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## Acknowledgement of Country

Canberra Community Law acknowledges the Ngunnawal people as traditional custodians of the land on which we work in the ACT and surrounding region and recognise any other people or families with connection to the lands of the ACT and region.

We pay our respects to First Nations elders past, present, and future for they hold the stories, traditions, and the cultures of their people.

We are grateful that we share this land and express our sorrow for the costs of this sharing to Australia's First Peoples.

Any meaningful discussion on the right to adequate housing must begin by acknowledging the impact of Australia's history of colonisation, dispossession, forced assimilation, and racism on Aboriginal and Torres Strait Islander Peoples.

There is profound injustice in Aboriginal and Torres Strait Islander peoples fighting for a right to housing on their own land.

We will continue to acknowledge the legacy of our history and strive in our goals to empower our community through social justice. We hope that our efforts will contribute to a realisation of equity, justice and partnership with Traditional Custodians of this land.

## About Canberra Community Law

Canberra Community Law runs the only specialist public housing and homelessness legal services in the ACT. We provide legal assistance to people experiencing homelessness, community housing tenants and people with occupancy agreements, including people who live in caravan parks, crisis accommodation, and supported accommodation.

CCL has substantial legal practice experience and expertise in homelessness, housing and tenancy law, and ACT human rights law, as well as social security and discrimination law. CCL has developed this expertise through the provision of specialist legal advice, assistance and representation services to people in the ACT on low incomes.

We aim to promote the human rights of our clients experiencing complex disadvantage and undertake strategic litigation in Canberra Community Law's areas of expertise to advance human rights law in the ACT.

We use the *Human Rights Act 2004* (ACT) in our everyday legal work to:

- prevent people being evicted from social housing,
- advocate for people to be housed and for appropriate and safe housing conditions,
- protect access to education and work,
- protect cultural and kinship rights for Aboriginal and Torres Strait Islander people,
- advocate for and protect access to disability support and services, and
- advocate for and protect the rights of people in custody.

This submission represents our preliminary views on the draft *Human Rights (Housing) Amendment Bill 2024* ('the Draft Bill').

We would be grateful for the opportunity to continue to be consulted as this important reform progresses.

# Q1. Do you think the *Human Rights Act 2004* should include a human right to access to adequate housing?

We strongly support the inclusion of a human right to access adequate housing in the *Human Rights Act 2004* for these reasons:

1. The housing and homelessness crisis in the ACT is a **human rights crisis**.
2. Legislating a right to housing is an opportunity for the ACT to **lead national change**.
3. Many aspects of the right to housing are already protected under ACT law. **A right to adequate housing is not a great leap for the ACT, but it is a vital next step**.
4. Protecting the right to housing has economic and social benefits for the whole ACT community, **including reducing the burden on the healthcare system**.
5. The right to housing is **fundamental to the realisation of all other rights** in the Human Rights Act 2004.

## 1.1 The Housing and Homelessness Crisis in the ACT is a Human Rights Crisis

Homelessness, poor housing conditions, unaffordable rent, overcrowding, insufficient security of tenure, inaccessible housing, and a lack of social, affordable and community housing for those in need are all inconsistent with the enjoyment of the right to housing.<sup>1</sup>

Most of our clients have no place to call home. In the last financial year, **55% of the people we helped were experiencing homelessness**. Many of our clients were, for example, sleeping rough, or in a boarding house, or on a friend's couch, or in one room with four of their children - each of which is a form of homelessness.<sup>2</sup>

There is an ongoing shortage of affordable housing for low-income households in Canberra, and the wait times for public housing remain long.<sup>3</sup> For those of our clients who have a public, social, or community housing property, the conditions are often poor.

Our housing law practice assists large numbers of tenants who live in homes with inadequate heating and cooling, mould infestation, asbestos, water ingress and water damage, dilapidated and non-functioning kitchens and bathrooms, and a lack of insulation and ventilation.

**In the last financial year, 94% of our clients were experiencing financial disadvantage.**<sup>4</sup> Low social security payments, like the JobSeeker payment, are providing little insulation in a cost-of-living crisis. Almost half of our clients disclose experiences of domestic and family violence (DFV), many of whom are facing eviction. This is consistent with the evidence that DFV is a leading cause of homelessness for women and their children nationwide.<sup>5</sup> Sixty-four percent of our clients have disabilities, and many of our clients tell us that their housing issues have exacerbated their mental or physical ill-health.<sup>6</sup>

1 *Guidelines for the Implementation of the Right to Adequate Housing*, UN GA HRC, 43<sup>rd</sup> sess, Agenda Item 3, UN Docs A/HRC/43/43 (26 December 2019), II.13, 17.

2 Australian Bureau of Statistics, *Estimating Homelessness: Census methodology*, 2021 <[www.abs.gov.au/methodologies/estimating-homelessness-census-methodology/2021#cite-window1](http://www.abs.gov.au/methodologies/estimating-homelessness-census-methodology/2021#cite-window1)>.

3 City Futures Research Centre, University of New South Wales, *Housing Need Dashboard* (Web page, 2021) <[cityfutures.ad.unsw.edu.au/cityviz/housing-need-dashboard/](http://cityfutures.ad.unsw.edu.au/cityviz/housing-need-dashboard/)>; ACT Council of Social Service (ACTCOSS), 2024 Cost of Living Report (Report, August 2024).

4 Canberra Community Law, *Annual Report 2023–24* (Report, 2024) 3.

5 Paul Flatau et al, Centre for Social Impact, The University of Western Australia and the University of New South Wales. *Ending homelessness in Australia: An evidence and policy deep dive* (Report, November 2021) 45 [4.7].

6 National Social Security Rights Network and Canberra Community Law, *Homeward Bound—Social Security and Homelessness* (December 2019) 18.

In our everyday work, we see the ways that different forms of discrimination and marginalisation are linked to inadequate housing. Some key legal issues we see include:

- **Aboriginal and Torres Strait Islander** people, including Elders, experiencing race discrimination, overcrowding, and difficulty getting repairs and maintenance done in public, social and community housing properties. We also regularly represent Aboriginal and Torres Strait Islander people who are being evicted from their homes. For members of the Stolen Generations and their families in particular, these experiences are profoundly traumatic, recalling Government policies of forced relocation.
- Housing providers raising debts against **women experiencing domestic or family violence (DFV)** for rent arrears they accrued because of, or while fleeing, physical, emotional, and/or financial abuse.
- People with disabilities (including mental ill-health) living in public housing properties that are in urgent need of repairs or ill-equipped for their needs, where these issues pose a threat to their health and safety.
- Housing providers attempting to evict **people experiencing acute mental-ill health** -for example, psychosis – into homelessness because of their alleged antisocial behaviour.
- **People leaving prison or mental health facilities** who have been evicted while they are away from home, and who are now facing homelessness.
- **Asylum seekers** who are living in insecure housing, unable to access mainstream public, social, or community housing, and unable to access either work or social security payments to support themselves.
- People who are at risk of homelessness because they were unable to pay their rent after having a **physical or mental health emergency** that left them unable to work.

## 1.2 The Right to Housing is an Opportunity for the ACT to Lead Change

Housing is one of the core policy challenges of our time. This Draft Bill is an opportunity for the ACT to lead national change.

At the federal level, there is growing momentum behind a rights-based approach to housing. The recent *National Housing and Homelessness Plan Bill 2024* (Cth), which proposed recognising housing as a fundamental human right, demonstrated the wide support across civil society and the housing industry for a human rights-based response.<sup>7</sup>

The *Human Rights Act 2004* was the first Australian law to explicitly protect human rights. By enshrining the right to adequate housing in the *Human Rights Act 2004*, the ACT can pioneer a human rights-based approach to housing in Australia.

We recognise that the housing and homelessness crisis has been decades in the making, and its structural drivers are complex. Legislating a right to housing will not solve the crisis overnight. Addressing the housing and homelessness crisis will involve a long-term, whole-of-Government approach. A right to housing is a strong foundation.

## 1.3 The Right to Housing is a Next Step, Not a Great Leap

Many aspects of the right to housing are already protected under ACT law. A right to adequate housing is not a great leap for the ACT, but it is a vital next step.

The right to housing has seven essential elements: legal security of tenure, availability of services, affordability, habitability, accessibility, appropriate location, and cultural adequacy.<sup>8</sup>

<sup>7</sup> Community Housing Industry Association, Homelessness Australia, and National Shelter, Submission No 54 to the Senate Economics Legislation Committee, *Inquiry into the National Housing and Homelessness Plan Bill 2024* (No. 2) (9 August 2024) 4.

<sup>8</sup> Committee on Economic, Social and Cultural Rights, *General Comment No 4 (1991): The Right to adequate Housing (Art 11 (1) of the Covenant)*, UN ESCOR, UN Doc E/1992/23 (13 December 1991) 2 [8].

In the ACT, we have laws, regulations, and policies that establish housing services, and enshrine protections, entitlements, and standards that correspond with elements of the right to adequate housing. Some of these place prescriptive obligations on public authorities that are enforceable, and breaches of those obligations are sometimes compensable. For example, lessors have an obligation to provide habitable premises that are reasonably clean, in a reasonable state of repair, and reasonably secure.<sup>9</sup> Tenants can seek compensation if lessors fail to comply. We also have laws, policies, and programs that address the normative aspects of the right to adequate housing [See examples in the **Table** below]. However, these protections only cover some elements of the right to adequate housing, *they do not protect the right itself*.

The *Human Rights Act 2004* offers some protections that apply to housing – for example, the right to not have one’s home interfered with unlawfully or arbitrarily.<sup>10</sup>

At CCL, we regularly use the *Human Rights Act 2004* in our advocacy work. We find that human rights arguments can be powerful, but since there is no right to adequate housing, **the protection is insufficient** (see Brenda’s case study below).

### **Case study: Brenda**<sup>11</sup>

Brenda is a single mother and survivor of domestic and family violence. Brenda fell into rental arrears because she got sick, and her ex-partner started using violence against her. Brenda was hospitalised because of his violence.

For the past few years, Brenda has been unable to work because of her illness. She has been in severe financial hardship, trying to pay the rent on her own while undergoing treatment and caring for her children.

Brenda’s housing provider was aware of her circumstances. They applied to the ACT Civil and Administrative Tribunal (ACAT) to evict her for rent arrears. The eviction proceedings went on for several months and caused Brenda great distress.

Brenda told CCL that if she got evicted, she had nowhere to go- she would have no choice but to move back in with her abuser.

CCL advocated with Brenda’s housing provider, urging them to withdraw their application to evict her. CCL argued that the housing provider had obligations to Brenda and her children under the ACT Human Rights Act 2004 and that evicting Brenda in her circumstances was conduct that was incompatible with the protected human rights of Brenda and her children, which are in section 12 of the Human Rights Act 2004 (the right to not have one’s privacy, family, home, or correspondence interfered with unlawfully or arbitrarily).

In response, Brenda’s housing provider withdrew their application to evict her, and the family was able to stay in their home.

A properly framed right to housing would have strengthened Brenda’s case. Brenda’s housing provider may have had a clearer understanding of their obligations to Brenda and her children with regard to their housing, and this may have prevented them from taking action to evict her in the first place.

Although the ACT framework protects housing rights to some extent, we consistently represent people like Brenda who have slipped through its cracks. A right to adequate housing is consistent with the ACT’s existing law and policy framework around housing. It is time to build on this framework to offer more comprehensive protection.

9 See *Residential Tenancies Act 1997* (ACT) sch 1 cl 54.

10 *Human Rights Act 2004* (ACT) s 12.

11 Details changed to protect client’s identity.

## 1.4 Inadequate Housing has a Great Cost

Protecting the right to housing has economic and social benefits for the whole community, **including reducing the burden on the healthcare system.**

The housing and homelessness crisis in the ACT comes at a bitter individual, social, and economic cost. Homelessness has been described by the UN Special Rapporteur on the right to adequate housing as ‘a profound assault on dignity, social inclusion and the right to life’.<sup>12</sup> It is a prima facie violation of the right to housing and contravenes other rights, such as the rights to life and to health.<sup>13</sup>

Our clients tell us that having inadequate housing is frightening and dangerous. We consistently hear that inadequate housing exacerbates our clients’ mental and physical health conditions and causes severe emotional and financial distress.

Clients like Delia (see case study below) report feelings of helplessness as they wait for urgent assistance that never comes.

### Case Study: Delia<sup>14</sup>

Delia has lived in a public housing property for a decade. For the entire period of her tenancy, Delia has dealt with a leaking roof, severe mould, an unlockable front door, broken windows, and an unstable electricity supply. Delia had consistently reported these issues to her housing provider, but to no avail.

The maintenance issues in Delia’s home are affecting her mental and physical health. Her pre-existing respiratory illness is aggravated by the mould, and Delia has experienced anxiety and poor sleep because she cannot secure her home against potential intruders.

CCL assisted Delia to apply to the ACT Civil and Administrative Tribunal (ACAT) for compensation for her housing provider’s failure to make repairs to her home. Delia accepted a settlement on the basis of her loss of quiet enjoyment of the property, and a retrospective rent reduction. The housing provider is finally repairing her home.

A right to housing may have prevented Delia from living in inadequate housing for ten years. If Delia were able to realise her right to adequate housing, she may not have suffered adverse health impacts, and the taxpayer may not have had to bear the cost of compensation and structural repairs to a significantly deteriorated property.

Our clients’ testimony is supported by a growing body of research that shows that stable and secure housing is fundamentally important to health and wellbeing. The Centre for Research Excellence in Healthy Housing is investigating how housing affects health. Some of the Centre’s research findings so far are set out below. The Centre has observed that:

*Each element of adequate housing has impacts on human health. This means that Australians without adequate housing risk harms to their health.<sup>15</sup>*

<sup>12</sup> *Guidelines for the Implementation of the Right to Adequate Housing*, (n 1) 30.

<sup>13</sup> Leilani Farha, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context*, UN GA HRC, UN Doc A/HRC/47/43Add.1 (28 April 2021), II.A.6.

<sup>14</sup> Aggregate case study.

<sup>15</sup> Centre of Research Excellence in Healthy Housing, *Submission No 47 to Senate Standing Committees on Economics, Inquiry into the National Housing and Homelessness Plan Bill 2024* (No 2) 4.

There is evidence that people who are insecurely housed are more likely to make frequent hospital visits, often for health issues that could be more effectively managed in a primary care setting. The health risks faced by those without a safe and secure place to live are so severe that their life expectancy is, on average, 20-30 years shorter than those who are housed. While mental health episodes can lead to homelessness, the isolation and trauma of being homeless, especially when rough sleeping is involved, can also precipitate mental illness.<sup>16</sup>

Conversely, safe, secure, affordable, and appropriate housing for everyone, benefits everyone.

There is strong evidence that reducing homelessness leads to significant health improvements and eases pressure on the healthcare system, particularly benefiting First Nations people, women, and young people who face the highest risk of homelessness in Australia. Safe, secure, affordable, and appropriate housing not only improves individual health but also reduces health service costs by billions of dollars and boosts household productivity. Providing housing for people experiencing homelessness creates myriad cost benefits, mostly in reduced costs related to health and crime, and better employment and education outcomes. Housing that is affordable to low- and moderate-income workers, and is well located relative to jobs, is also critical for the economy and for the functioning of key public services, including healthcare services.<sup>17</sup>

Recent research in Wales modelled the impact of progressively realising the right to adequate housing over ten years. The findings suggest that realising the right to adequate housing in Wales would generate socio-economic benefits that significantly outweigh the costs of implementation.<sup>18</sup>

As the ACT Wellbeing Framework identifies:

*Access to secure, suitable, and affordable housing improves social inclusion, health, wealth, and welfare. It guards against future issues like climate change, economic changes, and health challenges.<sup>19</sup>*

## 1.5 The Right to Housing is a Foundation for All Other Rights

The right to housing is **fundamental to the realisation of all other rights** in the *Human Rights Act 2004*. When people do not have adequate housing, they lose access to other basic human rights such as health, education, and safety.

The *Human Rights Act 2004* protects several rights that cannot be fully and progressively realised without the right to housing as a foundation, including the right to protection of the family and children, the right to a healthy environment, the right to work, and the cultural and other rights of First Nations peoples.

### EXAMPLES OF EXISTING PROTECTIONS FOR HOUSING RIGHTS IN THE ACT

Tenants are **protected from forced evictions** by the termination provisions of the *Residential Tenancies Act 1997* (ACT). The Act prescribes detailed processes for seeking a tenant's eviction and prevents lessors from unilaterally ending tenancies without the oversight of the ACT Civil and Administrative Tribunal (ACAT). We note that there are limitations to these protections and generally speaking, they do not apply to occupancies.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Alma Economics, *The Right to Adequate Housing in Wales: Cost-Benefit Analysis* (Report, September 2022).

<sup>19</sup> ACT Government, 'Housing and Home', *ACT Wellbeing Framework* (Web Page) <[www.act.gov.au/wellbeing/explore-overall-wellbeing/housing-and-home](http://www.act.gov.au/wellbeing/explore-overall-wellbeing/housing-and-home)>.

Lessors have obligations under the *Residential Tenancies Act 1997* (ACT) to provide **habitable** premises that are reasonably clean, in a reasonable state of repair, and reasonably secure.<sup>20</sup> Tenants can seek compensation if lessors fail to comply.

Rent increases are limited under the *Residential Tenancies Act 1997* (ACT), partially protecting the **affordability** of housing.<sup>21</sup>

Housing **affordability** is also a ‘principle of good planning’ enshrined in the *Planning Act 2023* (ACT). This includes ensuring that affordable housing is **located** close to essential services, amenities and affordable transport options.<sup>22</sup>

Increasing **affordable** rental housing and home ownership, and reducing homelessness, are also goals of the ACT Housing Strategy 2018–2028.<sup>23</sup>

The *Housing Assistance Act 2007* (ACT) seeks to ensure the provision of **affordable** and **accessible** housing. Its objects include:

- to maximise the opportunities for everyone in the ACT to have access to housing that is affordable, secure and appropriate to their needs;
- to facilitate the provision of housing assistance for those most in need;
- to facilitate the provision of rental housing that—
  - (i) has adequate amenity, is of an adequate size and is appropriately located for employment opportunities and necessary services and facilities; and
  - (ii) is coordinated with any support services (provided under other laws) required by consumers of housing assistance to live in the community.

People are **protected from discrimination** in the provision of accommodation, including housing, in the *Discrimination Act 1991* (ACT), and by the new positive duty to make reasonable adjustments to accommodate a person’s particular needs under that Act.<sup>24</sup> These provisions protect the element of **accessibility**.

**Accessibility** is also partially protected by instruments under the *Housing Assistance Act 2007* (ACT) for the provision of specialised dwellings for Aboriginal and Torres Strait islander people, older people, and people with disabilities.<sup>25</sup>

The **cultural adequacy** of housing is partially protected by the cultural and other rights of Aboriginal and Torres Strait Islander peoples and other minorities under the *Human Rights Act 2004*.<sup>26</sup>

20 See *Residential Tenancies Act 1997* (ACT) sch 1 cl 54.

21 See *Residential Tenancies Act 1997* (ACT) pt 5.

22 *Planning Act 2023* (ACT) s 10.

23 ACT Government, *ACT Housing Strategy* (October 2018).

24 *Discrimination Act 1991* (ACT) ss 21, 74.

25 See *Housing Assistance Public Rental Housing Assistance Program (Special Needs Applicants and Dwellings) Determination 2012 (No 1)* (ACT).

26 *Human Rights Act 2004* (ACT) s 27.

## Q2. What do you think about the date of commencement?

The proposed commencement date is a reasonable and realistic timeframe for the implementation of the right to housing, especially given that ACT law and policy already indirectly protects many elements of the right to adequate housing for public, social, and community housing tenants.

## Q3. Do you think that the right should be expressed as simply as it is in the Bill? Do you think that both aspects of 'access' and 'adequacy' should be incorporated?

The human right to housing should be defined broadly and not be unnecessarily limited to ensure that it offers effective protection and creates real accountability. In our view, it should, at a minimum, align with the right as defined in International Human Rights Law.

### 3.1 Access

Article 11(1) of the ICESCR provides for a *right to adequate housing*, while the Draft Bill provides for a right of 'access to' adequate housing. **In our view the inclusion of the words 'access to' limits the full expression of the right and if adopted, could prevent the full protection offered by the right from being realised.**

As a matter of statutory construction, the inclusion of the words 'access to' is likely to be treated as an intentional limitation placed on the scope of the right, especially in light of the broader available definition in article 11(1) ICESCR and other rights in the *Human Rights Act 2004* which are cast in broader terms (e.g. s 27B, right to work).

A right to have 'access to' adequate housing suggests that the Government must remove barriers to adequate housing *that is already available*, but is not required to use its resources to *make* adequate housing available.<sup>27</sup> In our view, this wording can also be read as limiting the Government's obligations to the tasks of ensuring non-discriminatory access to the housing market or the availability of services essential for housing (e.g., a functioning sewerage system). These interpretations are more limited and procedural than the international right, which is an entitlement of the rights holder to adequate housing *even when it may not already be available*. The obligation is on the Government to make it available.

In our view, the limitations introduced by inclusion of the words 'access to' have the potential to undermine the objectives sought to be achieved by enacting the right. They may significantly reduce the onus on Government to use its resources to realise the right and limit the direct applicability of International Human Rights standards and jurisprudence. This in turn would impact on the potential for progressive realisation of the right.

Removing the words 'access to' would not mean that the right to adequate housing would operate without limits. Human rights in the ACT are already subject to reasonable limits set by laws that can be demonstrably justified in a free and democratic society.<sup>1</sup> In our view, there is no need to further limit the operation of a right to adequate housing in the ACT.

<sup>27</sup> See Manisuli Ssenyonjo, *Economic, Social and Cultural Rights in International Law* (Hart Publishing, Oxford, 2<sup>nd</sup> ed, 2016) ch 5 275.

## 3.2 Adequacy

CCL strongly supports incorporating an element of adequacy in the right to housing, **supported by a non-exhaustive list of examples which may assist in determining whether housing is 'adequate' for the purposes of the Act.** We disagree that a concept of 'adequacy' may be implied into the operation of a right to housing in the absence of the express use of the word.

In our view, requiring housing to be more than merely 'a roof over one's head,' but also to be adequate, should but will not necessarily trigger an evaluation of the sufficiency of the quality and condition of housing or its appropriateness for a given individual or family. As we continue to advocate for, public housing stock in the ACT should include appropriate levels of culturally appropriate housing, housing suitable for large families, housing suitable to offer protection to people at risk of domestic violence, and housing that is accessible for people with disabilities. A right to 'adequate' housing notionally encompasses the right to availability of these types of housing, but the Draft Bill leaves this to be realised progressively and by implication.

Adequacy 'is determined in part by social, economic, cultural, climatic, ecological and other factors',<sup>28</sup> and these factors are apt to change over time. For this reason, we think it is important to retain the broad framing of the right employed in the ICESCR, allowing for an internationally consistent and flexible right that does not demand an unduly restrictive interpretation.

On the other hand, the content and scope of the 'right to adequate housing' can be vague and difficult for the community to understand. Rights holders should be able to understand the content and scope of the right, so that they are able to claim it. We also know from experience that decision makers are assisted in understanding and fulfilling their obligations under the *Human Rights Act 2004 (ACT)* where these are clearly articulated. Moreover, decisions about what amounts to adequate housing are unique to each individual or family and need to be assessed on a case-by-case basis. To this end, CCL supports the inclusion of a non-exhaustive list of examples to guide the decision maker in determining whether housing is adequate for the purposes of the *Human Rights Act 2004*. They could be included in the *definitions* section and be framed as follows:

*Whether housing is 'adequate housing' is to be determined on a case-by-case basis. Examples of considerations for determining whether housing is adequate include, but are not limited to, the following:*

- *whether the housing is affordable for the inhabitants;*
- *whether the housing meets reasonable standards for habitability, including being structurally sound, providing the inhabitants with adequate space, protecting the inhabitants from threats to health, structural hazards, and disease vectors, and providing for the inhabitants' physical safety;*
- *whether the housing sufficiently accommodates the inhabitants' individual needs (including for example physical and cultural accessibility);*
- *whether the housing contains facilities essential for health, security, comfort, and nutrition (including safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services)*
- *whether the housing is located reasonably close to public services (including but not limited to education, healthcare and public transport) and employment opportunities for the inhabitants;*
- *whether the housing provides the inhabitants with security of tenure and protection against unfair eviction; and*
- *whether the housing is culturally adequate for the inhabitants and enables the expression of cultural identity.*

<sup>28</sup> Committee on Economic, Social and Cultural Rights (n 8) [8].

## Q4. Are there other components to the right that you think should be immediately realisable? The Bill leave progressive realisation to implication and reading-in via notes and sources of international law. What do you think about this approach and what are alternatives you prefer?

We support the inclusion of a non-exhaustive list of immediately realisable aspects of the right. However, there are additional immediately realisable aspects that should be included in the proposed section 27D.

The principle of progressive realisation is that it might not be feasible to fulfil all aspects of the right to adequate housing immediately due to resource constraints. States have an obligation to take steps to the *maximum of their available resources* with a view to achieving progressively the full realisation of the right to adequate housing, *by all appropriate means*.<sup>29</sup>

We submit that in a wealthy country like Australia, governments cannot claim to be unable to meet the core obligations of the right to adequate housing. Such a claim would make especially little sense in the ACT, given that we already have a sophisticated law and policy framework that indirectly protects many aspects of the right to adequate housing (although there are gaps). We note that even where available resources are demonstrably inadequate (which, we argue, does not apply anywhere in Australia), the obligation remains for a State to ‘strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances.’<sup>30</sup>

Setting out a non-exhaustive list of immediately realisable aspects runs the risk of limiting progressive realisation of the right. The two immediately realisable aspects of the right to education in the ACT have not been added to in the last 12 years.<sup>31</sup> The right to education explicitly limits the immediately realisable aspects of the right. By contrast, the draft provision for the right to adequate housing does not limit the immediately realisable aspects to those listed in the provision. However, courts and tribunals tend to be reluctant to expand the operation of human rights. In any case, human rights-based litigation in the ACT is limited, so there are unlikely to be many opportunities for interpretive expansion through the courts.

Nonetheless, our view is that articulating a non-exhaustive list of immediately realisable aspects of the right will assist to focus Government resources and attention on fulfilling aspects of the right that are, in the short term, the **most critical** to improving the living conditions of people in the ACT.

<sup>29</sup> *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS3 (entered into force 3 January 1976) art 2 (1).

<sup>30</sup> Committee on Economic, Social and Cultural Rights, *General Comment No 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)* 5<sup>th</sup> sess, E/1991/23 (14 December 1990) [11].

<sup>31</sup> See [Human Rights Amendment Act 2012](#) (ACT).

We argue that the proposed elements in subsection (2)(a) and (b) of the Draft Bill are already substantially protected under ACT law, and do not represent Government taking steps to the maximum of its available resources to fulfil the right to adequate housing. We propose the following additional subsections:

- everyone has a right to suitable and accessible emergency housing if they are at risk or in a situation of homelessness
- everyone has the right to habitable housing
- everyone has the right to affordable housing
- everyone has the right to housing that is culturally adequate
- everyone has the right to accessible housing

To guard against the risk of limiting progressive realisation, we propose a new Commissioner for the Human Right to adequate housing (see Q8).

## Q5. What do you think is an appropriate timeframe for a review of the operation of the right to access to adequate housing?

The 5-year timeframe is reasonable. It will draw the ACT Government's attention to necessary amendments after allowing enough time for the provision to produce results. It will provide an opportunity for the ACT Government to consider whether the section should be expanded or clarified.

The review should involve significant public consultation. In particular, the consultation process should ensure that First Nations peoples, as well as marginalised groups, can participate effectively.

## Q6. What could a right to housing look like? How could it be expressed?

See above.

## Q7. What does 'access to adequate' housing mean to you?

CCL is supportive of, and strongly advocates for, the inclusion of housing as a human right. While this is an appropriate starting point and the natural progression of current legislation and policy, we believe that this jurisdiction has the capacity to go further in protecting its constituents.

We take a human rights-based approach to advocating for our clients. We share the Canadian Centre for Housing's position, which states that:

*The goal of a rights-based approach is to prioritize groups that have been marginalized through the development process, and to hold duty-bearers accountable with regard to their human rights obligations. Any housing policy that is truly to improve the living conditions of those most in need of adequate housing should be systematically designed using a rights-based approach.<sup>32</sup>*

<sup>32</sup> Canadian Centre for Housing Rights, *A Human Rights-Based Approach to Housing* (Resource, February 2023) 5  
<[housingrightscanada.com/wp-content/uploads/2023/10/CCHR-HR-Approach-for-Tenant-Leaders-UpdatedSept2023.pdf](https://housingrightscanada.com/wp-content/uploads/2023/10/CCHR-HR-Approach-for-Tenant-Leaders-UpdatedSept2023.pdf)>

By taking a human rights-based approach to housing in the ACT, we will see more effective responses to key areas of housing concern including the availability of adequate crisis accommodation, equal protections for all renters, consistent and transparent pathways into social housing, and improved affordability of all forms of social housing. Specifically, we see more effective responses to ongoing housing concerns as including:

- **Availability of crisis accommodation:** There are inadequate responses to people in crisis and insufficient crisis accommodation to address the level of need in the community. CCL frequently assists clients who do not have access to secure housing and are forced into homelessness. This is particularly problematic for people with additional vulnerabilities such as people escaping domestic violence, people with disabilities, Aboriginal and Torres Strait Islander people and people with uncertain visa status. There needs to be systematic re-consideration of our response to homelessness so that the people in need are not turned away. We foresee this gap being addressed through increased brokerage for hotels, the ability to spot purchase suitably sized properties when needed; and brokerage to pay rent to keep people housed.
- **Equal protections for all renters:** We have long held concerns in relation to the growing disparity in the rights enjoyed by different types of renters under the RTA. The disparity in recourse and protections available under the RTA disproportionately affects people experiencing structural disadvantage, including people in jail; occupants; and people in crisis accommodation.
- **Consistent pathways into social housing:** The eligibility criteria for all social housing should be publicly available and consistent across providers. Housing providers are exercising a function of the government and their management of this should be regulated transparently and consistently and reviewed annually in accordance with economic and social factors.
- **Minimum standards for housing:** Consistent and transparent regulation and enforcement mechanisms should also be extended to ensure minimum standards of habitability and accessibility that are articulated in legislation. We note that the outcome of the ACT Government review of minimum standards is still pending.
- **Improved affordability of all forms of social housing:** Further to the above, there should be consistency in the management of affordability of housing where housing providers are exercising a function of the government. At a minimum we must ensure rent is charged consistently across all forms of social housing, and this rate should be publicly available and reviewed annually.

In the interim, we interpret the notion of ‘access to adequate housing’ as an evolving principle of minimum standards and freedoms that that governments should progressively achieve in relation to the provision and management of housing. This should reflect the changing and diverse needs of the community, *as expressed by the community itself*.

Community consultation and ownership over the design and implementation of policies and decisions around access to adequate housing is key to ensuring that it is reflective of the real needs and preferences of the people they affect. On ‘adequate housing’ the UN Special Rapporteur has said:

*Those in need of housing or related social benefits should be treated as rights holders and as experts in what is required for a dignified life, not recipients of charity. They are entitled to participate actively, freely and meaningfully in the design and implementation of programmes and policies affecting them.*<sup>33</sup>

The ACT community has various sectors and particular needs that must be incorporated into housing policy for it to contribute to ‘adequate’ access to housing for the community. These include:

- the rights and interests of Aboriginal and Torres Strait Islander peoples;
- the rights and interests of all persons living with disability; and
- climate safe housing.

<sup>33</sup> Leilani Farha, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context: Guidelines for the Implementation for the Right to Adequate Housing*, UNGAOR, 43<sup>rd</sup> sess, Agenda item 3, A/HRC/43/43, (26 December 2019) –, para 21.

## 7.1 The Rights and Interests of Aboriginal and Torres Strait Islander Peoples

Historically, housing policy in the ACT has involved dispossession, systemic racism, and discrimination against Aboriginal and Torres Strait Islander peoples. Despite this, Aboriginal and Torres Strait Islander peoples have a continuing connection and relationship with the lands in the ACT and beyond.

There are nonetheless persistent issues faced by Aboriginal and Torres Strait Islander people in the ACT, which include:

- Housing affordability. As at 2022, 44.6 percent of Aboriginal and Torres Strait Islander recipients of Commonwealth Rent Assistance (CRA) in the ACT were experiencing housing stress.<sup>34</sup>
- Overcrowding in public housing arising from a lack of suitably sized homes.<sup>35</sup>
- Public housing decisions being made without consideration for the role of informal carers supporting extended family members.
- Housing stock for larger public housing properties being located in the north of the ACT, while many support services for Aboriginal and Torres Strait Islander peoples are located in the south.
- Overrepresentation in correctional institutions.

The design of future housing policy in the ACT should recognise the history of oppressive structures and practices faced by Aboriginal and Torres Strait Islander people and the cultural integrity and ability of Aboriginal and Torres Strait Islanders to determine and develop their own priorities and strategies for development must be fostered and preserved.<sup>36</sup>

In practice, this means that the ACT Government should directly engage with Aboriginal and Torres Strait Islander peoples on the right to adequate housing and the design of housing policy and programs that may impact them. The views expressed should then be meaningfully incorporated into housing policies and decisions so that Aboriginal and Torres Strait Islander peoples can continue to individually and culturally persevere, develop, and flourish in the ACT.

<sup>34</sup> Housing stress in this context means using more than 30% of your income for rent; Moskos et al., *Indigenous housing support in Australia: the lay of the land* (Final Report No 434, February 2025) 47 <[www.ahuri.edu.au/sites/default/files/documents/2025-02/AHURI-Final-Report-434-Indigenous-housing-support-in-Australia\\_the-lay-of-the-land.pdf](http://www.ahuri.edu.au/sites/default/files/documents/2025-02/AHURI-Final-Report-434-Indigenous-housing-support-in-Australia_the-lay-of-the-land.pdf)>.

<sup>35</sup> See further Canberra Community Law, 'Overcrowding – a human rights issue' (15 July 2019) <[canberracommunitylaw.org.au/wp-content/uploads/2021/11/Overcrowding-a-human-rights-issue.pdf](http://canberracommunitylaw.org.au/wp-content/uploads/2021/11/Overcrowding-a-human-rights-issue.pdf)>.

<sup>36</sup> Leilani Farha, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living*, UN DOC A/74/83 (17 July 2019) [4]; Thalia Anthony and Jessie Hohmann, 'Indigenous Housing Rights and Colonial Sovereignty: Self-Determination and Housing Rights beyond a White Possessive Frame' (2024) *Social & Legal Studies* 14-15.

### Case Study: James<sup>37</sup>

James is a young Wiradjuri man in a local prison. James has lived with complex mental health issues since he was a teenager and is a survivor of childhood sexual abuse.

Prior to entering the prison system, James lived in public housing. James had served 12 months of an 18-month sentence and had just become eligible to apply for parole, when the public housing authority applied to ACAT to terminate his tenancy. Without a home to be paroled to, the Sentence Administration Board would not grant parole, as an 'approved residence' is a requirement for parole. Without a home to return to, James would have to compete for scarce short term transitional housing and face an uncertain future.

CCL represented James at ACAT, asserting that ACAT should not terminate James's tenancy, as his protected rights under the Human Rights Act 2004 were engaged and had to be taken into consideration in deciding whether to terminate his tenancy. CCL argued that termination of James' tenancy placed him at risk of being arbitrarily detained as he may have to serve 6 months more than he otherwise would if his tenancy was not being terminated. CCL also argued that termination of his tenancy was an unlawful interference with his protected right to privacy, reputation, and home, as it would also likely result in James becoming homeless upon release, placing him at high risk of relapse and recidivism. After receiving our submissions, the public housing authority withdrew its ACAT application. James was granted parole and released to his home, with community and family support nearby.

## 7.2 The Rights and Interests of all Persons Living with Disability

People with disability are another sector of the ACT community that faces multiple barriers to securing housing that is accessible, secure, appropriate and safe.<sup>38</sup> As such, accommodating their needs and perspectives is vital to ensuring access to adequate housing in the ACT.

One area in which housing in the ACT fall short is through the uniformity of housing design. Uniform design fails to reflect the needs and circumstances of individual people with disability. Consultation with disabled individuals to gain their perspective on home adjustments they require is therefore crucially important, and should consider:

- **Location:** People with disability should be supported to remain part of their culture and community by being housed in inclusive neighbourhoods close to essential formal/informal supports, services, and infrastructure.
- **Accessibility:** 'Liveable housing' is 'housing that includes features that enable use by people with a disability or transitioning through their life stages'<sup>39</sup> and housing design should always achieve these standards by being inclusive and easily maintainable.
- **Adaptable:** Modifications to a person with disability's home may be required over time to reflect changes to their health, independence and need for daily supports.
- **Tenure:** Longevity of housing and security of tenure is critical to ensure a sense of security for people living with disabilities.

Public, community and social housing is intended to bridge the gaps of accessibility to housing and, as such, housing providers should not be broadening this gap by providing homes to people that are inadequate for their needs.

<sup>37</sup> Details changed to protect client's identity.

<sup>38</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Final Report, 29 September 2023) vol 7 pt C, 535.

<sup>39</sup> The Australian Building Codes Board, 'Liveable Housing Design Guidelines', *Liveable housing* (Guidelines, 2017) <[liveablehousingaustralia.org.au/wp-content/uploads/2021/02/SLLHA\\_GuidelinesJuly2017FINAL4.pdf](https://liveablehousingaustralia.org.au/wp-content/uploads/2021/02/SLLHA_GuidelinesJuly2017FINAL4.pdf)>.

### 7.3 Climate Safe Housing

A final key consideration for access to adequate housing that we see impacting our clients is the risk posed by climate change for the safety and habitability of housing in the ACT.<sup>40</sup> Recent polling has indicated that 90% of social security recipients found that an inability to cool their homes in hot weather contributed to making them sick.<sup>41</sup> The effects of climate change will disproportionately impact our client groups and must be considered in considering what adequate housing access looks like.

## Q8: Should the Bill set out other obligations on the Government?

We support the creation of a **Commissioner for Housing Rights** to sit within the ACT Human Rights Commission (by amendment to the *Human Rights Commission Act 2005* (ACT) or otherwise).

A Housing Rights Commissioner would independently monitor and assess the Government's progress in realising the right to housing, including by reporting on the realisation of the right, handling complaints, promoting community awareness, and investigating systemic issues. An independent accountability mechanism will ensure accountability for the progressive realisation of the right over time.

## Conclusion

We strongly support the inclusion of a right to adequate housing in the *Human Rights Act 2004* (ACT).

We want to see a future where all Canberrans have secure, appropriate and affordable housing. To address the housing and homelessness crisis in the ACT, the government response needs to go beyond setting mere policy objectives. **A human right to housing for the ACT is the right next step.** It will broaden the way the government and its agencies understand and take responsibility for addressing housing need and the consequences of inadequate housing and set a national benchmark for ensuring that access to housing progressively improves into the future.

Our clients have been on the frontline as the housing and homelessness crisis has developed. Many of the intersecting disadvantages they experience, and the associated social and economic costs, can be reduced by placing housing rights at the centre of the government's strategy. The ACT Government has an opportunity in this reform to commit to real change that will progressively promote accountability and a focus on solutions and ultimately improve the lives of Canberrans.

We would be grateful for the opportunity to continue to be consulted as this important reform progresses.

<sup>40</sup> Office of Environment & Heritage, NSW Government and ACT Government, *Australian Capital Territory Climate change snapshot* (Snapshot Report, November 2014).

<sup>41</sup> Stephanie Convery, 'Inability to cool homes in summer heat making almost 90% of Centrelink recipients ill, survey finds', *The Guardian Australia* (Melbourne, 24 February 2023) <[www.theguardian.com/australia-news/2023/feb/24/inability-to-cool-homes-in-summer-heat-making-almost-90-of-centrelink-recipients-ill-survey-finds](https://www.theguardian.com/australia-news/2023/feb/24/inability-to-cool-homes-in-summer-heat-making-almost-90-of-centrelink-recipients-ill-survey-finds)>.