



Overcrowding- a human rights issue

By Dhurrawang Aboriginal Human Rights Program

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The right to housing has particular significance for children. Because of their vulnerability they have special needs for care and protection. Without decent secure accommodation children are unlikely to realise their right to grow and develop in an atmosphere of moral and material security, free from abuse and neglect.¹

Dhurrawang* is a legal service for the Aboriginal and Torres Strait Islander communities in Canberra. Our service is provided through a human rights framework and informed by the human rights principles of participation, inclusion and self-determination. We provide legal advice and representation in the following areas of law: Human Rights, Public Housing, Tenancy, Social Security and Race Discrimination.

Our services are delivered in a culturally appropriate manner. We recognize the importance of culture and family to our clients. We advocate for human rights and cultural rights to be given priority consideration by decision makers in utilizing the legal protections in the ACT *Human Rights Act 2004 (Human Rights Act)*.

We are mindful of our historical legacy and engage with clients within this framework. We endeavor to build genuine relationships with Aboriginal and Torres Strait Islander members of our community through a human rights informed practice that recognizes the consequences of apathy and oppression.

Overcrowding

We often work with Aboriginal families in Canberra comprising of one adult primary carer and several children living in severely overcrowded conditions. The adult has either formal or informal care of children who have been removed from their parents or other carers because of abuse and neglect. We

¹ Chris Sidoti – Human Rights commissioner, *Housing as a Human Right*, National conference on Homelessness 4 September 1996, accessed at https://www.humanrights.gov.au/sites/default/files/content/pdf/human_rights/housing.pdf on 8 July 2019.

frequently see children who have themselves left abusive foster placements and moved in with a safe adult family member who is providing them with care. The alternative to living with this adult for the children would likely be homelessness. The children have complex needs stemming from trauma and many have developmental delays and mental illness. The women who have accepted the challenging job of raising these children are mindful of the impact of the trauma on the children and are actively working to support their rehabilitation.

We have worked with families with as many as 8 children in 3-bedroom 1-bathroom homes. The children (some as young as 8 yo) have arrived at their doorstep having shown enormous courage leaving the abusive situation seeking the protection of an adult with whom they have found love and safety. However, their struggle does not end when they find this safety, but another battle begins – the battle for the adult to demonstrate to the relevant authorities that they can provide safety and love despite their overcrowded living conditions.

The Aboriginal women we work with are culturally obliged and feel morally bound to give refuge to the children who seek their protection. This is a cultural practice that is true for Aboriginal and Torres Strait Islander people across the nation.² Often, they have themselves survived foster care and do not want this experience to be repeated by their nephews, nieces and godchildren. There are several children across a range of age groups sharing one bedroom. There is little space in the bedrooms for the bedding required to sleep all the children. There is no space left for anything else.

The school age children struggle to keep up with their classmates as they are sleep deprived and have little space for studying or downtime away from the smaller children. The homes are run down, have mold and vermin and need other urgent repairs. But the children are safe and loved there.

Human Rights and access to Public Housing

The ACT is a human rights jurisdiction where public authorities are subject to the *Human Rights Act 2004*. Public authorities in the ACT must give proper consideration to relevant human rights in making their decisions and must act consistently and compatibly with human rights.³ According to the *Human Rights Act*:

² Australian Institute of Family Studies, Australian Government, *Enhancing the Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle*, Australian Institute of Family Studies <<https://aifs.gov.au/cfca/publications/enhancing-implementation-aboriginal-and-torres-strait-islander-child/export>>.

³ S 40B(1) *Human Rights Act 2004*

*Every child has the right to the protection needed by the child because of being a child...*⁴

The rights of children to be protected in this instance are paramount in both ensuring their safety and importantly in protecting their cultural rights as Aboriginal peoples. The *Human Rights Act* protects the rights of Aboriginal and Torres Strait Islander peoples in the ACT by declaring that:

*Aboriginal and Torres Strait Islander peoples hold distinct cultural rights and must not be denied the right –
(a) to maintain, control, protect and develop their-*

- (i) cultural heritage and distinctive spiritual practices, observances, beliefs and teachings; and*
- (ii) languages and knowledge; and*
- (iii) kinship ties...*⁵

It is crucial that Housing ACT recognizes these rights as such recognition can ensure that where Aboriginal children seek the care and protection of an Aboriginal elder; this is facilitated by providing the elder with an appropriate dwelling within which she can care for the children and teach them about their culture and heritage. By residing with their Aboriginal kin, children are receiving cultural knowledge and strengthening their kinship ties.

Public housing is the only viable option for our clients given their income and the size and composition of their household limits their ability to compete in the private rental market. Some households are already in small public housing properties and applying to transfer to a larger home where the family can be suitably accommodated. Others are homeless and living in shelters and seeking public housing to continue supporting the children in their care.

By utilizing the ACT *Human Rights Act* and the protections it affords to children, families and Aboriginal people, we have successfully advocated for our clients to be approved for large properties on the Priority housing waiting list (the most urgent waiting list category) with Housing ACT.

Housing ACT policies are consistent with the Canadian National Occupancy Standards⁶ in that no more than two children should share a bedroom and their age and gender must be taken into consideration in determining bedroom

⁴ S 11(1) *Human Rights Act* 2004

⁵ S 27(2)(a) *Human Rights Act* 2004

⁶ Australian Institute of Health and Welfare, *Canadian National Occupancy Standard*, accessed at <https://meteor.aihw.gov.au/content/index.phtml/itemId/386254> on 25 June 2019.

entitlement.⁷ However, by utilizing the *Human Rights Act* and medical evidence, we have successfully advocated for Housing ACT to approve additional bedrooms in cases where children have special needs and require their own room, or where our Aboriginal clients have kinship responsibility for children that move in and out of their care.

The lack of suitable homes

Although the legal mechanisms support our submissions to have our clients approved for a larger property on the Priority waiting list and Housing ACT have become increasingly more receptive to these arguments, our efforts appear futile in the face of inadequate housing stock to meet the needs of large families.

There are currently over 20 families on the priority waiting list for 4/5 bedroom properties across Canberra. Our clients are expected to wait more than 12 months, possibly double or triple this wait time, for a suitable property to become available. The impact of overcrowding on children - particularly children in care - is significant.

Impact on Children

Overcrowding for children who have special needs and are recovering from the impact of trauma is particularly difficult as it compounds the obstacles they face in participating in school and social activities. Their doctors consistently recommend space for the children to take time out from the rest of the family to regroup, study or spend quiet time doing activities that help them regulate.

Overcrowding also threatens the safety that the children have found with their new carer as ACT's Child and Youth Protection Services (CYPS) is reluctant to leave children in overcrowded situations and will remove them, placing them with less desirable carers including non-family and interstate placements. The outcomes for children that are repeatedly moved from one household to another is disastrous with more than a third of out-of-home care leavers becoming homeless within a year⁸ and many becoming involved in the criminal justice system.⁹

⁷ *Property Size Guidelines – Important Information from Housing ACT* accessed at https://www.communityservices.act.gov.au/_data/assets/pdf_file/0006/520458/Size-of-Property-Allocation.pdf on 25 June 2019.

⁸ Home Stretch – What is out of Home Care? Accessed at <http://thehomestretch.org.au/learnmore/> on 24 June 2019.

⁹ Higgins, Daryl, *Protecting Children – Evolving systems*, Family Matters No. 89 – December 2011, Australian Institute of Family Studies accessed at <https://aifs.gov.au/publications/family-matters/issue-89/protecting-children> on 24 December 2019.

The definition of overcrowding is relative to the needs of the household. Where several children are required to share a bedroom and don't have enough space to play, to study or to take time for themselves - particularly where the children are trauma survivors or have disabilities- the impact can be severe. Overcrowding for Aboriginal families in the ACT remains a distressing issue with multiple negative consequences particularly where this impacts on the outcomes for vulnerable children in care.

Public housing stock in the ACT remains geared towards the needs of smaller families with the vast proportion of properties comprising of 2 and 3 bedroom properties and very few 4 or 5 bedroom homes suitable to the needs of families with broader cultural obligations.

The ACT Government operates in a human rights jurisdiction where the cultural rights of the Aboriginal and Torres Strait Islander communities are deemed paramount. The ACT government has recently committed to "Delivering equitable outcomes for Aboriginal and Torres Strait Islander Peoples" through the ACT Aboriginal and Torres Strait Islander Agreement 2019 – 2028 (The Agreement). In its Relationship Principles the Agreement stipulates that the government will :

- *Avoid one size fits all solutions. Tailor a response that meets the needs of the individual.*
- *Continuously improve the level of service delivered to Aboriginal and Torres Strait Islander peoples.¹⁰*

The provision of suitable housing to Aboriginal families with complex needs is a simple solution for government to a complicated and devastating issue. This space remains wide open for reform with families waiting indefinitely for a fundamental human right to adequate housing.

*We thank the United Ngunnawal Elders Council for gifting us with the name Dhurrawang. Dhurrawang means 'light'- when gifting us this name the United Ngunnawal Elders council said "UNEC sends Ngunnawal Blessing, we wish your program much success in spreading 'Dhurrawang' through your Aboriginal Human Rights Program.

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¹⁰ ACT Aboriginal and Torres Strait Islander Agreement 2019 -2028, accessed at https://www.communityservices.act.gov.au/_data/assets/pdf_file/0015/1323132/ACT-Aboriginal-and-Torres-Strait-Islander-Agreement-2019-2028.pdf on 24 June 2019.

