

An Argument for the Establishment of an Overcrowding Policy for Indigenous and Torres Strait Islander Peoples in ACT Public Housing

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Introduction

Imagine— You are a twenty-five-year-old Ngunnawal woman, taking care of six children, and living in a three-bedroom home. While three of these children are your own, the others belong to your sister. Unfortunately, she recently passed, and as next of kin you have taken on the cultural responsibility to provide them undivided care. This quickly becomes an arduous task – the consequences of overcrowding beginning to manifest.

As your eldest daughter reaches high school, she struggles to find quiet space at home to study. The corollary – declining school performance precluding the vast opportunities she otherwise hoped to realise.(1) Similarly disillusioned by overcrowded living, your nephew recognises your struggle – he leaves home prematurely and commences a trying journey through homelessness.(2) Still, with five children remaining, you are forced to use limited amenities. Overuse causes significant wear. The bathroom is constantly damp, causing the growth of mould – its noxious presence warranting countless visits to the doctor.(3)

The effects of household overcrowding are far-reaching, spanning from poor childhood learning outcomes; to premature homelessness; and chronic adverse health consequences. While overcrowding may affect anyone, its presence is not indiscriminate. In 2016 the *Australian Bureau of Statistics* found Indigenous households experience overcrowding at a rate three times that of their non-Indigenous counterparts.(4) Further data demonstrates that – on average – Indigenous households are twice the size of non-Indigenous households.(5) It is clear that overcrowding disproportionately affects Australia's Indigenous populations.

This paper argues for a Housing ACT (HACT) Overcrowding Policy specific to Indigenous tenants. First, it delves into cultural practices causing overcrowding in Indigenous homes. Second, it discusses current legal infrastructure and failure to take into account unique culture. Finally, an HACT Overcrowding Policy is proposed with objectives to reduce complexity, increase human rights compliance and improve housing allocations.

Overcrowding: A Hidden Epidemic

Why Are Indigenous and Torres Strait Islander Peoples More Susceptible to Overcrowding?

The reasons behind overcrowding are manifold, though, for the most part they can be attributed to cultural duties – namely formal and informal kinship responsibilities.

While kinship arrangements can affect all cultures, a study by the Australian Institute of Family Studies draws attention to the markedly higher likelihood of Aboriginal and Torres Strait Islanders providing such care compared to their non-Indigenous counterparts. (6) The

reason, it proclaims, is a “duty to meet the needs of children” and “to preserve their families’ and child’s identity”.(7)

This is not geographically distinct. Reports conducted for the Australian Housing and Urban Research Institution found that Indigenous respondents perceive kinship care as a ‘core obligation’ to having Indigenous identity – a value no less maintained in urban areas as in remote communities, (8) often adhered to at the expense of housing infrastructure. (9)

Aboriginal and Torres Strait Islander peoples more often accept kinship arrangements, though they more often come from lower socio-economic backgrounds.(10) With median rental prices topping the Australian market,(11) it is not surprising many Aboriginal and Torres Strait Islander households require assistance.

The Current Infrastructure

Tenants requiring housing are sorted between three categories under the *Housing Needs Categories Determination* – priority (most urgent), high needs and standard housing (least urgent).(12) To secure a priority position, applicants submit a claim of ‘exceptional, urgent and critical’ circumstances.(13)

While persons aggrieved by overcrowding may seek such transfer through this mechanism, there is no specific procedure developed to address this issue. Overcrowding typically warrants high needs as opposed to priority determination,(14) leaving afflicted tenants to endure periods of overcrowding extending beyond two years.(15)

Even where tenants are eligible for priority housing, the process is ad hoc and sporadic. At least anecdotally, correspondence between government and other stakeholders is often times marred by miscommunication. Generally, a solicitor’s specialist skills are required to navigate complex arrangements.

A further barrier to attaining adequate housing is the limited existing infrastructure, particularly that which conforms to the requirements of the larger and more malleable Aboriginal and Torres Strait Islander families. Despite the differing compositions and kinship practices of Indigenous households, public housing developments across Australia and the ACT remain largely dominated by the provision of three-bedroom homes.(16) These are accustomed chiefly to the requirements of nuclear Anglo-Australian households and serve as a substantial hurdle to achieving adequate and appropriate housing.(17) The past has demonstrated that a ‘one size fits all’ approach to housing has been fundamental to governments’ inability to provide culturally adequate and appropriate housing for Aboriginal and Torres Strait Islander peoples in remote communities, let alone the urban ACT setting.(18)

The *Housing Assistance Act* purports to ‘maximise the opportunities for everyone in the ACT to have access to housing’ that is ‘appropriate to their needs’,(19) by providing housing of ‘adequate amenity’ and of ‘adequate size’.(20) As a public authority, HACT is required to act in accordance with the ACT *Human Rights Act*.(21) This includes the rights of Aboriginal and Torres Strait Islander peoples to maintain and develop cultural heritage and kinship ties under section 27.(22)

Not only does HACT bear the duties of at least two legislative schemes, it has the opportunity to reap the benefits of more streamlined procedures.

Housing ACT Overcrowding Policy

A. Reduce Complexity

A primary objective of an HACT Overcrowding Policy ought to be the reduction of complexity in seeking transfer to appropriate housing. To achieve this, the policy ought to be accessible and comprehensible to those seeking assistance.

An effective means of meeting this objective is through the use of easy English, a system of everyday images and simple words which convey information to those of low English literacy.(23) There should exist widely comprehensible outlines of the Policy, which can be easily accessed through the ACT Community Services Directorate.

Access to an intelligible policy would allow tenants to more fully understand their rights and the HACT processes. This would reduce the complexities associated with navigating the housing system and increase the ability for tenants to scrutinise HACT decisions. Where policy decisions can be more broadly scrutinised, a likely corollary is increased cultural awareness within HACT and more robust human rights compliance.

B. Increase Community Participation

As stipulated above, HACT is duty-bound to provide adequate housing and protect cultural rights of Indigenous peoples, including those rights to kinship ties. (24) It is clear that the ACT values Indigenous rights in pioneering human rights legislation within Australia. The *Human Rights Act* specifically affirms the ‘special significance’ of Aboriginal and Torres Strait Islander rights.(25) Notwithstanding, words on a page lack meaning absent proactive application.

To champion Indigenous rights, attention should be drawn to the General Comments on the Covenant of Economic, Social and Cultural Rights,(26) an instrument underlying much of the ACT’s human rights legislation. It urges that ‘family’ be understood in a ‘wide sense’, while housing should be culturally adequate.(27)

To achieve this, the creation of policy should comprise a participative approach involving Indigenous community members to fully understand the needs of Indigenous residents.(28) Indigenous participation in the development of policy will not only provide individuals with knowledge of services, it will convey the ACT’s serious approach to rights compliance.

C. Improve Allocation

A further objective ought to be the improved allocation of public housing across the ACT. Current mechanisms for housing allocation are clearly deficient, with a significant percentage of under-utilised HACT homes notwithstanding the overcrowding epidemic.(29)

The policy should mandate routine compilation of housing data – information that may be used in future planning and investment.(30) It should offer an independent measure of

overcrowding – one which envelops the cultural practices of Aboriginal and Torres Strait Islander households, including unique kinship duties. (31)

Where taken into account, HACT homes may be put to more efficient use, rather than subject to arrangements that mismatch the housing infrastructure. Better allocation would lead to long-term cost savings through reduced wear-and-tear of infrastructure.

Conclusion

The effects of overcrowding are manifest. A policy must be adopted which is accessible, raises awareness for Indigenous cultural practices, and improves allocation in order to better aid Australia's First Nations. While the easement of overcrowding in Indigenous homes will no doubt require colossal effort, an HACT Overcrowding Policy is an obvious first step in the right direction.

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