Living in Public Space: A Human Rights Wasteland?' (PhD Thesis, UNSW, 2008).

evictions are a key factor in the incidence of homelessness.¹¹⁷ Evictions are the main reason that couples and couples with children seek assistance from homelessness support services.¹¹⁸

169. According to Australia's commitments under the ICESCR, the Australian Government has an obligation to take all appropriate measures, to the maximum of the available resources, to ensure that adequate alternative housing or resettlement is available to those who are forcefully evicted and unable to provide for themselves.¹¹⁹ As proposed in section 7.2(d) and **Recommendation 9**, homelessness legislation should provide for protection from forced evictions with respect to housing services funded under the legislation.

170. However, evictions into homelessness from private rentals will not be prevented by this measure.

171. Australia has been criticised by the UN Special Rapporteur on Adequate Housing for not having adequate legal protection in place to prevent forced evictions.¹²⁰ Australia does not have national standards for tenancy laws which could help ensure forced evictions do not occur. At present, state and territory tenancy laws can permit landlords to evict tenants with inadequate safeguards to reduce the risk that individuals are evicted into homelessness.¹²¹

172. The White Paper proposes that the Australian Government review the impact of tenancy laws on homelessness.¹²² This is a welcome development. The review should include a recommendation that all eviction laws comply with our minimum human rights obligations.

173. For example, in South Africa, where the right to adequate housing is protected in the Constitution, the High Court has ruled that where a tenant will become homeless if evicted by a private landlord, the court may join the responsible government department to the eviction proceedings to hear submissions from the government about arrangements to rehouse the tenant¹²³. The Constitutional Court has also ruled that, in appropriate cases,

¹¹⁷ Australian Government, Green Paper on Homelessness, 'Identifying the Problem', *Which way home: new approaches to homelessness* (2008), note 55, 10.

¹¹⁸ Australian Institute of Health and Welfare. *Homeless people in SAAP: SAAP National Data Collection annual report*. SAAP NDC report series 13 (Cat. no. HOU 191) (2009) 33, 38.

¹¹⁹ Committee on Economic, Social and Cultural Rights, *General Comment 7: Forced evictions*, UN Doc E/1998/22 (1997), note 51 para 16. At [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+Comment+7.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/CESCR+General+Comment+7.En?OpenDocument) at 19 June 2009.

¹²⁰ *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living*, Miloon Kothari, Mission to Australia, A/HRC/4/note 18/Add.2 (2007), para 69.

¹²¹ *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living*, Miloon Kothari, Mission to Australia, A/HRC/4/note 18/Add.2, 11 May (2007), para 17.

¹²² FAHCSIA, note 2, p36.

¹²³ In *Lingwood v The Unlawful Occupiers of E/R of Erf 9 Highlands* (Unreported, High Court of South Africa, Witwatersrand Local Division, Mogagabe AJ, 16 October 2007), the High Court of South Africa considered whether to grant such an order against some 19 adults and 8 children who were very poor and had lived in the property lawfully as private tenants, in some cases for over 15 years. The Court

the responsible government may be ordered to compensate a private landlord if an eviction needs to be delayed until re-housing can be arranged.¹²⁴

174. This kind of procedure in our tenancy tribunals could significantly improve coordination of services and ensure that there is an appropriate balancing of the competing interests of private landlords and vulnerable tenants, especially when children are involved. This would also help to prevent people being made homeless, and reduce both the personal costs to those facing homelessness and the flow-on costs to government agencies and services.

Recommendation 20: The Australian Government should ensure the conduct of a national review of tenancy laws which has minimum rights protection as a key term of reference. In particular, tenancy laws should be reviewed to ensure that there are safeguards to prevent evictions into homelessness.

(c) *The need for a Human Rights Act*

175. The Australian Government is currently conducting a National Human Rights Consultation.¹²⁵ The Committee conducting the Consultation is due to report to the Australian Government by 30 September 2009.

176. The Commission has made two submissions to the Consultation.¹²⁶ This section summarises the Commission's submissions which are relevant to improving protection of the human rights of people facing homelessness.

177. The Commission has recommended to the Consultation that Australia should enact a Human Rights Act. One effect of a Human Rights Act would be to provide a national framework for helping to ensure that government affords people their human right to dignity and respect at all times.

178. A Human Rights Act would also help ensure that the human rights of people facing homelessness, are considered at every stage of federal law and policy-making and service delivery.

179. The Commission recommended that a Human Rights Act should explicitly recognise and protect the civil, political, economic, social and cultural rights contained in the ICCPR and ICESCR. A Human Rights Act should include

ordered that the City of Johannesburg be joined in the proceedings so that it could be called to account regarding provision of alternative accommodation for the families. See, further, C Goldie, *Housing and Homelessness: What's Human Rights Got to Do With It?* (Paper delivered at HREOC Human Rights Law Seminar, Sydney, 7 April 2009).

http://www.hreoc.gov.au/legal/seminars/speeches/cassandra_goldie08.html (viewed at 26 June 2009).

¹²⁴ *President of the Republic of South Africa and Minister of Agriculture and Land Affairs v Modderklip Boerdery (Pty) (Ltd)* (CCT20/04) [2005] ZACC 5; 2005 (5) SA 3 (CC); 2005 (8) BCLR 786 (CC) (13 May 2005).

¹²⁵ Australian Government, *National Human Rights Consultation* (2009). At

<http://www.humanrightsconsultation.gov.au/www/nhrcc/nhrcc.nsf/Page/Home> (viewed 25 August 2009).

¹²⁶ Australian Human Rights Commission, *Submission to the National Human Rights Consultation* (2009). At http://www.humanrights.gov.au/legal/submissions/2009/200906_NHRC_complete.pdf (viewed 25 August 2009)., note 44.

core economic, social and cultural rights such as the right to an adequate standard of living, including adequate food, clothing and housing.

(i) What could be the key features of a Human Rights Act?

180. The Human Rights Act model proposed by the Commission would:

- a. require the government to consider human rights, including the right to adequate housing, from the earliest stages of the development of laws and policies;
- b. require parliamentary scrutiny of new legislation to assess its compatibility with human rights obligations, including the right to adequate housing. This could include scrutiny by a parliamentary committee and a requirement that new Bills be accompanied by a 'human rights impact statement' when introduced into Parliament;
- c. require legislation to be interpreted consistently with human rights, including the right to adequate housing;
- d. require Parliament to be notified, and to publicly respond, if a law is found to be inconsistent with human rights;
- e. require public authorities to act in a way that is compatible with human rights and to give proper consideration to human rights in decision-making; and
- f. provide for an effective remedy when a public authority breaches human rights. Effective remedies are further discussed in section 7.6 of this Submission.¹²⁷

181. The model of a Human Rights Act proposed by the Commission does not allow courts to strike down laws. Parliament would retain the final say over legislation. However, a Human Rights Act would require the Australian Parliament to consider human rights when making decisions and to publicly justify decisions to limit rights. This would improve accountability and transparency in government decision-making, a key element of taking a human rights-based approach to addressing disadvantage.

(ii) How could a Human Rights Act improve responses to homelessness?

182. The requirement in a Human Rights Act that the government consider human rights at every stage of law and policy making could help ensure that laws do not disproportionately impact upon people who are homeless, or place people at further risk of homelessness.

¹²⁷ See Australian Human Rights Commission, *National Human Rights Consultation: Australian Human Rights Commission Submission* (June 2009). At http://www.hreoc.gov.au/legal/submissions/2009/200906_NHRC.html (viewed 14 August).

183. A Human Rights Act would also require that public authorities consider and respect human rights when making decisions and delivering services. This should include ministers, departments, government agencies and any other organisations acting on behalf of the government.

184. This could help to improve the policies, procedures and services that many people who are homeless or are at risk of homelessness encounter daily.

185. This framework can also help to ensure that all people are afforded respect by public authorities. Experience in the United Kingdom shows that the *Human Rights Act 1998* (UK) ‘has led to a shift away from inflexible or blanket policies towards those which are capable of adjustment to recognise the circumstances and characteristics of individuals’.¹²⁸ This, in turn, can improve the effectiveness of policies and service delivery.

186. The Commission considers that if Australia had a Human Rights Act, public authorities would become more conscious of the impact their decisions have on the rights of individuals and the need to respect those rights. This greater awareness and understanding could prevent many human rights breaches from occurring.

187. It would be imperative that government-funded service providers be adequately resourced to fulfil obligations under a Human Rights Act. This should include appropriate funding and training.

Recommendation 21: The Australian Parliament should enact a national Human Rights Act that protects civil, political, economic, social and cultural rights, including the right to adequate housing.

(d) *Prohibiting discrimination on the grounds of homelessness or social status*

188. At present, Australia’s national anti-discrimination laws prohibit discrimination on the grounds of race, sex, disability and age and related characteristics. Discrimination on the ground of homelessness or social status is not prohibited.

189. The Commission considers that discrimination on these grounds, including in the provision of accommodation and other goods and services, can perpetuate disadvantage and prolong homelessness. In June 2008, the Final Report of the Victorian Equal Opportunity Review (‘the Victorian Report’) recommended that homelessness be included as a protected attribute in Victoria’s equal opportunity legislation.¹²⁹ Among the submissions it discussed, the Victorian Report noted the submission of the PILCH Homeless Persons’ Legal Clinic that discrimination is not simply another obstacle or challenge for vulnerable people. It can lead to and entrench homelessness, unemployment and

¹²⁸ United Kingdom Department for Constitutional Affairs, *Review of the Implementation of the Human Rights Act* (2006), 4.

¹²⁹ Victorian Department of Justice, *An Equality Act for a Fairer Victoria: Equal Opportunity Review Final Report* (June 2008), Recommendation 46.

poverty.¹³⁰ In the Victorian Report's view, there is sufficient evidence to suggest that discrimination on the basis of homelessness is occurring in Victoria, and the size of the problem is significant. The impact of the discrimination on this large and particularly vulnerable group can be severe, further entrenching discrimination.¹³¹

190. The Victorian Report also noted that other jurisdictions had legislated in a similar way. For example, the *Human Rights Act 1993* (NZ) prohibits discrimination on a number of grounds, including 'employment status'. Employment status is defined to mean being unemployed, or being a recipient of a benefit under the *Social Security Act 1964* (NZ), or an entitlement under the *Injury Prevention, Rehabilitation and Compensation Act 2001* (NZ). The New Zealand Human Rights Commission has indicated it prefers a broad interpretation of 'unemployment' for the purposes of the Human Rights Act.¹³²

191. The Commission notes that Lynch and Stagoll have outlined relevant examples of 'employment status' cases in New Zealand.¹³³ For example, in *K v J*,¹³⁴ the complainant (K), a social security beneficiary, made a complaint that her dentist refused to treat where when he was told that payment would be met by the Department of Social Welfare. Lynch and Stagoll note the evidence was that the dentist refused payment because he believed that the Department should not have to pay for what he considered to be non-urgent dental work. K subsequently went to another dentist, who noted that she had evidence of acute toothache. The New Zealand Human Rights Commission found that the dentist had discriminated against K because of her beneficiary status, and had treated her rudely and dismissively.¹³⁵

192. The Commission notes that since the publication of the Victorian Report, the United Kingdom House of Lords have also ruled that homelessness is a 'status' or attribute for the purposes of Article 14 of the *European Convention on Human Rights* ('ECHR').¹³⁶ Article 14 of the ECHR prohibits discrimination in respect of the enjoyment of any of the rights contained in the ECHR. Specifically, Article 14 prohibits discrimination:

...on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or *other status*. (emphasis added)

¹³⁰ Victorian Department of Justice, *An Equality Act for a Fairer Victoria: Equal Opportunity Review Final Report* (June 2008) note 132, para. 5.99.

¹³¹ Victorian Department of Justice, *An Equality Act for a Fairer Victoria: Equal Opportunity Review Final Report* (June 2008) note 132, para. 5.100.

¹³² Victorian Department of Justice, *An Equality Act for a Fairer Victoria: Equal Opportunity Review Final Report* (June 2008) note 132, para. 5.84.

¹³³ P Lynch and B Stagoll, *Promoting Equality: Homelessness and Discrimination*, (2002) 7 *Deakin Law Review*, 295, -317.

¹³⁴ New Zealand Human Rights Commission, 11/12/97.

¹³⁵ P Lynch and B Stagoll, *Promoting Equality: Homelessness and Discrimination*, (2002) 7 *Deakin Law Review* 295, 317.

¹³⁶ *R (on the application of RJM) v Secretary of State for Work and Pensions* [2008] UKHL 63, para 41.

193. In the House of Lords' view, it was appropriate to recognise homelessness within the category of 'other status' in Article 14 of the ECHR.

194. The House of Lords decision is relevant to Australia in terms of Australia's obligations under Article 26 of the ICCPR. Article 26 of the ICCPR states that:

All persons are equal before the law and entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or *other status*. (emphasis added).

195. There is some difference in the operation of Article 14 of the ECHR and Article 26 of the ICCPR. Article 14 of the ECHR is concerned with prohibiting discrimination in respect of the enjoyment of any of the rights contained in the ECHR, while Article 26 of the ICCPR creates a free-standing right to be free from discrimination in respect of equality before the law and equal protection of the law. The House of Lords decision nevertheless provides some guidance in the likely scope of the ground of 'other status' in Article 26 of the ICCPR.

196. The Commission has also called for reform of Australia's current national anti-discrimination laws. In the Commission's submission to the National Human Rights Consultation, it proposed, in principle, that Australia's current national anti-discrimination laws should be replaced by a single Equality Act, which broadens the grounds on which discrimination is prohibited.¹³⁷

197. The Commission has recommended that the Australian Law Reform Commission conduct a comprehensive inquiry on the issue of whether a single Equality Act should be enacted. This inquiry would enable the Australian public to consider whether it is justified to extend the grounds of prohibited discrimination to include homelessness or social status.

Recommendation 22: The Australian Government should refer to the Australian Law Reform Commission for inquiry and report the question of how best to strengthen, simplify and streamline national anti-discrimination laws. The inquiry should specifically consider expanding the grounds of protection from discrimination to include homelessness or social status.

(e) *Expanding the mandate and capacity of the Australian Human Rights Commission*

198. The Commission's human rights functions are currently limited by the definition of 'human rights' in section 3 of the *Australian Human Rights Commission Act 1986* (Cth) (the Australian Human Rights Commission Act).

¹³⁷ Australian Human Rights Commission, *Submission to the National Human Rights Consultation* (2009), note 44, 35. At http://www.humanrights.gov.au/legal/submissions/2009/200906_NHRC_complete.pdf (viewed 25 August 2009).

This definition includes those rights set out in the instruments scheduled to the Act and other designated ‘relevant international instruments’.

199. The Commission currently has the power to investigate and conciliate some complaints of economic, social and cultural rights. For example, the Commission can receive complaints about breaches of the rights set out in the *Convention on the Rights of the Child* (CRC) if the complaint is against the Commonwealth or one of its agencies. The CRC includes a wide range of economic, social and cultural rights, including ‘the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development’.¹³⁸ The Commission is empowered to receive and investigate complaints under the CRC which relate to the adequate housing of children.

200. The ICESCR has not been declared to be a ‘relevant international instrument’ and therefore does not come with the definition of ‘human rights’ in section 3 of the Australian Human Rights Commission Act.

201. Declaring the ICESCR to be a ‘relevant international instrument’ under the Australian Human Rights Commission Act would mean that the Commission would be expressly empowered to promote public awareness and understanding of economic, social and cultural rights, including the right to adequate housing; and to inquire into, and assist to resolve, a broader range of human rights complaints.

202. The Commission recommended to the National Human Rights Consultation Committee that its mandate be expanded to include receiving complaints under the ICESCR.¹³⁹

Recommendation 23: The Attorney-General give consideration to declaring the ICESCR under section 47(1) of the Australian Human Rights Commission Act.

(f) *Ratification of the Optional Protocol to the ICESCR*

203. The Optional Protocol to the ICESCR was adopted by the UN General Assembly on 10 December 2008. It is scheduled to open for signature on 24 September 2009.¹⁴⁰

204. The Optional Protocol is an important means of enabling individuals who have exhausted all domestic remedies to lodge an individual communication with the CESCR to complain about a human rights violation, including violation of the right to adequate housing.

¹³⁸ CRC, art 27(1).

¹³⁹ Australian Human Rights Commission, *Submission to the National Human Rights Consultation* (2009), 109. At http://www.humanrights.gov.au/legal/submissions/2009/200906_NHRC_complete.pdf (viewed 25 August 2009).

¹⁴⁰ United Nations, ‘*Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*: New York, 10 December 2008: Opening for Signature’ (19 February 2009). At <http://treaties.un.org/doc/source/signature/CN106E.pdf> (viewed 2 August 2009). note 107.

205. The availability of this international remedy would enable people in Australia to obtain recognition if their human rights have been violated. It would also enable the CESCR to provide guidance to the Australian Government as to the specific action that should be taken to address the violation for any person concerned.

206. The views of the CESCR arising out of an individual communication under the Optional Protocol would also assist the Australian Government to identify areas where current domestic laws, policies, programmes or practices remain inadequate to implement the ICESCR obligations.

Recommendation 24: The Australian Government should ratify the *Optional Protocol to the ICESCR*.

9 Appendix

9.1 *International Human Rights Instruments to which Australia is a party*

207. The following sets out international human rights treaties relevant to homelessness to which Australia is a party:

Major human rights treaties	Australia adopted
<i>International Convention on the Elimination of All Forms of Racial Discrimination (CERD)</i> ¹⁴¹	1975
<i>International Covenant on Economic, Social and Cultural Rights (ICESCR)</i> ¹⁴²	1975
<i>International Covenant on Civil and Political Rights (ICCPR)</i> ¹⁴³	1980
<i>Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)</i> ¹⁴⁴	1983
<i>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)</i> ¹⁴⁵	1989
<i>Convention on the Rights of the Child (CRC)</i> ¹⁴⁶	1990
<i>Convention on the Rights of Persons with Disabilities (Disability Convention)</i> ¹⁴⁷	2008

208. The ICCPR and the ICESCR form part of the International Bill of Rights, which was adopted by the United Nations (UN) General Assembly in 1966.

209. The ICCPR protects a broad range of civil and political rights. Many of these aim to ensure that all people are able to participate in public and political affairs – for example, the right to vote, to take part in the conduct of public affairs, and freedom of speech, association and assembly. Other rights aim to protect people's physical liberty and safety – for example, the right to life and to be free from torture, freedom of movement, freedom from arbitrary detention, and the right to a fair trial.

¹⁴¹ *International Convention on the Elimination of All Forms of Racial Discrimination (CERD)*, 1965. At http://www.unhchr.ch/html/menu3/b/d_icerd.htm (viewed 29 May 2009).

¹⁴² *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, 1966, art 2(2). At http://www.unhchr.ch/html/menu3/b/a_ceschr.htm (viewed 22 May 2009).

¹⁴³ *International Covenant on Civil and Political Rights (ICCPR)*, 1966, art 26. At http://www.unhchr.ch/html/menu3/b/a_ccpr.htm (viewed 22 May 2009).

¹⁴⁴ *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, 1979. At <http://www.unhchr.ch/html/menu3/b/e1cedaw.htm> (viewed 29 May 2009).

¹⁴⁵ *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*, 1984. At <http://www2.ohchr.org/english/law/cat.htm> (viewed 29 May 2009).

¹⁴⁶ *Convention on the Rights of the Child (CRC)*, 1989. At <http://www.unhchr.ch/html/menu3/b/k2crc.htm> (viewed 29 May 2009).

¹⁴⁷ *Convention on the Rights of Persons with Disabilities (Disability Convention)*, 2006. At <http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf> (viewed 29 May 2009).

210. The ICESCR creates obligations on government to progressively realise a diverse range of economic, social and cultural rights. Many of these relate to the basic necessities people need in order to lead a healthy and dignified life – for example, the right to adequate housing,¹⁴⁸ food and clothing and the right to adequate health care. Others aim to ensure that all people can develop to their full potential and have access to economic opportunities – for example, the right to a basic education, to work, and to fair and safe conditions at work.
211. Australia is also a party to a number of other international treaties relating to human rights, including the following:

Other human rights treaties	Australia adopted
<i>Convention on the Prevention and Punishment of the Crime of Genocide</i> ¹⁴⁹	1949
<i>Convention relating to the Status of Refugees</i> ¹⁵⁰	1954
<i>Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery</i> ¹⁵¹	1958
<i>Protocol relating to the Status of Refugees</i> ¹⁵²	1973
<i>Convention relating to the Status of Stateless Persons</i> ¹⁵³	1973
<i>Convention on the Reduction of Statelessness</i> ¹⁵⁴	1973
<i>Convention concerning Discrimination in respect of Employment and Occupation (ILO No.111)</i> ¹⁵⁵	1973
<i>Optional Protocol to the International Covenant on Civil and Political Rights</i> ¹⁵⁶	1991
<i>Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women</i> ¹⁵⁷	2008

¹⁴⁸ See Appendix 9.2, below, for more detail about the human right to adequate housing.

¹⁴⁹ *Convention on the Prevention and Punishment of the Crime of Genocide*, 1948. At http://www.unhchr.ch/html/menu3/b/p_genoci.htm (viewed 29 May 2009).

¹⁵⁰ *Convention relating to the Status of Refugees* (Refugee Convention), 1951. At http://www.unhchr.ch/html/menu3/b/o_c_ref.htm (viewed 29 May 2009).

¹⁵¹ *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*, 1956. At <http://www2.ohchr.org/English/law/slavetrade.htm> (viewed 29 May 2009).

¹⁵² *Protocol relating to the Status of Refugees*, 1967. At http://www.unhchr.ch/html/menu3/b/o_p_ref.htm (viewed 29 May 2009).

¹⁵³ *Convention relating to the Status of Stateless Persons*, 1954. At http://www.unhchr.ch/html/menu3/b/o_c_sp.htm (viewed 29 May 2009).

¹⁵⁴ *Convention on the Reduction of Statelessness*, 1961. At http://www.unhchr.ch/html/menu3/b/o_reduce.htm (viewed 29 May 2009).

¹⁵⁵ *Convention concerning Discrimination in respect of Employment and Occupation (ILO No. 111)*, 1958. At http://www.unhchr.ch/html/menu3/b/d_ilo111.htm (viewed 29 May 2009).

¹⁵⁶ *Optional Protocol to the International Covenant on Civil and Political Rights*, 1966. At http://www.unhchr.ch/html/menu3/b/a_opt.htm (viewed 29 May 2009).

¹⁵⁷ *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, 1999. At http://www.unhchr.ch/html/menu3/b/opt_cedaw.htm (viewed 29 May 2009).

212. Australia has signed but not yet ratified the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.¹⁵⁸

9.2 **The Right to Adequate Housing: Sources and References**

213. The following sets out sources of international standards regarding the human right to adequate housing under the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

The right to adequate housing

Article 11(1) ICESCR

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. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

The right to non-discrimination

Art 2(2) ICESCR

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant [the ICESCR] will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Effective Remedies

Para 17 CESCR General Comment No 4: The Right to Adequate Housing¹⁵⁹

The Committee views many component elements of the right to adequate housing as being at least consistent with the provision of domestic legal remedies. Depending on the legal system, such areas might include, but are not limited to: (a) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions; (b) legal procedures seeking compensation following an illegal eviction; (c) complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination; (d) allegations of any form of discrimination in the allocation and availability of access to housing; and (e) complaints against

¹⁵⁸ *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT), 2002. At <http://www.unhcr.ch/html/menu2/6/cat/treaties/opcat.htm> (viewed 29 May 2009). The Australian Government signed OPCAT on 19 May 2009, but has not yet ratified it.

¹⁵⁹ UN Committee on Economic, Social and Cultural Rights, *General Comment 4*. At http://www.bayefsky.com/general/cescr_gencomm_4.php. note 55

landlords concerning unhealthy or inadequate housing conditions. In some legal systems it would also be appropriate to explore the possibility of facilitating class action suits in situations involving significantly increased levels of homelessness.

Prohibition on Forced Evictions

Para 18 CESCR General Comment No 4: The Right to Adequate Housing¹⁶⁰

... the Committee considers that instances of forced eviction are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.

Para 16 CESCR General Comment No 7: Forced Evictions¹⁶¹

Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.

Monitoring of Progressive Realisation of the Right to Adequate Housing

Para 13 CESCR General Comment No 4: The Right to Adequate Housing¹⁶²

Effective monitoring of the situation with respect to housing is another obligation of immediate effect. For a State party to satisfy its obligations under article 11 (1) it must demonstrate, *inter alia*, that it has taken whatever steps are necessary, either alone or on the basis of international cooperation, to ascertain the full extent of homelessness and inadequate housing within its jurisdiction. In this regard, the revised general guidelines regarding the form and contents of reports adopted by the Committee (E/C.12/1991/1) emphasize the need to "provide detailed information about those groups within ... society that are vulnerable and disadvantaged with regard to housing". They include, in particular, homeless persons and families, those inadequately housed and without ready access to basic amenities, those living in "illegal" settlements, those subject to forced evictions and low-income groups.

National Housing Strategy

Para 12 CESCR General Comment No 4: The Right to Adequate Housing¹⁶³

¹⁶⁰ UN Committee on Economic, Social and Cultural Rights, *General Comment 4*. At http://www.bayefsky.com/general/cescr_gencomm_4.php.

¹⁶¹ UN Committee on Economic, Social and Cultural Rights, *General Comment 7*.

¹⁶² UN Committee on Economic, Social and Cultural Rights, *General Comment 4*. At http://www.bayefsky.com/general/cescr_gencomm_4.php.

¹⁶³ UN Committee on Economic, Social and Cultural Rights, *General Comment 4*. At http://www.bayefsky.com/general/cescr_gencomm_4.php.

While the most appropriate means of achieving the full realization of the right to adequate housing will inevitably vary significantly from one State party to another, the Covenant clearly requires that each State party take whatever steps are necessary for that purpose. This will almost invariably require the adoption of a national housing strategy which, as stated in paragraph 32 of the Global Strategy for Shelter, "defines the objectives for the development of shelter conditions, identifies the resources available to meet these goals and the most cost-effective way of using them and sets out the responsibilities and time-frame for the implementation of the necessary measures". Both for reasons of relevance and effectiveness, as well as in order to ensure respect for other human rights, such a strategy should reflect extensive genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives. Furthermore, steps should be taken to ensure coordination between ministries and regional and local authorities in order to reconcile related policies (economics, agriculture, environment, energy, etc.) with the obligations under article 11 of the Covenant.

9.3 ***The Right to Participation: Sources and References***

208. The following sets out some sources of international standards regarding the right to participation:

The international human rights framework affirms the right to participate in the conduct of public affairs.¹⁶⁴ The UN Human Rights Committee has commended that the right of participation 'is supported by ensuring freedom of expression, assembly and association' as well the right to information.¹⁶⁵ Enjoyment of the rights to freedom of association, assembly and expression is required to enable people experiencing homelessness to participate meaningfully in public life.¹⁶⁶

Further, other international human rights instruments also affirm this right. See, for example:

Article 18 Declaration of the Rights of Indigenous Peoples

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Art 7 CEDAW

¹⁶⁴ ICCPR, art 25. See also OHCHR, note 23, 14.

¹⁶⁵ UN Human Rights Committee, *General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25)* UN Doc CCPR/C/21/Rev.1/Add.7 (1996), para 8. At <http://www.unhcr.ch/tbs/doc.nsf/0/d0b7f023e8d6d9898025651e004bc0eb?Opendocument> (viewed 29 July 2009).

¹⁶⁶ ICCPR, arts 19, 21, 22(1).

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: ...

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government...

The Convention on the Rights of Children also recognises the rights of children to express their views freely in all matters affecting them.¹⁶⁷

¹⁶⁷ CRC, art 12.