Report to the UN Special Rapporteur on Housing

Women and the Right to Adequate Housing in Australia

Written and submitted by a Coalition of Non-Government Workers Australia

August 2004
About this Report

This report has been produced by a reference group composed of representatives of a number of NGOs including: National Shelter, Victorian Council of Social Services, People With Disabilities, Women With Disabilities Australia, WESNET, Centre for Housing Rights and Evictions, Community Legal Centres, Community Housing Associations and Tenancy Services.

While the Report has not been specifically endorsed by any particular organisation, it describes the concerns held by the organisations about the Australian housing system. Its intention is to inform the Special Rapporteur of some of the issues affecting women in their rights to adequate housing.

The report will be circulated to organisations around Australia requesting comments and recommendations. An endorsed final version of this report including recommendations will be published later in 2005.

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Introduction & Two Broad Recommendations

What is the right to adequate housing?

The right to adequate housing contained in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) is:

*The right of everyone to an adequate standard of living for himself [sic] and his family including adequate food, clothing and housing, and to the continuous improvement of living conditions.*

This right is also contained in other human rights instruments such as the Convention on the Rights of the Child.

Over the past few years, the UN Committee on Economic, Social and Cultural Rights has made several comments (known as General Comments) on the details of what is meant by the right to adequate housing. Seven elements have been formally identified by the Committee, all of which are required to be fulfilled for housing to be deemed adequate. An international housing NGO, Habitat International Coalition-Housing and Land Rights Network, has identified a further six elements, which are extremely useful in understanding what the right to adequate housing actually could mean in any given case.

Entitlements under the Right to Adequate Housing

1. Legal security of tenure including laws and policies to ensure people cannot be evicted without good reason
2. Availability of services, materials, facilities, infrastructure eg right to be on public housing list, affordable access to good drinking water and fuel
3. Affordability
4. Habitability: home must be dry, sanitary, have sufficient space
5. Accessibility: it must be easy to access your home
6. Location: must be close to schools, churches, health care, transport, employment etc
7. Cultural adequacy: must be appropriate for the individual/community
8. Freedom from dispossession: eg Indigenous peoples shouldn’t be threatened with loss of land or community
9. Right to information
10. Right to participation & self-expression: residents should have a say in their own housing
11. Resettlement: where eviction is unavoidable, there must be proper consultation with residents and compensation regarding resettlement
12. Safe environment: not polluted or at risk of disaster
13. Security (physical) and privacy: residents are protected from physical threats inside and outside the home; no invasion of privacy.¹

Why are we writing a report on women and housing in Australia?

Women experience violations of housing rights alongside other members of their family and community.

However, women also face violations of housing rights because of situations which predominantly affect women. For example, women are much more likely than men to be the victims of domestic violence, and this often threatens their housing rights as they are forced to flee the violent home. Women may also suffer different impacts as a result of the housing right violation. For example, the great majority of single parents are women. If a single mother is made homeless, she also has to find resources to care for her children. Also women may not have the same access to redress in law as other members of the family or the community. Any pre-existing discrimination women may be facing because of their sex/gender and because of their class, ethnicity, race, disability or other status, may have a further impact on preventing women from asserting their right to adequate housing. For these reasons, it is important to develop an understanding of the violations of women’s right to adequate housing and establish appropriate legal, policy and programme responses.

In Australia, a group of community organisations decided to work on a combined NGO report to be presented to the UN on women and housing. The consultation process was kick-started on 10 March 2004 by a forum in Melbourne where a Research Associate to the Special Rapporteur, Alison Aggarwal, provided training on the elements of the right to adequate housing. The forum participants then identified information relevant to women’s experiences of housing in Australia. There was another similar consultation held in Canberra in April.

The consultation process asked for participant’s comments on each of the elements (see above), collected case studies, testimonies and best practices to illustrate the current national situation of women’s housing rights in Australia.

Particular emphasis has being given to:
- the situation of Indigenous women
- rising homelessness of young women
- the situation of women with disabilities

There was some limitation to the consultation process since the participating organisations had no money available to consult more widely. However we see

¹ Elements 1-7 were identified as elements of the right to adequate housing by the Committee on Economic Social and Cultural Rights in General Comment 4. Elements 8-13 have been added by HIC-HLRN.
this report as a preliminary one, which will be circulated widely in Australia and sent to the UN to assist the Special Rapporteur in considering issues relating to Women and Housing in the Australian context.

**Why bother with the UN process?**

Australia ratified the ICESCR in 1972. Therefore the Australian Government has committed to the international community that it will respect, promote and fulfil the right to adequate housing. However somewhere along the way we stopped holding the Government accountable for upholding the detail in the articles of the international covenants.

Engaging with the Special Rapporteur on Adequate Housing is a step toward advocating for housing from a human rights perspective. Framing housing rights violations in terms of the 13 elements (see above) is a new way of looking at what we know, instinctively, to be housing violations. We know that young single mums should not be homeless. We know that women fleeing domestic violence should have access to refuges and assistance in gaining permanent safe housing.

In submitting a report to the Special Rapporteur on the Right to Adequate Housing, Australian groups can raise the profile of these issues in Australia nationally and internationally. Which brings us back to the relevance of the UN. It’s not just a body which makes decisions (or not!) about weapons of mass destruction. The UN Human Rights Commission continues to work on encouraging countries and civil society organisations to monitor the implementation of human rights at the grass roots level. It is up to Australian organisations to make this process work for us.

Whilst other organisations have submitted similar reports and written articles on the right to adequate housing (and here we note Lynch and Otto (2002) and Devereux, A. (1991) our purpose was not to duplicate those reports but to expand the picture of housing in Australia by involving non-government organisations, tenants’ organisations and homeless person’s organisations to present case studies and provide an update on changes to Australia’s laws since 2002. However we recognise the drawbacks that this report suffers from given our limited resources and short time line.

**Recommendations**

In preparing this report for the UN Special Rapporteur for Housing, community groups have worked to ensure that the SRAH is aware of issues in Australia. While there are many specific recommendations which we could make to insist upon Australia’s compliance with the right to adequate housing in ICESCR and other human rights conventions, we have decided to firstly circulate this report to peak housing and women’s bodies throughout Australia. We will ask such bodies...
to provide their recommendations for improving housing for women in Australia, which we hope will become a national platform for action.

We therefore confine the recommendations of this report to two:

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<tr>
<td>1.</td>
<td>That the Australian Governments (at the federal, state/territory and local government level) design and monitor their housing laws, policies and plans according to the right to adequate housing.</td>
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<tr>
<td>2.</td>
<td>That the Australian Government invite the UN Special Rapporteur on the Right to Adequate Housing to Australia to carry out an inspection of housing conditions in this country.</td>
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Chapter 1. Australian housing characteristics

This chapter provides a broad picture of housing delivery in Australia. Most of the information (1.1 to 1.4) is derived from reports written by the Australasian Housing Information Network. Other sources are referenced.

1.1 The Dominance of the Market in the Production and Allocation of Housing

In Australia most aspects of housing provision are undertaken by the private sector. Governments do, however, have a role in providing resources for housing assistance and in establishing a framework for private sector provision, for example, planning and building regulations, taxation and other financial subsidies.

A major influence on Australian housing delivery is our federal system of governance. The federation of the colonies in 1901 has meant that most of the laws applying to housing - for example, residential tenancy legislation, property law, building regulations and planning controls - are State or local government based. Unlike in the United States or Canada, there is no large federal agency responsible for policy directions in housing, with the result that there is nothing which resembles an Australian housing policy. The Commonwealth, however, has historically had taxing powers and therefore most of the revenue. Thus, while States and local government - particularly the former - provide or set the context for housing provision, arrangements have had to be made with the Commonwealth for funding.

1.2 Home Ownership in Australia

In contrast with other countries, owner-occupied housing in Australia has been long established. In the late 19th century, close to half of all Australians were home owners at a time when few other countries had levels much above 20 per cent. Even in the 1980s Australia still had ownership levels higher than most other countries. Table 1 shows the trend in ownership over time.

Table 1: Home Ownership in Australia, 1911-96, % of population

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<tr>
<td></td>
<td>46%</td>
<td>54%</td>
<td>63%</td>
<td>71%</td>
<td>68.6%</td>
<td>68.1%</td>
<td>72%</td>
<td>68.5%</td>
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Source: ABS Census of Population and Households (respective years)

1.3 Social housing in Australia

In contrast with the high levels of ownership, Australia has a disproportionately low level - 5 per cent - of non-profit or social housing (see Table 2). Only the United States, amongst advanced industrial countries, has a lower proportion.

Social housing in most advanced Western societies is provided by a mix of community organisations, housing associations, cooperatives and local government. In Australia none of these are important. The major owners and managers of social housing are the public housing agencies of each the States, with that of New South Wales being the largest provider (128,000 dwellings).

Table 2: Social Housing in Australia, 1911-96, % of total housing

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<tbody>
<tr>
<td></td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>4.2</td>
<td>5.8</td>
<td>4.9</td>
<td>6.1</td>
<td>5.5</td>
</tr>
</tbody>
</table>

Source: ABS Census of Households and Dwellings (respective years)

1.4 Private sector housing in Australia

The private rental sector in Australia is relatively large, accounting for around 22 per cent of the housing stock. The sector declined slowly in the postwar era but began to recover in the 1980s as home ownership became more expensive, lifestyles changed, and government policy became more supportive of the sector. By international standards the sector operates in a fairly deregulated environment, with no rent controls and fairly minimal residential tenancy controls. Distinctive attributes, besides the deregulated environment, include the large proportion of rental stock that is detached housing, the dominance of small investors (most investors own only one property) and the lack of any institutional investment.

Table 3 traces the private rental sector’s declining importance from the nineteenth century up to the 1980s when its relative tenure position began to improve. Although private rental by 1981 had declined to a low of 18.7 per cent, it remained a robust part of the Australian housing system, with little of the debate that has occurred in parts of Europe – particularly the UK – on how to revive the sector or what was its appropriate role. While the decline in private rental in the early postwar years echoes similar trends for the UK and parts of Europe – although not to the same degree – it was not necessarily for the same reasons.

The contraction shown in Table 3 was less because of disinvestment in private rental than faster growth of ownership due to the ‘long boom’ of postwar affluence, and the rise of public housing from a zero base. In absolute numbers, the sector only fell between 1954 and 1961, and then only marginally.
Subsequently there has been numerical growth between all census periods up to 1996 and with proportionate increase post-1986. Investment data provided by the Real Estate Institute of Australia (REIA) would suggest a post-1996 strengthening of the position of private rental given that, in some of the largest capital cities (Sydney, Melbourne and Perth), investors in 1998 were accounting for between 23 and 33 per cent of all dwelling sales (compared to between 20 and 22 per cent a decade earlier) and over 30 per cent of all finance approvals for housing (REIA 1988, 1998, ABS 1998).

Table 3: Tenure Trends, Australia, 1911-96, % of total

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</thead>
<tbody>
<tr>
<td>Private rental</td>
<td>42</td>
<td>40</td>
<td>29.9</td>
<td>23.2</td>
<td>22.1</td>
<td>18.7</td>
<td>20</td>
<td>21.7</td>
</tr>
<tr>
<td>Home ownership</td>
<td>46</td>
<td>54</td>
<td>63</td>
<td>71</td>
<td>68.6</td>
<td>68.1</td>
<td>72</td>
<td>68.5</td>
</tr>
<tr>
<td>Public housing</td>
<td>0</td>
<td>0</td>
<td>4.2</td>
<td>4.2</td>
<td>5.8</td>
<td>4.9</td>
<td>6.1</td>
<td>5</td>
</tr>
<tr>
<td>Other including ‘not stated’</td>
<td>12</td>
<td>6</td>
<td>2.9</td>
<td>1.6</td>
<td>3.5</td>
<td>8.3</td>
<td>1.9</td>
<td>4.8</td>
</tr>
</tbody>
</table>

Source: ABS, Census, respective years

### 1.5 Housing stress

Housing stress is defined as spending in excess for 30% of income on housing costs (rent or mortgage repayments) for the lowest 40% of incomes. Excessive spending on housing reduces the amount of money left for other necessities.

A recent study by the National Centre for Economic Modelling (NATSEM) found that 1.7 million people faced housing stress, 8.8% of all income units in Australia. Of those in housing stress, more than two-thirds rented privately. However tens of thousands of first home buyers were also struggling to meet loan repayments.

One-third of people in housing stress live in NSW. However, Queenslanders were the most likely to be in greater housing stress.

NATSEM estimated that people who bought a house in the past three years were devoting 39 per cent of their disposable incomes to mortgage repayments - averaging $385 a week - up from 30 per cent in 1998.

Sole parents were the social group at highest risk of poverty and housing stress. One study conducted in the north eastern suburbs of Melbourne found that low-income households such as single mothers spend approximately 50% of their income on rent.

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6 ibid.
7 ibid.
1.6 Housing assistance which ameliorates housing stress

There are three main forms of government housing assistance to assist women with housing costs:

- Commonwealth Rent Assistance for those receiving income support and renting privately.
- Public housing.\(^9\)
- The Supported Accommodation Assistance Program.
- Low income mortgage schemes (offered by some States and Territories).
- Mortgage relief schemes.

Rent Assistance is failing to provide affordability.\(^10\) There is no requirement that Rent Assistance payments keep pace with median rent levels. Hence, in some areas of Australia (especially in capital cities), Rent Assistance payments are too low to lift recipients out of housing stress.

Over one third (35%) of Rent Assistance recipients, around 330,360 people, exceed the Government's own measure for housing affordability by spending more than 30% of their income on rent. Almost one in ten (9%) recipients, around 85,000 people, spends more than 50% of their income on rent\(^11\).

A substantial shift in housing support has taken place over the past decade away from the supply of low-cost public and community housing towards 'in the pocket' financial assistance. In the ten years to 2003-04, Commonwealth spending on Rent Assistance increased by 7% in real terms to $1.92 billion\(^12\).

Public housing does provide affordability. Tenant’s rents are set at no more than 25% of income. However, public housing is difficult to obtain. Base grant funding to the Commonwealth-State Housing Agreement (CSHA) decreased by 54% to $1.28 billion in the ten years to 2003-04. In general, waiting lists are long and applicants far outnumber dwellings available. However for those women who can access public housing, it can provide much improved affordability, especially for single mothers who may struggle to find affordable housing elsewhere.

Women in housing crisis can access SAAP accommodation however there is currently a lack of housing services that adequately cater for single mothers and pregnant women. Once again, rents are linked to income and in general SAAP services are affordable. However, SAAP services provide temporary

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9 Public housing should be read as also including community and Aboriginal housing schemes.
10 National Shelter and ACOSS, September 2003
11 ibid.
12 ibid.
accommodation only and many services report difficulty in finding affordable accommodation options for exiting women.

Low income mortgage schemes are provided in some States and Territories (for example, by the South Australian and Tasmanian Governments). These are targeted towards lower income people who could repay a mortgage but cannot obtain a loan from mainstream financial institutions. Applicants are required to save a small deposit or 5% of the value of a prospective property to qualify. Repayments are restricted to a percentage of income (usually 25%) and interest can be lower than market rates. Such schemes work best in low cost housing areas. Despite the availability of such assistance schemes, housing affordability is plummeting in Australia.\textsuperscript{13}

Mortgage relief is available from some State and territory governments for mortgages on homes under a certain value for home buyers experiencing housing stress. The assistance given is in the form of a loan and is repayable. There is a cap on how much assistance is given (for example, the Queensland Government schemes caps the assistance at $6000). Such schemes are useful for home purchasers going through a difficult financial period.

\section*{1.7 Homelessness}

As in many other countries, Australia has different definitions of "homelessness" depending upon the context. The \textit{Supported Accommodation Assistance Program Act} 1994 (Cth) defines a 'homeless' person as follows:

\begin{quote}
For the purposes of this Act, a person is homeless if, and only if, he or she has inadequate access to safe and secure housing.
\end{quote}

The Act goes on to define 'inadequate access to safe and secure housing'.

\begin{quote}
For the purposes of this Act, a person is taken to have inadequate access to safe and secure housing if the only housing to which the person has access:

\begin{itemize}
  \item damages, or is likely to damage, the person’s health; or
  \item threatens the person’s safety; or
  \item marginalises the person through failing to provide access to:
    \begin{itemize}
      \item adequate personal amenities;
      \item the economic and social supports that a home normally affords;
    \end{itemize}
\end{itemize}
\end{quote}

\textsuperscript{13} ‘Housing has reached unprecedented levels of unaffordability’ Julian Disney, Online Opinion, http://www.onlineopinion.com.au/view.asp?article=2352
\textsuperscript{13} Casey (2002), p 4.
places the person in circumstances which threaten or adversely affect the adequacy, safety, security and affordability of that housing.

The Australian Institute of Health and Welfare pointed to five situations which homelessness tend to focus. These are:

- currently living on the street;
- living in crisis or refuge accommodation;
- living in temporary arrangements without security of tenure-for example, moving between the residences of friends or relatives, living in squats, caravans or improvised dwellings, or living in boarding houses;
- living in unsafe family circumstances-for example, families in which child abuse or domestic violence is a threat or has occurred;
- living on very low incomes and facing extraordinary expenses or personal crisis.14

Most definitions, including that in the SAAP Act, allow for considerations of 'safety' and 'security' as well as the need for basic shelter.

On census night 2001, 99,900 people in Australia were homeless, including at least 14,200 people 'sleeping rough'.15

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15 Australian Bureau of Statistics, Housing and Social Trends.
Chapter 2. Legal and Policy Context

2.1 The Right to Adequate Housing

International Covenant on Economic, Social and Cultural Rights (ICESCR)

Adequate housing is essential for human survival with dignity. Without adequate housing, many other basic human rights are compromised such as the right to family life and privacy, the right to freedom of movement, the right to assembly and association, the right to health and the right to development. The right to adequate housing has been recognised in various United Nations conventions and declarations such as the ICESCR, article 11(1), which states that

The state parties to the present Convention recognise the right of everyone to an adequate standard of living...including adequate food, clothing and housing, and to the continuous improvement of living conditions. The State Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international co-operation based on free consent.

Article 2(1) obliges a government to take steps...to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Convention by all appropriate means, including the adoption of legislative measures.

Australia has ratified the International Covenant on Economic, Social and Cultural rights and is therefore the responsible duty holder for respecting, promoting and fulfilling the right to adequate housing. Through becoming a party to the Covenant, the Commonwealth bound itself in international law to take steps to the maximum of its available resources to achieve the right’s full realisation. The Special Rapporteur for Adequate Housing’s report to the United Nations Commission on Human Rights, to be submitted in April 2005, will highlight the extent to which the right to adequate housing has been implemented in Australia and other countries.

The Special Rapporteur on Adequate Housing has defined the right to housing, stating that

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the human right to adequate housing is the right of every woman, man, youth and child to gain and sustain a secure home and community in which to live in peace and dignity (E/CN.4/2001/51. para 8)

The right to adequate housing has been interpreted broadly and as stated by the Committee on Economic, Social and Cultural Rights

the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity...the right to housing is integrally linked to other human rights and to the fundamental principles upon which the covenant is premised.

Consistent with a broad in interpretation of the right, General Comment 4 sets out a number of elements or obligations, which the state must fulfil. Accordingly a breach of any one of these obligations is a breach of the right to adequate housing itself. In General Comment 4 the Committee on Economic, Social and Cultural Rights has identified seven minimum core obligations or elements of the right to adequate housing. These minimum core obligations include:

- Legal security of tenure
- Availability of services, materials, facilities and infrastructure
- Affordability
- Habitability
- Accessibility
- Location
- Cultural Adequacy

Accordingly, The Special Rapporteur regards housing to include a wide range of related issues such as land, property, water, essential services and forced eviction. Women are especially vulnerable to discrimination and violations of their right to housing and although there is a growing recognition of their right to housing there is still a lack of its implementation. Women face violations of the human right within contexts specific to women, such as domestic violence. Furthermore, they tend to suffer different impacts resulting from the breach of the right to adequate housing, such as difficulty finding care for children. Inadequate housing affects a woman’s ability to obtain education, health and other basic services necessary for survival. Certain groups of women are particularly disadvantaged and are unable to access adequate housing and therefore obtain an adequate quality of life.

**Other conventions**

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In addition to Article 11 of ICESCR, several other conventions refer to the right to adequate housing. The International Convention on the Elimination of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention on the Elimination of Racial Discrimination (ICERD) refer to the right to adequate housing in relation to particular groups. Other conventions also state that people shall not be subjected to unlawful or arbitrary interference with one’s home or liberty.

2.2 Australian Policy and Legislation

2.2.1 Failure to incorporate the right to adequate housing into domestic legislation

There is no reference to a right to adequate housing in the Australian Constitution and Federal legislation. As stated by Devereux,

the most obvious means by which the Federal Government could have sought to fulfil Australia’s obligation to protect the individual’s right to housing would have been either to incorporate such a right into our legal system or provide individuals who have suffered infringements of this right with an avenue for complaint and redress. The Australian government has chosen neither course.

Currently Australia does not have a national housing policy or legal framework and therefore lacks a primary tool for indirect implementation of the right to adequate housing. As stated by the Queensland government:

Currently, there is no national housing policy framework. On the contrary, there is a divergence between the Commonwealth and State/Territory policy directions. An agreed policy framework and funding priorities…would maximise the use of public funds and deliver improved housing outcomes for those in need.

Many housing organisations, including National Shelter and the National Association of Tenant Organisations, have recommended that a national housing policy be developed in order to inform housing policy at all levels of government as well as an increase in funding for social housing.

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19 CEDAW Art 14.2(h); CRC Art 27.3; ICERD Art 5(e)(iii).
20 ICCPR art 9.1; CRC art 16.1.
22 Ibid.
24 Senate Community Affairs Reference Committee, A hand up not a hand out: Renewing the fight against poverty, Report on poverty and financial hardship, Commonwealth of Australia, p 140
Furthermore, although Australia has a history of providing housing schemes that encourage housing affordability and fund crisis accommodation, there is no legally enforceable right to adequate housing. Housing issues are predominately seen as the responsibility of individual state or territory governments, although the Federal Government does provide some funding to the states and territories for housing.

### 2.2.2 Commonwealth-State Housing Agreement (CSHA)

Whilst Australia has failed to directly implement the right to adequate housing, two Federal acts mention the right even though they do not implement it. The *Housing Assistance Act 1996 (Cth)* states in its preamble that

> Australia has acted to protect the rights of all its citizens, including people who have inadequate housing, by recognising international standards for the protection of universal human rights and fundamental freedoms through
> a) the ratification of the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights…

Accordingly the Parliament considers that the provision, by the Governments of the Commonwealth, the States, the Australian Capital Territory and the Northern Territory, of housing assistance to people requiring access to affordable and appropriate housing is essential to reduce poverty and its effects on individuals and on the community as a whole.

The *Supported Accommodation Assistance Act 1994 (Cth)* states that

> Australia has acted to protect the rights of all its citizens, including people who are homeless or at risk of homelessness, by recognising international standards for the protection of universal human rights and fundamental freedoms.

Despite the mention of the right to housing in these Acts, in practice government programs relating to the legislation do not adequately provide housing to those in need.

### 2.2.3 Public housing demand and funding cuts

Australia provides housing for women in need through funding for low-cost public and community housing, pursuant to the Commonwealth-State Housing Agreement. The Commonwealth and States fund public housing jointly and under this program public housing tenants pay no more than 25% of their income

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on rent.\textsuperscript{27} The latest agreement, which commenced in July 2003, provides funding of $4.75 billion over five years for public, community, crisis and Indigenous housing.\textsuperscript{28}

Public housing comprises dwellings owned and managed by State and Territory housing authorities. Australia has relatively low levels of public housing, with approximately 5\% of households living in public housing tenures.\textsuperscript{29} Community housing is rental housing that is provided for low to moderate income or special needs households and is often managed by community organisations that are partly funded by the government.\textsuperscript{30} In June 2003 there were 337,959 public housing dwellings occupied nationally, with a further 29,367 community housing dwellings.\textsuperscript{31}

Public housing provides an essential avenue whereby many low-income households are able to secure affordable and appropriate housing of an adequate standard.\textsuperscript{32} However, the decrease in funding to public housing, increased maintenance costs of upgrading public housing and increased demand for housing stock is threatening the viability of the system in fulfilling the obligation of providing adequate housing to those, especially women, in need.\textsuperscript{33}

State and Commonwealth commitments to social housing have fallen from $1.7 billion in 1996 to $1.3 billion in 2003, which constitutes a reduction of 30\%.\textsuperscript{34} Australia’s social housing system has declined as a proportion of total housing stock from 6.2\% in 1994 to 4.7\% in 2001. As a result, public housing waiting lists have grown by 15\%, from 195,000 households in 1990 to 223,290 households in 2001.\textsuperscript{35} Furthermore, CSHA grants by the Commonwealth Government to the states have not been indexed for deflation and as a result some states have a public housing infrastructure that is unsustainable.\textsuperscript{36}

Whilst the demand for low cost accommodation has grown, the availability of such accommodation has fallen.\textsuperscript{37} Although housing affordability is deteriorating and homelessness is an increasing problem, housing advocacy groups such as National Shelter have been defunded by the government, in addition to the major funding cuts in relation to the public housing sector.\textsuperscript{38}

\textsuperscript{27} Senate Community Affairs Reference Committee (2004), p 129.
\textsuperscript{28} Ibid.
\textsuperscript{29} Ibid.
\textsuperscript{30} Ibid.
\textsuperscript{31} Ibid.
\textsuperscript{32} Ibid.
\textsuperscript{33} Senate community affairs reference committee (2004), p 130.
\textsuperscript{34} Services First, Services first before tax cuts: Facts Sheets, p 12.
\textsuperscript{35} Ibid.
\textsuperscript{36} Senate community affairs reference committee (2004), p 131.
\textsuperscript{38} Ibid.
2.2.4 Commonwealth Rent Assistance Program (CRA) is not providing affordability for private renters

The Federal Government’s Commonwealth Rent Assistance Program is designed to assist those on income support payments with housing affordability in the private rental market. It is a supplementary payment to assist with private rental costs. In June 2003, 940,708 people received rent assistance. Despite the availability of this program, Rent Assistance often does not adequately allow for increases in housing costs, especially in metropolitan areas. When the cost of housing exceeds more than 30% of the household income a household is said to be in “housing stress”. In December 2002, 34% of CRA recipients spent more than 30% of their income on rent and 9% spent more than 50% of their income on rent. This is problematic, especially when considering that the Commonwealth government has spent over $1.6 billion per year on the program since 1993. Furthermore, Rent Assistance is not easily accessible to the working poor or to some of those who are eligible for assistance as documentation is needed to obtain the benefit and many of the most disadvantaged people are not even aware of its existence.

2.2.5 The Supported Accommodation and Assistance Program (SAAP) is underfunded

The supported accommodation assistance programme (SAAP), which is jointly funded by the government and the states, provides crisis accommodation for those who are homeless or at risk of homelessness. In 2001-2002 there were 1300 SAAP agencies across Australia assisting approximately 20,000 people a day. SAAP does not provide long term accommodation but rather crisis and short to medium term accommodation. The largest client group in SAAP services are young women aged 18-19 years.

SAAP services are forced to turn away 67,000 requests for SAAP services during 2002-2003. At least half these requests are from women (some with children). The Australian Federation of Homelessness Organisations has estimated that a 40% increase in funding is necessary address the current level of unmet demand.

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40 Ibid.
41 Ibid.
42 Ibid.
43 Ibid.
44 Devereux (1991), p 238.
46 AFHO. (2004).
47 Ibid.
The NSW Ombudsman recently found that some services may exclude certain groups of disadvantaged people, who may be left homeless.\(^{48}\) In the past ten years, funding has been reduced, preventing housing services being able to adequately assist those in need, as well as inadequate assistance from other agencies (eg. health, housing) which makes SAAP services’ jobs more difficult.

### 2.3 ‘Bad Tenant’ Databases

An increasingly dominant feature of the private residential tenancy market is ‘bad tenant’ databases. These databases, run by private companies, collect information about tenants from landlords and real estate agents. Many agents then use the databases to look up the details of a tenancy applicant before deciding whether to offer the tenant a tenancy agreement. There is limited legal regulation of these databases and as such no formal channel to dispute a listing. There is also no requirement that the information recorded in the listing must be above a certain threshold, for example it is not required that the alleged breach of the agreement be determined by the Tribunal. The information included is therefore at the complete discretion of the listing agent.

These databases operate as a significant barrier to housing in the private rental market.

### 2.4 Discrimination Legislation

Discrimination legislation has been enacted in Australia at both a Federal and State level. Most Federal and State discrimination legislation prohibits discrimination against applicants for and residents of accommodation by owners (private people, companies, and government agencies) and real estate agents. Generally, the Acts cover:

- refusal to provide accommodation;
- changing the terms of acceptance of applicants;
- putting applicants lower on the acceptance order;
- denying or limiting access to any benefit associated with the accommodation;
- evicting a person from the accommodation;
- subjecting the person to any other detriment in relation to the accommodation.\(^{49}\)

#### 2.4.1 Federal discrimination law

*Sex Discrimination Act 1986 (Cth)*


There is limited indirect jurisdiction relating to the right to adequate housing through Commonwealth discrimination legislation. Section 23 of the Sex Discrimination Act 1986 (Cth) addresses discrimination on the grounds of gender in relation to accommodation. The Act makes it unlawful for a principal or agent to refuse an application for accommodation or treat an application to rent a property differently due to a person’s sex, marital status or potential pregnancy. Such provisions are especially relevant to single mothers who often suffer discrimination due to assumptions by real estate agents or landlords about their ability to afford rent due to their marital status. However, such anti-discrimination legislation is currently ill equipped to identify and respond to structural discrimination, such as the inability of many women to access adequate housing due to gendered poverty.\(^{50}\)

**Racial Discrimination Act 1975 (Cth)**

Racial discrimination particularly affects Indigenous, migrant and refugee women attempting to access adequate housing in the private rental market.\(^ {51}\) The Racial Discrimination Act 1975 (Cth) makes it unlawful to discriminate on the grounds of a person’s race, colour, national or ethnic origin when accessing housing and other accommodation. However, the Act fails to protect women in a variety of situations where discrimination has a basis in both gender and race. The Act needs to be supplemented by complementary policies and programs that deal more effectively with more complex forms of discrimination, especially in relation to Indigenous and Torres Strait Islander people, whose disadvantage is linked to their historical dispossession.\(^ {52}\)

**Disability Discrimination Act 1992 (Cth)**

The Disability Discrimination Act 1992 (Cth) makes it unlawful to discriminate in the provision of goods, services or facilities against people on the basis that they have, have had, or may have, a disability. The Act also makes it unlawful to discriminate against a person on the basis that one of her associates may have a disability. Accordingly, under the Act, it is unlawful for real estate agents and landlords to discriminate against a person due to a disability. The Act requires that people with disabilities be given equal opportunity to participate in and contribute to a full range of social, political and cultural activities. All SAAP services in Australia have a legal obligation under the Act to provide services for people with disabilities. The Act promotes and protects equality of access for people with disabilities, including attitudinal, informational and physical access. Despite the Act’s protections, there is nothing in the Act that addresses the lack of suitable alternative accommodation for disabled women.\(^ {53}\) Furthermore, there

is currently a serious shortage of accommodation for people with disabilities and despite provisions in the Act, SAAP and public housing often do not cater for women with disabilities.

2.4.2 State and Territory discrimination laws

All states and territories also have broad anti-discrimination legislation which covers the provision of housing. Often a person can make a claim under both State law and Federal law - for example if a landlord in NSW refuses to rent a property to an Indigenous person, the person discriminated against could take action under the Racial Discrimination Act (Cth) and also the Anti-Discrimination Act (NSW). However, if the discrimination is by a State/Territory government agency, a person can take action under State/Territory laws only.

2.5 Tenancy Legislation

In 2001 26.3% of all occupied private dwellings in Australia were rented, with a total of 1,858,234 Australian households currently in rented housing.\(^54\)

In Australia, residential tenancy legislation is a matter determined exclusively by the States and Territories, with no national policy in existence.\(^55\) Each State and Territory has its own principal Residential Tenancy Act, and each deals with tenancy in a different way. In a recent report released by the National Organisation of Tenant Associations, various deficiencies in the current legislation were highlighted.\(^56\) Some of these are discussed further in this report when considering the individual elements of the right to housing, particularly in relation to security of tenure. The report is also provided to the UN Special Rapporteur for assistance in understanding the tenancy laws in Australia.

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Specific groups of women in Australia face significant barriers when accessing adequate housing. These groups of women include:

- Indigenous women
- Women affected by domestic violence
- Single mothers
- Women in rural and regional Australia
- Women refugees
- Women in prison
- Women with disabilities
- Young women
- Older women
- Sex workers

When examining the situation of these various groups of vulnerable women in Australia, it becomes apparent that their human right to adequate housing is currently not being adequately protected.

### 3.1 Indigenous Women

There are multiple factors that lead to the extensive and disproportionate violation of the human right to adequate housing for Indigenous women in Australia. The violation of this human right for Indigenous women is of shocking proportions and is difficult to compare to the rest of the Australian population.

The Australian nation is built on a history of racism against Indigenous peoples dating from the time of colonisation. Racism continues today. People have experienced a long history of forcible dispossession of their lands, including active policies of assimilation and destruction of Indigenous culture, violent conflict and decimation of Indigenous settlements and entire populations.

The current social and economic situation of Indigenous women, including their access to adequate housing, must be understood within this historical and present context of dispossession from land and racism.

### 3.1.1 Dispossession and Racism against Indigenous People in Australia

The over-arching context of racism, denial of native title and land rights, and lack of recognition of self-determination rights is at the heart of the extreme disadvantages experienced by Indigenous peoples, and women in particular, in
Australia today. Any analysis of the individual violations of the right to adequate housing for Indigenous women must be undertaken within this broader context of ongoing denial of Indigenous peoples rights.

An adequate response to Indigenous homelessness and inadequate housing should not just focus ‘material’ provision but extend to a broader agenda of social justice and human rights. Arguably, for people who have been subjected to dispossession, dislocation and discrimination, the introduction of culturally appropriate policies and practices, developed and implemented by the Indigenous community, is an important premise for policy.\(^\text{57}\)

**Historical Context**

From the time of colonisation in 1788, the British authorities asserted their sovereignty over Australia on the basis of occupation of the land as *terra nullius* (‘land belonging to no one’). According to this legal fiction, there was no obligation to recognise Indigenous land ownership and use, and this legal position was upheld by various court decisions until 1992.\(^\text{58}\) As a result, the use of the land by Indigenous people – and the existence of Indigenous homes and communities – was completely denied and unrecognised under Australian law.

Enforcement of British sovereignty in Australia against Indigenous people involved the taking of vast tracts of land ‘without benefit of treaty, agreement or compensation’\(^\text{59}\) often by use of force and violence.

...little known is the amount of brutality and bloodshed that was involved in enforcing on the ground what was pronounced by the law. Aboriginal people were deprived of their land and if they showed resistance they were summarily dealt with. The loss of land meant the destruction of the Aboriginal economy which everywhere was based upon hunting and foraging. And the land use adopted by the settlers drastically reduced the population of animals to be hunted and plants to be foraged. And the loss of the land threatened the Aboriginal culture which all over Australia was based upon land and relationship to the land. These were the most dramatic effects of European colonisation supplemented by the decimating effects of introduced disease to which the Aboriginal people had no resistance.\(^\text{60}\)


\(^{58}\) See *Cooper v Stuart* (1889) 14 App Cas 286 (Privy Council). See also *Coe v Commonwealth* (1979) 24 ALR 118.


The government authorities also adopted a range of laws and policies of ‘assimilation’ to further deny Indigenous people enjoyment of their rights to land and culture, the effects of which continue to be experienced today. Government authorities were given powers to remove children from their Indigenous families without their consent. The children, known collectively as the ‘stolen generations’, were often removed to places far away from their land and people, never to be reunited. These policies devastated Indigenous family structures, and often destroyed capacities to retain cultural practices and connections to land.61

In 1997, the Human Rights and Equal Opportunity Commission released the findings of its investigation into the separation of Indigenous children from their families, estimating that, between 1910 and 1970, up to 30% of Indigenous children were removed. The Commission found that these past events amounted to an act of genocide against the Indigenous people of Australia.62

The Australian Constitution does not incorporate a bill of rights. Significantly, there is no constitutional protection in Australia against the enactment of discriminatory laws on the grounds of race, a constitutional deficit that has been the subject of international human rights concern.63 This was an intentional outcome of the Constitutional Conventions of the 1890s.

The prevailing sentiment of the framers was that the Constitution should not incorporate rights-oriented provisions. This was not due to a belief that rights across the community were generally well protected

…the framers were driven by a desire to maintain race-based distinctions, which today would undoubtedly be regarded as racism. They considered a Bill of Rights undesirable because it might protect, as citizens, ‘Chinamen, Japanese, Hindoos, and other barbarians’ in the context of such areas as employment.64

As part of these deliberations, the framers of the Australia Constitution also determined not to give Indigenous peoples legal recognition as citizens of the new Commonwealth of Australia. Indigenous peoples were excluded from being

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63 See, for example, Committee on the Elimination of Racial Discrimination, Concluding observations of the Committee on the Elimination of Racial Discrimination: Australia, UN Doc CERD/C/304/Add.101: ‘The Committee is concerned over the absence from Australian law of any entrenched guarantee against racial discrimination that would override subsequent law of the Commonwealth, states and territories.’
64 George Williams, Human Rights under the Australian Constitution (2002), 24-25.
counted in census processes as ‘people of the Commonwealth’. By operation of s 41 of the Constitution, and enactment of the Commonwealth Franchise Act 1902 (Cth), Indigenous peoples were also excluded from the Federal electoral roll. The denial of citizen rights continued until the 1960s. It was only in 1965 that Indigenous people in all states and territories of Australia became entitled to vote and in 1967 that the Australian Constitution was amended to give people legal status as full citizens of Australia, rather than being ‘protected’.

The 1970s and 1980s saw some changes in terms of land rights for Indigenous people through the enactment of various state and territory Land Rights Acts. These laws provided a statutory basis for governments to transfer tracts of land to Indigenous people in recognition of traditional land rights. However, these laws were not comprehensive and varied in their scope.

In 1975, the Australian Government ratified the International Convention on the Elimination of All Forms of Racial Discrimination and enacted the Racial Discrimination Act 1975 (Cth) (‘RDA’) to provide statutory protection against discrimination on the grounds of race. The RDA deals with racial discrimination in a range of areas of activity, including the provision of housing assistance, or renting or buying property.

The enactment of the RDA paved the way for the historic High Court decision in 1992 dealing with Indigenous land rights, Mabo v Queensland [No 2]. ‘In Mabo [No 2], the High Court overturned the doctrine of terra nullius in Australia and confirmed that the common law of Australia could recognise rights over traditional land. So-called ‘native title rights’ survived the acquisition of British sovereignty and persist today subject to the Crown’s power of extinguishment and to proof by Indigenous groups they have maintained a continuous connection... The Native Title Act 1993 (Cth) generally adopted this definition of native title.'

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65 See Australian Constitution, s 127: ‘In reckoning the numbers of the people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives shall not be counted.’

66 Under the Commonwealth Franchise Act 1902, ‘any aboriginal native of Australia, Asia, Africa or the Islands of the Pacific, except New Zealand’ were excluded from voting unless the person was on the roll before 1901. Queensland and Western Australia had passed laws prohibiting Indigenous people from voting in 1985 and 1993, respectively. In South Australia (and therefore also in Northern Territory which was governed by South Australia at that time), Indigenous people had been granted the right to vote in 1894. Accordingly, a few Indigenous people who were on the roll in these jurisdictions prior to 1901 could continue to vote.

67 In 1962, the Commonwealth Electoral Act was amended to enable all Indigenous people to vote in Federal elections. However, unlike non-Indigenous people, voting was not compulsory.


69 Mabo v Queensland [No 2] (1992) 175 CLR 1; 66 ALJR 408.

Recent Developments

Since the election of the Coalition Federal Government in 1996, a range of retrogressive developments have occurred in violation of the human rights of Indigenous people, particular in relation to self-determination and freedom from discrimination.

Importantly, the gains of Indigenous people towards recognition of their land rights through Mabo [No 2] and the Native Title Act have been whittled back. The Native Title (Amendment) Act 1998 (Cth) has extinguished the rights of Indigenous native title-holders to negotiate on pastoral leases, mining and government activities, and made successful native title claims less likely. The 1998 amendments have been the subject of adverse comments regarding Australia’s compliance with its international human rights obligations, both by the Australian Human Rights and Equal Opportunity Commission (‘HREOC’),71 and a number of international human rights treaty bodies.72 The Federal Government has refused to address these concerns. A series of native title court decisions, such as the Yorta Yorta decision,73 have also made it increasingly more difficult for Indigenous people to enforce their native title rights. The requirement of continuous connection to the land is extremely difficult for many communities to prove – especially for those who were forced off their land during colonisation.74

The current policies of the Federal government in relation to recognition of the rights of Indigenous people to land contrary to international human rights standards are a part of a broader context of ongoing racism against Indigenous people in Australia. The impacts of this racism pervade all areas of Indigenous lives. Housing is but one example.

Indigenous peoples are heavily discriminated against in both the public housing sector and the private rental market.75 Recent community consultations in Australia regarding racism confirm that ‘the denial of accommodation based on race was … another recurring example of discrimination. Examples were given by people how had been told that accommodation was available, only to be informed that it was no longer available when their race or ethnic backgrounds

74 For a discussion of the impact of recent native title High Court decisions, see Sean Brennan, ‘Native Title in the High Court of Australia a decade after Mabo’ (2004) 14 Public Law Review 209.
became known.\textsuperscript{76} Human Rights and Equal Opportunity bodies consistently receive high levels of complaints about the treatment of Indigenous families by housing providers, including public housing. The Equal Opportunity Commission in Western Australia is currently conducting an investigation into the provision of public housing as a result of ‘many years of persistently heavy rates of complaints by Aboriginal people.’\textsuperscript{77} The Commission had previously found that there were disparities in delay, referrals, age of housing and ‘Indigenous’ allocations, with more than 37% of complaints to the Commission made about Homeswest, the government authority responsible for providing public housing. Most of the complaints were lodged by Indigenous women.\textsuperscript{78} In addition, Indigenous women are typically stereotyped as violent, destructive, aggressive and anti-social, especially through images in the media. Accordingly, Indigenous women are largely discriminated against when attempting to access private rental accommodation.

In the lead up to the 2001 United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, HREOC undertook broad community consultations regarding racism in Australia.

\begin{quote}
Every community consultation identified the Indigenous people of Australia as those worst affected by racism. As one Indigenous woman stated during the consultations:

‘We just live with racism every day. It’s like getting up, washing your face and having a cup of tea.’\textsuperscript{79}
\end{quote}

The Acting Race Discrimination Commissioner and Aboriginal and Torres Strait Islander Social Justice Commissioner continued:

\begin{quote}
I was particularly struck by the widespread acknowledgement that Australia’s colonial history is the principal cause of the racism experienced today. The privileged position of the colonisers has historically been maintained at the expense of the Indigenous people and those from non-English speaking backgrounds and this has led to a sense of marginalisation for those who do not fit the stereotype of the “typical” Australian.\textsuperscript{80}
\end{quote}


The current Federal Government has implemented a range of policies that have adversely affected prior gains in addressing racism against Indigenous people and achieving reconciliation between Indigenous and non-Indigenous Australians. In particular, the government has developed and persisted with its policy of ‘practical’ reconciliation rather than promotion and protection of rights—including land rights—for Indigenous people. The policy of ‘practical’ reconciliation has been criticised by the Aboriginal and Torres Strait Islander Social Justice Commissioner for its lack of success in achieving improvement in the lives of Indigenous people. According to a recent report for the Centre for Aboriginal Economic Policy Research:

…”practical” reconciliation stands in opposition to a rights-based approach, and in particular to recognition of rights that may arise from the unique position of Indigenous peoples as the original owners and occupiers of the land and users of its resources.83

As the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance recently confirmed:

The land question remains crucial and is the key to the Australian problem.84

Most recently, in June 2004, the Federal Government moved to abolish the Aboriginal and Torres Strait Islander Commission (‘ATSIC’). ATSIC was established by the Aboriginal and Torres Strait Islander Commission Act 1989 (Cth) and began operations on 5 March 1990 as the statutory, ‘popularly elected,
Indigenous representative independent national organisation in order to be the sole adviser to the Federal Government on Indigenous policy and the primary provider of Federal Government Indigenous programs. It also acted as an independent political advocate for Indigenous Australians. For example, ATSIC held NGO Consultative Status with the UN Economic and Social Council, and has been instrumental in alerting UN human rights treaty bodies to breaches of Australia’s international human rights obligations with respect to its Indigenous peoples, particularly by the current Federal Government.

The Federal Government proposes to replace ATSIC with ‘a group of distinguished Indigenous people to advise the Government in a purely advisory basis in relation to Aboriginal affairs.’ Such a body would have no independence and could not, for example, hold NGO Status with the United Nations. The decision to abolish ATSIC without replacing it with an improved Indigenous independent body has been extensively criticised by HREOC. HREOC’s Aboriginal and Torres Strait Islander Social Justice Commissioner has described the decision as an attempt to ‘scapegoat’ ATSIC for the failings of successive Australian government to address the human rights of Indigenous people. He argues that the abolition of ATSIC flies in the face of his own findings regarding an agenda for achieving social justice for Indigenous people, released less than six months before the Prime Minister’s announcement.

The latest Social Justice Report to the federal Parliament identifies the current situation faced by Indigenous peoples as a crisis one. It reveals a government approach that is failing. And it identifies an agenda for change to turn this situation around.

This agenda identifies increased Indigenous participation and control as a central feature of improved government service delivery and to move Indigenous people from dependency on government services. It also identifies the need to reform ATSIC to ensure that it is capable of interacting with governments while also being representative of and accountable back to Indigenous communities and people.

Abolishing ATSIC and ensuring that Indigenous people have no place at the negotiating table is not the answer. It will simply silence Indigenous

87 There has been speculation that the abolition of ATSIC is in part a response by the Federal Government to ATSIC involvement with UN human rights treaty bodies. See, for example, Geoffrey Atkinson, ‘Australian NGOs at the UN: no funds no criticism’ (2003) The Brisbane Line <http://www.brisinst.org.au/resources/brisbane_institute_atkinson_ngo.html>.
people at the national level while the deeply entrenched crisis in Indigenous communities continues unabated.  

Note that the Federal Government has also introduced legislation to abolish the position of the position of the HREOC Aboriginal and Torres Strait Islander Social Justice Commissioner but has been unable - to date - to achieve support for the Bill in the Senate, the Upper House of the Federal Parliament, where the government does not enjoy a majority.

The current economic, social and cultural circumstances of Indigenous people in Australia, including the extent to which Indigenous women enjoy the human right to adequate housing, must be understood within this broader context of historical and ongoing dispossession, racism and lack of self-determination rights for Australia’s Indigenous peoples.

### 3.1.2 Economic, Social and Cultural Disadvantage of Indigenous People, with particular reference to Women

Australia is one of the wealthiest countries in the world. According to the 2004 Human Development Report of UNDP, Australia is ranked third highest against key indicators of quality of life, after Norway and Sweden. In light of the level of wealth of the nation, the poor realisation of economic, social and cultural rights by the Indigenous population in Australia is an international disgrace.

Despite government claims to the contrary, current statistics indicate that the living conditions of Indigenous people in Australia are not improving in comparison to improvements for non-Indigenous people, and that this trend is likely to continue in key areas such as employment over the next decade. This trend stands in stark contrast to other countries, such as Canada, New Zealand and the United States, where there have been relative improvements in the overall enjoyment of economic and social rights by Indigenous populations.

This report focuses on the right to adequate housing for Indigenous women. However, it is well understood that the enjoyment of this right is interdependent with the enjoyment of other human rights. In this section, a summary of key

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88 Aboriginal and Torres Strait Islander Commissioner, 'Statement on ATSIC' (Press Release, 16 April 2004).
economic, social and cultural indicators of enjoyment of human rights is provided. The indicators represent key factors that impact on the ability of Indigenous women to enjoy their human right to adequate housing. Due to the limits of this report, the summary is not exhaustive but is designed to illustrate the level of disadvantage faced by Indigenous women in Australia today that impacts on their housing rights. The indicators show the major disparities between the quality of life for Indigenous people compared to others in the community. They also show that this disparity is not improving, and in some cases is becoming significantly worse.

**Poverty and Unemployment**

The capacity of Indigenous women to secure and retain adequate housing in Australia is directly contingent on their financial circumstances. Yet, Indigenous Australians have incomes much lower than the non-Indigenous population, and far higher rates of unemployment. Many Indigenous people live in extreme poverty.

For example, the most recent 2001 Census data shows that the median gross weekly income for Indigenous people is still much less than other people, and that the gap between the two sectors of Australian society has increased over the last 10 years. In 2001, the median gross weekly income of Indigenous people was $226, compared to $380 for non-Indigenous people. This was a 19% increase from 1996, in contrast to a 28.4% increase for non-Indigenous people.92 In 1991, the median income of Indigenous people was 70% of the income of non-Indigenous people. By 2001, that percentage has fallen to 59%.93

The unemployment rate of Indigenous people is three times the rate of non-Indigenous people. Participation by Indigenous women in the Australian labour force is also significantly less than other people. In 2001, the participation rate for Indigenous women was 45%, compared to 60% for Indigenous men, and 63% for other people.94 The Centre for Aboriginal Economic Policy Research (CAEPR) ‘forecasts that there will be a further widening of the disparity between Indigenous and non-Indigenous employment rates over the next decade.’95

**Health and Mortality Rates**

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The lives of Indigenous women and their families are filled with early deaths, and sickness to an extent that cannot be compared with others in the community. This pervasive feature of Indigenous women’s daily lives has a direct impact on their level of poverty, capacity to secure and retain employment, and to achieve secure and adequate housing. High rates of hospitalisation amongst Indigenous families and the meeting of family obligations through attendance for funeral business lead to extended absences by Indigenous women from the formal home. These absences lead to significant difficulties in managing housing obligations in both the private and public sectors.

The sense of ever-present sickness and death for Indigenous women is illuminated by available data regarding life expectancy and mortality rates in Indigenous communities. Once again, these statistics show a decline in quality of life for Indigenous people over the last ten years in contrast to overall improvements for the non-Indigenous communities. This decline is to be contrasted with the gains made by Indigenous communities from countries such as Canada, New Zealand and the United States.

Approximately thirty years ago, life expectancy rates for Indigenous peoples in Canada, New Zealand and the United States of America were similar to the rates for Aborigines and Torres Strait Islanders in Australia...Australia has fallen significantly behind in improving the life expectancy of Indigenous people...data suggests Aboriginal and Torres Strait Islander males live between 8.8 and 13.5 years less than Indigenous males [from these other countries]. Aboriginal and Torres Strait Islander females live between 10.9 and 12.6 years less...96

Between 1997 and 2001, the life expectation of Indigenous women fell from 63 to 62.8 years. Non-Indigenous women’s life expectation over the same period improved from 81.8 years to 82.4 years. By 2001, accordingly, the gap between the age of death for Indigenous and non-Indigenous women increased to 19.6 years. The current life expectation for Indigenous women is lower than India (63 years), and approximately the same as women from Sub-Saharan Africa (excluding the impact of AIDS).97

The low birth weight of Indigenous children— a key determining factor in the health of people over time - has also worsened, rather than improved. The number of low weight babies born to Indigenous women is twice as many for non-Indigenous women in Australia. The birth weight of babies of Indigenous women is lower than in Ethiopia, Senegal, Tanzania and Zimbabwe.98

Imprisonment

Indigenous peoples in Australia are amongst the most highly incarcerated peoples in the world and Indigenous women are imprisoned at a much greater rate than other women in the community. These high imprisonment rates result from their socio-economic marginalisation and the destructuring (sic) of their society. The rate of imprisonment of Indigenous people has been the subject of ongoing concern by UN human rights treaty bodies. The HREOC Aboriginal and Torres Strait Islander Social Justice Commissioner reported that between 1988 and 1998:

...the Indigenous prison population (across all age groups) has more than doubled. It has grown faster than non-Indigenous prisoner rates in all jurisdictions. Nationally, Indigenous prison populations have increased by an average of 6.9 per cent per year for the decade. This is 1.7 times the average annual growth rate of the non-Indigenous population.

The extent of incarceration of Indigenous people, and the link between this level of incarceration, and the historical dispossession and social disadvantage of Indigenous communities was extensively investigated and documented in the ‘Royal Commission into Aboriginal Deaths in Custody’ in 1991. More than ten years later, the rates of imprisonment of Indigenous communities, and women in particular have only increased. At the time of the Royal Commission, Indigenous people made up 14.3% of the prison population. By 2001, that percentage had increased to 20%. As reported by HREOC:

Since the Royal Commission, the greatest relative increase in incarceration has been for Indigenous women. The Indigenous female prison population increased by 262% between 1991 and 1999 (compared with an increase in non-Indigenous women of 185%). In June 2003,

100 Committee on the Elimination of Racial Discrimination, Concluding observations of the Committee on the Elimination of Racial Discrimination: Australia, UN Doc CERD/C/304/Add.101, para 15: ‘The Committee notes with grave concern that the rate of incarceration of Indigenous people is disproportionately high compared with the general population.’
Indigenous women were incarcerated at a rate 19.3 times that of non-Indigenous women.104

The connection between incarceration and the violation of housing rights of women prisoners have been explored elsewhere in this Report. For the purposes of its Social Justice Report 2002, HREOC undertook consultations with Indigenous women prisoners, confirming that ‘a major issue faced by women incarcerated is the knowledge that they may lose their home...Chronic homeless[ness] and the loss of accommodation due to incarceration creates one of the most urgent needs of Indigenous women post-release.’105

It is however important to highlight that the inordinate rates of incarceration amongst Indigenous communities leads to a housing crisis for Indigenous women well beyond when women themselves are prisoners. The absences of fathers, brothers, husbands and other imprisoned members of extended family exacerbate poverty and crisis in the lives of Indigenous women, making it extremely difficult to secure and retain many forms of housing.

**Cultural Differences**

Indigenous peoples have had, and continue to have, significant cultural differences that lead to experiences of disadvantage and denial of their human rights to culture when living within the dominant structures, laws, and institutional arrangements of Australia society. The lack of respect for Indigenous cultural rights directly impact on the ability of Indigenous women to enjoy their right to adequate housing.

The vast majority of housing options available in Australia are planned, and designed around presumptions of a European way of living. Of particular significance is the presumption of a preference for living in ‘nuclear family’ units, and for conducting essential daily activities, such as cooking, in accordance with European customs, for e.g. cooking in an enclosed kitchen, and eating around a table, seated on chairs.

Whilst cultural practices amongst Indigenous families vary in similar ways to the general population, there is a well-recognised cultural obligation amongst Indigenous peoples to accommodate extended family in contrast to European cultures. Despite the high level of usage of social housing by Indigenous peoples, the vast majority of social housing, private rental options and indeed

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housing stock generally is designed in accordance with European standards. Various regulations on housing require Indigenous families to choose between acting in accordance with cultural obligations, or ‘overcrowding’ leading to ‘noise and nuisance’ and ‘anti-social behaviour’ in breach of tenancy agreements, leading to risk of eviction.

The Commonwealth Department of Family and Community Services has reported that:

…there are fundamental problems with the way houses for Indigenous people are designed and built, especially in the rural and remote regions of Australia. For example, houses are often designed in ways that do not meet Indigenous people’s cultural needs…\textsuperscript{106}

The 1999 – 2003 Commonwealth State Bilateral Housing Agreement recognised that a key priority for the Northern Territory Government should be to take action to address:

…issues particular to urban Indigenous housing [which] include the strong cultural obligation to accommodate extended family and groups. This has often been the trigger for a range of tenancy issues, including neighbourhood disputes and domestic violence.\textsuperscript{107}

However, housing providers continue to typically analyse the use of housing by Indigenous families as a ‘problem’ of overcrowding, noise and nuisance rather than a failure of housing design to accommodate the cultural rights of Indigenous families.

Tangentyere Council, an Indigenous organisation based in Alice Springs, made submissions to the Federal House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs: Inquiry into the Needs of Urban Dwelling Indigenous People. The Council called on the Northern Territory Government to develop and implement housing standards for urban public housing that suit Indigenous people:

\begin{quote}
We feel that it is time for a complete investigation into the standards applied to the construction of public housing in urban areas as it is clear that increasingly the occupants of these houses will be ‘welfare’ tenants of whom the majority will be Aboriginal in the Northern Territory (emphasis added).\textsuperscript{108}
\end{quote}

\textsuperscript{106} Commonwealth Department of Family and Community Services, \textit{Indigenous Publications}, 26 June 2002.
During the same inquiry, the Indigenous Housing Association (‘IHA’) in Darwin also highlighted that the government approach to provision of accommodation in urban areas has been culturally inappropriate for Indigenous families. The IHA stated that:

*The Northern Territory unfortunately is lagging behind in its approach to provide culturally appropriate and affordable housing for Indigenous Territorians. The paternalistic approach of government, coupled with the politicising of Indigenous issues, has been the main contributor to the reasons why Indigenous people are still disadvantaged and have the lowest home occupation and ownership in Australia…* 

**Government policies have remained fundamentally assimilationist…**

…the solution for homelessness could be found in the building of culturally appropriate housing. The conformity of building a three bedroom dwelling, as does the Northern Territory Government, where three generations of family are required to live in the same dwelling is no longer appropriate. Current NT Housing Rental Policy is that one or two people cannot reside in a three bedroom property. Therefore the property must be vacated. This is probably appropriate for European society. However, in Indigenous culture, which is also highly transient, the children/grandchildren visit between families and is not considered ‘permanent tenants’. As in European culture, where each generation is expected to find their own accommodation, Indigenous society expects and even demands that family as provided shelter indefinitely…

…Indigenous housing needs vary and differ greatly from European needs. As Indigenous families are traditionally bigger and incorporate different generations, the traditional ‘three bedroom’ European dwelling as entirely inappropriate and does not encourage traditional Indigenous family culture.¹⁰⁹

The views of the IHA in 2000 were a reiteration of research almost 20 years earlier:

*Most of the urban housing available today is designed to suit assumed ‘typical’ households, those of nuclear families, Australians of British origin. Variations such as flats and hostels are available for those who don’t quite fit the nuclear mould, but these options neglect the cultural diversity, the diversity of lifestyles, and the ranges of household compositions which actually occur in Australian society. Aboriginal people, whose cultural*  

norms differ more obviously from the majority Australian population than those of any other group, are the most seriously affected by inappropriate housing.\textsuperscript{110}

On 20 September 2002, the Long Grass Association, a local grass roots association of long grass people and their supporters, launched its Vision Statement. The Vision Statement was released at the ‘Freedom to Sleep’ Concert held outside the Northern Territory Parliament in protest at the Darwin City Council by-laws and stated that:

The Department of Housing [ Territory Housing] is seen by many Indigenous people as a Balanda (non-Indigenous people) organisation operating for Balanda, trying to force Indigenous people to live under Balanda laws which means excluding extended family members from staying in their home. In Indigenous culture family is the number [one] obligation and this includes the extended family. Looking after family members, even if they have a drinking problem, is an obligation that cannot be abandoned. The Department of Housing has not accommodated for Indigenous extended families which continues to result in a very high rate of failed tenancies. Territory Housing refuses to disclose any information about these figures.\textsuperscript{111}

However, despite the extensive evidence available that public housing models are culturally inappropriate for Indigenous people living in urban areas, government authorities typically refuse to develop culturally appropriate designs, particularly in urban areas. Instead, a focus is given to strategies for dealing with the ‘noise and nuisance’ problems associated with Indigenous people trying to live in European models of accommodation. The strategies have included:

- A more responsive approach to complaints
- Requirements for references and introduction of 3 month leases
- Quarterly checks of yards
- Living Skills courses and post-allocation support...\textsuperscript{112}

It is understood that part of the Living Skills courses, which are designed specifically for prospective and current Indigenous tenants, is to educate Indigenous tenants to turn extended family away ultimately through the use of Trespass Notices.\textsuperscript{113}

\textsuperscript{110} Helen Ross: ‘Uses or Abuses: Aboriginal Usage of Conventional Housing’ in David Drakakis-Smith (Ed) Housing in the North: Policies and Markets (1984), 129.
\textsuperscript{112} Territory Housing, Housing 2003, CEO Overhead Presentation (2000).
There has been effort to challenge the public housing programs in Australia on the grounds of indirect racial discrimination. In *Balaiya V Northern Territory Government* (2002) Anti-Discrimination Commission File No C2002 1202-01, the applicant was a Senior Indigenous man who had been camping for many years on Crown land around the urban centre of Darwin, Northern Territory. The Northern Territory Government issued a Trespass Notice against the applicant in order to move him on from his most recent camp to make way for urban development. The applicant applied for public housing under the NT public housing program and was offered priority housing, consisting of a one bedroom unit. The applicant refused to accept the offer on the basis that he was 'a black man' and that the form of accommodation did not accommodate his cultural needs as a senior Indigenous person.

The applicant lodged a complaint against the Northern Territory Government under ss 20 and 24 of the *Anti-Discrimination Act (NT)*, alleging unreasonable indirect discrimination on the grounds of his race in the provision of accommodation, and a failure to accommodate his special needs in the provision of accommodation on the grounds of his race. In particular, he alleged that the NT public housing program was in breach of the Act in that the requirement to live in a one bedroom unit would prevent him from engaging in cultural practices essential to his race as an Indigenous person, such as his cultural obligation to welcome extended family and have them stay with him, to sit outside with small to larger groups, light fires, cook and live in the way of his culture.

The Anti-Discrimination Commission accepted his complaint as admissible under the Act. The parties entered into a confidential settlement of the proceedings.

**Family Violence**

The connection between family violence and the ability for women who experience this violence, or are a part of violent families, to obtain and maintain adequate housing is obvious and discussed elsewhere in this report. However, family violence amongst Indigenous communities is at levels that are far greater than in other parts of Australian society.

> ...numerous inquiries have concluded that rates of family violence are significantly higher among Indigenous peoples than for other Australians. Statistics and research dating back to the 1980s also reveal that this situation has existed for at least the past two decades with no identifiable improvement.\(^{114}\)

Various reports support these conclusions. For example, between 1989 and 2000, 54.2% of Indigenous homicides were committed by a member of the family, compared to 38.1% of non-Indigenous homicides.\textsuperscript{115} A study in Western Australia found that:

*Family violence and child abuse occur in Aboriginal communities at a rate that is much higher than that of non-Aboriginal communities. The statistics paint a frightening picture of what could only be termed an epidemic of Family Violence and child abuse in Aboriginal communities. Aboriginal women account for 3 percent of the population but 50% of domestic violence incidents reports to the police.*\textsuperscript{116}

These high levels of violence amongst Indigenous families are a major factor in the capacity of Indigenous women, Indigenous men and their children to enjoy safe and secure housing. Further, there are cultural differences amongst Indigenous communities that affect the ability of Indigenous women and other Indigenous people experiencing family violence to access ‘mainstream’ forms of protection and safe housing. Many women are reluctant to leave their extended family and country.

‘…Indigenous women’s experiences of discrimination and violence is bound up in the colour of their skin as well as their gender…an Indigenous woman ‘may be unable or unwilling to fragment their identity by leaving the community, kin, family or partners’ as a solution to the violence.’\textsuperscript{117}

The over-policing of Indigenous communities also affects the ability of Indigenous women to use available legal remedies to secure a safe place to live. Barriers to gaining legal protection from family violence experienced by Indigenous women include:

*…an historic distrust of the police and legal processes which has developed due to factors such as an historically high level of police surveillance of Indigenous peoples; a negative relationship with police due in part to the over-representation of Indigenous peoples, including Indigenous women, in public order and other petty offences; as well as*


experiences of inaccessible and culturally inappropriate court processes.  

3.1.3 Right to Adequate Housing for Indigenous Women

The economic, social and cultural disadvantages detailed above that continue to be faced by Indigenous women in Australia lead to a denial of the right to adequate housing in proportions far greater than other parts of the community. Other parts of this report have provided extensive information about the overall state of the protection and promotion of the human right to adequate housing in Australia for women generally.

The previous section has highlighted examples of how Indigenous women are in a far worse position than other parts of the community. In this section, we set out evidence to demonstrate that these factors do indeed lead to Indigenous women not enjoying the right to adequate housing on an equal footing with non-Indigenous women and other Australians. We consider key areas of housing that are available to Indigenous women. We also give particular attention to Indigenous living in public space, and homelessness, as it is most commonly understood.

Prior to looking at specific components of housing provision in Australia, it is important to note that, whilst there have been a range of Indigenous specific housing initiatives supported, and extensive policy development undertaken by Australian governments, Indigenous peoples continue to share unequally in the overall benefits of the government programmes that are currently in place in relation to housing.

According to the findings of the Special Rapporteur from his 2002 Mission to Australia regarding Racism,

> Housing benefits expressed on a per capita basis indicate that non-Indigenous people received between 9 and 21 per cent more benefits than Indigenous people. Given the greater housing needs of Indigenous people, existing policies are ‘inequitable and inadequate’ and this justifies ‘increased resources being put into programmes directed specifically towards addressing their housing needs’.

> These figures, when compared with the levels of disadvantage highlighted above, tend to indicate that while there are government funding and programmes aimed at redressing Indigenous disadvantage, they are

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clearly not sufficient to raise Indigenous people to a position of equality within Australian society.\textsuperscript{119}

Home Ownership

The proportion of Indigenous people owning or buying their own house has always been considerably lower than for non-Indigenous people. According to the Australian Institute for Health and Welfare:

\textit{Indigenous Australians are less likely to own or be purchasing a home than renting (32\% being purchased or fully owned and 61\% renting). This situation is reversed for non-Indigenous Australians of whom 71\% are either purchasing or fully own their home and 25\% are renting.}\textsuperscript{120}

Home ownership is a key indicator of the level of wealth acquisition and is seen to be the preferred form of housing by government. As a result of the various policies by current Australian governments to promote home ownership, in recent years, there has been a slight increase in the rate of home ownership amongst Indigenous people.

\textit{...the proportion of Indigenous households who are home owners increased by almost one percentage point [between 1996 and 2001] and is now over one third for the first time. In contrast, home ownership among other Australians remained unchanged. Indigenous home ownership improved, therefore in both absolute and relative terms, albeit marginally.}\textsuperscript{121}

However, home ownership remains the least likely form of housing for Indigenous people, including women, thereby denying them access to the most secure form of tenure available in Australia today.

Private Rental

According to recent findings of the Australian Bureau of Statistics it is indicated that 65.5\% of Indigenous and Torres Strait Islanders rent, in contrast to 25\% of non-Indigenous people. As a result of the poor regulation of security of tenure in the private rental market in Australia, this means that Indigenous people are far more likely to be evicted from their rental housing for no cause, without compensation, and regardless of whether or not the eviction would make them homeless. Their likelihood of eviction is compounded by the cultural differences


\textsuperscript{120} Australian Institute of Health and Welfare, \textit{‘Australia’s Welfare 2003’} (AIHW, 2003), 167.

described above. As noted above, racial discrimination also greatly limits the
ability of Indigenous women to secure housing in the private rental market.

The availability of affordable rental properties has also been on the decline,
thereby greatly disadvantaging Indigenous women’s ability to secure this form of
housing. This is compounded by the reduction in availability of social housing
options, discussed elsewhere in this report.

Between 1986 and 1996, ‘the number of low-rent stock fell from 236,000
to 177,400 dwellings, a reduction of 28% and the number of high-rent
stock rose from 131,300 to 231,000, an increase of 76% rise in rental
stock.’122

The disproportionate inability of Indigenous women to obtain private rental
accommodation is demonstrated by available date from the Supported
Accommodation Assistance Programme regarding where users of these services
go to get longer-term housing. When Indigenous women leave refuges or other
forms of temporary ‘crisis’ accommodation, the majority (27%) will find
accommodation through public or community housing. By comparison, non-
Indigenous people in the majority of cases (21%) are able to obtain rental
properties in the private market.123

The lack of access to low cost private rentals for Indigenous women is also
confirmed by the data regarding use of the Commonwealth Rental Assistance
(‘CRA’) Program, to subsidise private rental costs. ‘Of Indigenous clients [of
Centrelink], only 18% received CRA compared with 23% of non-Indigenous
clients.’124

Public and Community Housing (Social Housing)

Public and community housing is the most commonly used form of subsidised
housing for Indigenous families. ‘State/Territory Housing Authorities and
Indigenous Housing Organisations provided significant shares of the rental
accommodation for Indigenous households (32% and 17% respectively).125 Most
Indigenous people living in rural Australia, particularly rural areas of the Northern
Territory, Western Australia and South Australia, live on Indigenous-controlled
communities. Here the houses are owned by the community council and rented
out to Indigenous families at nominal rent.

It is important to note however, that whilst public housing provides the most
affordable form of accommodation in Australia, it offers a similar lack of security

125 Australian Bureau of Statistics, ‘Population Characteristics: Aboriginal and Torres Strait
Islander Australians 2001’ (cat no 4713.0, Commonwealth of Australia, 2003).
of tenure with the private rental market. Most if not all public housing tenancies enable ‘no cause’ evictions, as well as eviction for non-payment of rent, and breaches of other tenancy conditions, such as prohibition on overcrowding. Lack of security of tenure is a major problem for Indigenous women, whether or not they live in social housing, compared with other sectors of the community.

Indigenous renters do not enjoy the same level of continuity of tenure as the general population, regardless of whether they are renting privately or through a state housing authority. In 1999, only 23% of Indigenous public renters had lived in their current dwelling for 5 years or more. In fact, almost half of all Indigenous public renters (49%) had lived in their current dwelling for less than a year, compared with 16% for all public renters.\textsuperscript{126}

Tenancies of Indigenous women are often issued termination notices by the public housing department for reasons such as rent arrears, anti-social behaviour and property damage. In total there were 3454 termination notices issued by Homeswest in Western Australia and more than 40% of the notices were served on Indigenous tenants.\textsuperscript{127} Furthermore, the formal notice of termination is difficult for people with limited literacy skills to read and access to tenant advice services is limited due to lack of funding. Less than 5% of applications for termination are defended and eviction orders may be secured in minutes. In some cases Indigenous tenants are “persuaded” to leave without any of the legal formalities being initiated.

The following issues seem to occur disproportionately in the termination of tenancy agreements for Indigenous tenants.

\textbf{Failure to maintain property standards}

Property standards may be based on the white middle class standards of the departmental officer, without consideration of the number, age or health status of occupants. Maintaining run down, overcrowded housing to a level that satisfies the Department of Housing can be difficult in older housing estates, which are being gentrified through redevelopment projects.

\textbf{‘Anti social behaviour’}

‘Anti social behaviour’ may involve loud music or voices, fighting or swearing. Unfortunately, due to community prejudice many complaints of antisocial behaviour are based on ignorance, intolerance and racism. Neighbours may complain who simply do not want an Indigenous family in their street. Sometimes the complaint may relate to an event such as a funeral, an episode of family violence or mental illness, all of which Indigenous families are more vulnerable to than the general population. On receipt of a complaint, the family

\textsuperscript{127} Unpublished statistics provided to TAS by Department of Housing & Works.
may be placed under neighbourhood surveillance with all comings and goings scrutinised and reported, which is clearly a breach of privacy.

As noted elsewhere in this report, there is currently a tremendous strain on state housing providers, given that the private market is virtually inaccessible to a large proportion of Indigenous people. In Western Australia, for example, whilst Indigenous women make up 1.5% of the population they make up 13% of public state housing tenants.\(^{128}\) 61% of Western Australia’s housing tenants are women and 21% of this figure self identified as being Indigenous.\(^{129}\) Given that Indigenous communities rely heavily upon public and community housing it is crucial that that public housing stock be increased to meet the increasing need of Indigenous people.

It has been reported by tenant advocates that many women do not disclose their Indigenousness for fear that the quality of public housing offered will be of a substandard condition or their position on the waiting list further delayed. Anecdotally, it is understood that a large proportion of Indigenous tenants are offered housing which was described by a government public housing employee at a recent state network meeting as “post world war two housing stock”.\(^{130}\) A large proportion of Indigenous tenancies are held in the woman’s name.\(^{131}\) Such features bear far reaching consequences for women who are affected by family and domestic violence, given that the legal responsibility for the premises often falls upon the woman that is victim to such abuses.\(^{132}\)

**Homelessness and Use of Public Space**

Indigenous people are persistently over-represented in homelessness statistics. Shelter Western Australia recently completed a survey on homelessness. The findings indicated that more than a third of Western Australia’s homeless are Indigenous. Further to this, it is indicated that one third of homeless people are 14 years and under.\(^{133}\)

It is important to note however that the current approaches to data collection regarding homelessness in Australia for Indigenous people has been the subject of recent scrutiny and concern. In 2001, the Australian Bureau of Statistics changed the definition of ‘improvised dwellings’ in remote Indigenous communities. Unlike the general population, the ABS decided that remote community dwellings did not require their own ablution facilities in order to be considered adequate. This change in definition, apparently implemented without community consultation, lead to the overall drop in homelessness rates,


\(^{129}\) WA Department of Housing & Works (2004).

\(^{130}\) WACOSS Conference, Rural, Regional, Remote Networking Day.

\(^{131}\) Information informally provided by WA Department of Housing & Works staff.


particularly in remote Indigenous communities. As has been noted, the change is likely to be the subject of ongoing debate as to whether the change is 'culturally appropriate' or rather aimed at reducing the reported rates of homelessness in Indigenous communities.\textsuperscript{134}

Around 13\% (about 12,000 over a year) of SAAP clients (under the Supported Accommodation Assistance Program) identify themselves as Indigenous Australians while representing only 2\% (about 365,000) of the national population.\textsuperscript{135} The proportion varies widely across different states and territories. For example, in the Northern Territory around 37\% of SAAP clients are Indigenous, whereas they represent about one quarter (24\%) of the general population. In Victoria, about 4\% of SAAP clients come from Indigenous backgrounds, but the Indigenous population is only 0.005\% of the Victorian population.

One aspect of the high rates of Indigenous homelessness is the lack of recognition of the cultural differences regarding Indigenous use of open (and usually therefore 'public') spaces. Traditional connections to places and cultural practices of gathering in open spaces for meeting and family business, coupled with the cultural inappropriateness of private dwelling options, mean that a high proportion of people living or regularly occupying public places are Indigenous. A proportion of Indigenous people would not consider themselves homeless, but see that their human rights to culture, freedom of expression and movement are violated by the lack of respect for and control over the spaces and places that they consider home.\textsuperscript{136}

\begin{quote}
The image of Indigenous people living in bush camps and other more traditional lifestyles is one of government neglect that can be ameliorated by the provision of single family dwellings. Yet each of the context of traditional obligations and nomadic lifestyles can be an acceptable form of living for some Indigenous people.

The values and philosophical assumptions that attach to definitions of homelessness do not operate well for Indigenous people. They presuppose what is good and what is bad, without consideration of the unique qualities of the cultural obligations and roles that influence the way in which many Indigenous people live their lives and satisfy their family and cultural obligations.
\end{quote}


\textsuperscript{135} RMIT/Aboriginal Housing Board of Victoria (2001) at www.ahbv.org.au/homelessnessreport/welcome.htm

Many of these people neither seek nor want any form of intervention into the way in which they are living. At the same time they look for acceptance and understanding that the lives that they lead should be respected and with that respect should come supports and assistance at the time, and in the way, which most support their individual views of how their lives should be led.\footnote{Chris MacQueen, 'Developing a Vision to Address Indigenous Homelessness' (2003) (March) Australian Federation of Homelessness Organisations News 6, 7.}

However, the most common response to Indigenous occupancy of public places continues to be criminalisation of essential human activities and the creation of various forms of ‘move on’ powers. These laws and regulations are used particularly against Indigenous people particularly in urban areas. For example, in 1996, the former Lord Mayor of Darwin stated:

‘I reckon if you keep shifting them around, constantly harass them so they can’t settle, they will get sick and tired of it and maybe some will go back to their communities…’

Laws regulating public space have been the subject of criticism by the HREOC Aboriginal and Torres Strait Islander Commissioner:

\begin{quote}
A third key challenge is the re-emergence, if you could say that it ever went away, of strict regulation of Indigenous people in public space. During the past year the trend has continued of State and local governments resurrecting old policies which have the effect of excluding Aboriginal people from public places. These laws and policies in theory apply to everyone but in practice target Aboriginal people.\footnote{William Jonas, 'The Royal Commission into Aboriginal Deaths in Custody - 12 Years Later' (Paper presented at the Indigenous Corrections Conference, Adelaide, South Australia, 17 October 2003).}
\end{quote}

The Commissioner provided the following analysis:

\begin{quote}
Exclusionary laws such as these are a return to the old segregation days. They are based on paternalistic notions about the relationship between government and Indigenous people and attempt to impose assimilation as a pre-condition to their acceptance as full members of society. They come close to violating the citizenship rights of Aboriginal people. They also ignore the history of Aboriginal exclusion and disadvantage. They impact on the poorest, most isolated and most disadvantaged. Aboriginal people are grossly over-represented among those afflicted by ill-health, including alcohol addiction, by poor living conditions and by homelessness.\footnote{William Jonas, 'The Royal Commission into Aboriginal Deaths in Custody - 12 Years Later' (Paper presented at the Indigenous Corrections Conference, Adelaide, South Australia, 17 October 2003).}
\end{quote}
The disproportionate impact of laws regulating public places is demonstrated by available data regarding the enforcement of by-law 103 by the Darwin City Council in the Northern Territory. By-law 103 provides for a regulatory offence for any adult who sleeps in a public place between sunset and sunrise. ‘...[Over 70% of the people fined under by-law 103 between 1 February 2001 and January 2002 were Indigenous, in an area where Indigenous people comprise only 9% of the population.140]

There have been some legal challenges to the operation of laws regulating public spaces using racial discrimination laws and administrative law arguments. However, to date, no challenges have been successful.141 See the Case Study at the end of this Report.

3.1.4 Lack of Effective Remedies

The legal system fails to provide justice or adequate recognition and remedy for Indigenous women that have been discriminated against. For example, hundreds of complaints have been lodged against Homeswest in Western Australia over the past several years, however only three have been brought before the Tribunal with only one being successful.142 Clearly the system, in its current form is not effective and is inappropriate for Indigenous people, particularly women that have experienced family or domestic violence and suffer low self esteem. To engage in such process a person is required to provide evidence, supply witnesses, address “bureaucrats” (that are rarely Indigenous), and finally complete copious amounts of paper work. A large proportion of Indigenous women suffer financial, educational and social disadvantage that significantly impedes their ability to fulfil such requirements. To this end the institutionalised racism of such processes must be addressed in an effort to enhance and support the delivery of justice and equitable decision making for Indigenous women. This is crucial in the most fundamental area of Indigenous women’s lives, namely housing.


3.2 Women Affected by Domestic Violence

Domestic violence is a serious issue that affects all demographics of society. The latest national data on incidence and prevalence of domestic violence indicated that during the 12 months prior to the survey being conducted 23% of women who had ever been married or in a de facto relationship experienced violence from a partner at some time during their relationship and half of these women experienced more than one incidence of violence. 143 These statistics are underestimates. The pressures of negative community attitudes towards victims, feelings of isolation, lack of support and fear of retribution from the perpetrator contribute to low levels of disclosure of domestic violence.

Fleeing domestic violence is often inextricably linked with tenancy issues as a domestic relationship is often, although not necessarily, one in which the parties live together. Exclusion orders obtained as part of an apprehended domestic violence order may stop the defendant from entering the house, but they do not alter the tenancy agreement made between the landlord and tenants. The tenancy must still end in one of the ways specified in the relevant tenancy Act, including abandonment by all the tenants, an order by the tenancy court or tribunal or the consent of the landlord. Termination of the tenancy can be difficult to achieve and can carry large financial liabilities thereby creating additional barriers for women fleeing domestic violence.

Inadequate Legislation

Six of the seven states in Australia make no specific provision for either the termination of a tenancy or the exclusion of the perpetrator from the property in a situation of domestic violence. 144 The statutory provisions in various forms provide general provisions that allow for the victim to terminate the agreement. However, these provisions are complex, limited in their application and rely heavily on the discretion of the presiding member which makes it difficult to advise survivors of domestic violence about their prospects of success.

In the experience of welfare workers, the major tenancy problem for women trying to flee domestic violence is terminating the tenancy and avoiding the debts that can accrue as a result of this. If the woman is a co-tenant with the perpetrator, they are jointly and severally liable. Accordingly one cannot leave without the permission of the other. If she flees the property she may be liable

143 Using a representative sample of 6,300 women. Provided by The Women’s Safety Survey, conducted by the Australian Bureau of Statistics (ABS) in 1996, pp. 50, 55.
144 Under the Residential Tenancy Act 1994 (Qld), the spouse of a tenant (whether the spouse is a co-tenant under the tenancy agreement, or an occupant) may apply to the Small Claims Tribunal to terminate the tenancy on the grounds that the tenant has committed an act of domestic violence against the spouse. The spouse may also apply for termination on the grounds that the tenant has caused or is likely to cause serious damage to the premises. Also, the Act provides that the spouse may apply to the tribunal for an order to be recognised as a tenant under the agreement instead of the (current) tenant, on the grounds that the tenant has committed an act of domestic violence against the spouse. The Act also contains similar provisions for an occupant who is not the spouse of a tenant.
for debts accrued after she has vacated. Even if both tenants agree to vacate they may be liable for significant compensation costs including a re-letting fee, and the costs of advertising the premises.

The major cause of debt in domestic violence/tenancy matters is caused by the difficulties in terminating the agreement as discussed above. However debts can also accrue due to damage caused to the property as a result of the violence. Under most tenancy laws in Australia, the tenant is strictly liable for damage deliberately or negligently caused to the property by any acts of a person who is lawfully on the premises. Her consent to those acts is irrelevant. This means that if the woman is the tenant or the co-tenant, the landlord may pursue her for the compensation even if the perpetrator caused the damage.

Many Departments of Housing have policies relating to domestic violence allowing the Department to waive debts caused by domestic violence. However in practice it is unusual for this discretion to be exercised. Unfortunately many public housing tenants do not know their debt can be disputed and/or do not have the support to adequately present their case. If these debts are not dealt with they can create a bar to accessing public housing in the future.
3.3 Women and Homelessness

Homelessness is more than just being without a place to live, it can be the ongoing search for a safe environment, for food and shelter to survive… For women, homelessness is most often, but not always, linked to domestic violence.

Being homeless means being alienated, isolated and excluded from the social economic and civil opportunities that most of us enjoy… it is always a consequence of structural inequalities and inequities and the governments’ and the community’s response to these problems.  

On census night 2001, 99,900 people were homeless, including at least 14,200 people ‘sleeping rough’. Of these, 41,958 were women. Increasingly, more women are amongst the homeless – 42% of the total.

Young women are more likely to be homeless than older women. 53% people in supported accommodation are women (SAAP agencies include refuges for women escaping domestic violence). Many of these women are aged 18-19.

Indigenous women are also more likely to be homeless. While 2% of the population identified as Indigenous at the 2001 census, 9% of homeless people were Indigenous. Indigenous people made up 19% of those sleeping rough, 11% of those in supported accommodation, 7% of those in boarding houses and 3% of those staying with friends or relatives.

Women with mental illnesses, disabilities or drug and alcohol addictions are more vulnerable to homelessness.

Domestic violence is the main reason for homelessness among sole parents with children. This may be caused by the considerations discussed above such as large debts from past tenancies, being listed on ‘bad tenant’ databases, or ineligibility for public housing. These barriers to adequate housing, compounded by the logistics of attempting to remain untraceable, the current affordable housing crisis, the lack of medium to long-term accommodation and the shortage and unreliability of crisis accommodation, mean that by fleeing domestic violence, women and children often find themselves homeless.

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147 ibid.
Homelessness is not restricted to ‘sleeping rough’ in doorways, drains, car parks, or under bridges, although this is certainly a reality for some women. It also encompasses secondary homelessness, which is defined as people who move frequently from one form of temporary shelter to another, such as people using emergency accommodation, or those staying with family and friends.\(^{150}\) “Refuge-hopping” is a practical result of emergency accommodation as only short stays are generally permitted.

Furthermore, many women move away from friends and family to escape violence, resulting in the loss of support networks, which increase the stress and isolation at a time when self-confidence is likely to be low. Mothers face another challenge in the knowledge that the health of their children, especially their mental and emotional well being, can be seriously affected from having lived in an environment of fear, uncertainty and insecurity over an extended period.

**Government Assistance for Homeless Women**

There are two main forms of government assistance available to homeless women:

- SAAP and public housing funded by the Commonwealth and States through the Commonwealth-State Housing Agreement.\(^{151}\)

- Commonwealth Rent Assistance for women receiving income support who want to rent privately.

The Commonwealth’s main homelessness-specific program is the Supported Accommodation Assistance Program (SAAP). SAAP, which commenced in 1985, replaced a host of programs that had been directed to homeless people prior to that time. SAAP is a joint Commonwealth-State program that essentially provides recurrent funding to in excess of 1200 agencies that provide services and assistance to people who are homeless or in danger of becoming homeless.\(^{152}\) The main group that SAAP targets are women escaping domestic violence.\(^ {153}\) SAAP services directed to this group make up 22% of the total.

Rural women escaping domestic violence have fewer SAAP services to call upon, or may have to travel long distances to access a service. Also being in a small town can mean that a fleeing woman may find it more difficult to be untraceable.

Women who are in SAAP services and cannot return to their homes because of domestic violence may be eligible for further long term housing assistance such as public or community housing allocation or Rent Assistance.


\(^{151}\) Burke & Hulse, (2002), p vi)


\(^{153}\) ibid.
3.4 Single Mothers

3.4.1 Single mothers vulnerable to poverty and homelessness

Women-headed households make up 70% of the world’s homeless and single mothers are arguably the most disadvantaged group in Australian society.154 The single parent population in Australia has doubled since 1974.155 In 2002 there were 508,300 single parents; whereas in 1997 there were 162,800 single parents.156 Most single parents are women and as a group they face a high risk of poverty.157 The Smith Family’s research into spending patterns of low-income families shows that many sole parent families find it difficult to afford basic necessities.158 50% of those surveyed reported experiencing practical manifestations of poverty such as inadequate food and heating.159

Single mothers are over represented amongst homeless families, comprising 85% of families that are assisted through SAAP.160 The underlying causes of homelessness amongst single mothers relates to economic disadvantage caused by low income and an inadequate supply of affordable housing. Within this context there are a range of factors, which make some women more vulnerable than others to homelessness. A recent Senate Community Affairs Reference Committee inquiry found that the key causes of poverty and vulnerability to homelessness for single mothers include:

- The continuing inequality of wage levels, with women’s wages still being generally lower than that of males.161
- The nature of the work which women are more inclined than males to do, namely part time or casual work.162
- The difficulties of one parent combining work with parenting, including the lack of another parent to care for the children and therefore a greater reliance on costly childcare.163
- Discrimination against sole mothers in the work force and rental market.164
- The disadvantaged position of sole mothers after marriage separation. Even though the introduction of the child support scheme has reduced the unequal situation of the custodial and non-custodial parents, difficulties still remain including the higher costs of separated families.165

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156 ibid.
157 ibid.
161 Senate Community Affairs Reference Committee (2004), p 211.
162 ibid.
164 Ibid.
165 Ibid.
• Inadequacy of income support payments.\textsuperscript{166}
• Lack of access to affordable housing.\textsuperscript{167}
• High cost of childcare and education.\textsuperscript{168}

3.4.2 Housing assistance for single mothers

Single mothers are the largest group in Australia dependent on government pensions and allowances.\textsuperscript{169} Two main forms of government housing assistance for single mothers on low incomes are:

• SAAP and public housing funded by the Commonwealth and States through the Commonwealth- State Housing Agreement.\textsuperscript{170}
• Commonwealth Rent Assistance for sole parents receiving income support and renting privately.

Single parents make up to 43\% of new public housing tenants in some states and in 2000. Single mothers that do manage to obtain public housing are more likely to have been born overseas and speak a language other than English, which often contributes further to their disadvantage.\textsuperscript{171}

Single mothers accounted for 22\% of income units receiving Commonwealth Rent Assistance.\textsuperscript{172} Women suffer disproportionately from housing stress, especially single mothers.\textsuperscript{173}

Currently there is lack of housing services that adequately cater for single mothers. As just one example, pregnant women face great difficulties locating emergency accommodation. A recent report by the NSW Ombudsman suggested that pregnant women are often excluded from services because of a belief that women require special services or support, cannot be accommodated because of the physical layout or may be vulnerable within the service.\textsuperscript{174} Discrimination on the basis of pregnancy is unlawful in the provision of rental accommodation. As stated by the NSW Ombudsman

*refusal to accommodate a pregnant woman in a service that she would otherwise be eligible for is unreasonable and may be unlawful, unless it is based on an individual assessment of the actual risk to the pregnant, unborn child or any other residents…Exclusion should not be an automatic or predetermined response. This may also be an indication of the need*

\textsuperscript{166} ibid.
\textsuperscript{167} Senate Community Affairs Reference Committee (2004), p 211.
\textsuperscript{168} Ibid.
\textsuperscript{170} Burke & Hulse, (2002), p vi.
\textsuperscript{171} ibid.
\textsuperscript{172} AHURI (2002), \textit{op.cit} p 2.
\textsuperscript{174} NSW Ombudsman, (2004), p 57.
for greater numbers of independent accommodation units rather than congregate models of service provision.\textsuperscript{175}

The exclusion of pregnant women from adequate housing at a stage when they are especially vulnerable may have detrimental consequences for both the single mother and child.

However some SAAP services have said in response to the Ombudsman's report that they also have a duty of care and where adequate safeguards are not in place to protect the pregnant women the case of accident or medical emergency, it would be remiss of that service to accept a pregnant woman as a client.

The SAAP Peaks group in NSW also asked that all SAAP services be adequately funded to that they can carry out appropriate risk assessment and can staff services at levels that create a safer environment for their clients.

3.4.3 Housing affordability and availability

Many single mothers face considerable financial stress and difficulties affording and finding suitable low cost accommodation. These experiences are related to a relatively unregulated private rental market, the high cost of entry into home ownership and limited availability of public housing.\textsuperscript{176} A study conducted in the north eastern suburbs of Melbourne found that low income households such as single mothers spend approximately 50% of their income on rent.\textsuperscript{177} Private housing is usually not affordable for women on a social security payment. Furthermore, the availability of private rental is limited, with only 18-27% of overall vacancies in one-bedroom flats being affordable for people living on a Centrelink income in 2000-1.\textsuperscript{178} Sole mothers also face discrimination when attempting to obtain accommodation in the private rental market due to assumptions about their incapacity to afford payments.\textsuperscript{179}

There is often a high concentration of single mothers in areas where housing and rental prices are low, such as in the poorer metropolitan outer suburbs and coastal regional centres. The concentrations reflect the underlying poor economic conditions in the areas where many single mothers live.\textsuperscript{180} In such areas there are often difficulties associated with accessing services such as child-care centres. These areas also tend to have poorer quality housing and fewer job prospects.\textsuperscript{181} Single mothers are more likely to have a high level of

\textsuperscript{175} NSW Ombudsman (2004), p 58.
\textsuperscript{176} Casey (2002), p 4.
\textsuperscript{177} Casey (2002), p 3.
\textsuperscript{178} Casey (2002), p 4.
\textsuperscript{180} AHURI (2002), op.cit p 1.
\textsuperscript{181} ibid.
mobility, with implications in relation to disruption to children’s schooling as well as financial and personal well-being.\textsuperscript{182}

Single mothers in rural and regional Australia particularly express feelings of isolation and loneliness. Housing in rural areas is less likely to be obtainable and adequately able meet the needs of single mothers.\textsuperscript{183}

\textsuperscript{182} AHURI (2002), op.cit p 2.
\textsuperscript{183} Birrell & Rapson (2001), p 12.
3.5 Women in Rural and Regional Australia

Rural Australians tend to experience high levels of disadvantage due to low incomes, high living costs, poor housing quality and access to services. Women are disproportionately represented in the population of rural people living in poverty and face many problems accessing basic services such as transport, banking, social security, medical and counselling services.

A Woman and Poverty Forum in Melbourne in 2003 (conducted by Victorian Council of Social Services, the Council of Single Mothers and their Children, and YWCA Victoria) found that women in regional areas face a range of problems, including:

- Difficulties in accessing services such as medical and domestic violence support services that are sensitive to women’s needs.
- Income support payments are not adequate to meet the costs of living in rural and regional areas.
- The lack of suitable work, especially work that could be balanced with family responsibilities.
- Accredited childcare is often not available in rural areas, which severely limits women’s employment opportunities.
- There is a lack of public transport, education and social opportunities.

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185 Senate Community Affairs Reference Committee (2004), p 220.
3.6 Women Refugees

In 2002–2003 Australian allocated 12,000 places for refugees under its Humanitarian Program. Since 2000, the main countries of origin for refugees have been Afghanistan, Bosnia-Herzegovina, Croatia, Ethiopia, Federal Republic of Yugoslavia, Iran, Iraq, Somalia and Sudan. There are three streams within the humanitarian program:

- Persons admitted through the offshore settlement program, including women-at-risk.
- The Special Humanitarian program.
- Unauthorized arrivals who apply for protection and are subsequently determined to be refugees according to international criteria are issued a temporary protection visa (TPV or visa category XA785). More than 8,350 persons have been granted temporary protection visas since the subclass was introduced in late 1999. The majority of the TPV holders come from Iraq (47.9%), Afghanistan (41.9%) or Iran (4.5%), with the remaining 5.7 per cent are from a variety of Asian, Middle Eastern or African countries.

More sex-disaggregated data is needed on the numbers of women refugees in these programs. As stated by Dickman

Refugees are one of the most vulnerable groups in Australian society, especially during the early stages of their resettlement experience. They have been forced to abandon their homes and flee their home country because of persecution, and many have been subjected to torture and trauma…They usually arrive in resettlement countries, such as Australia, with few or no possessions. Most refugees come from non-English speaking backgrounds, and encounter considerable language difficulties upon arrival. In addition, they must learn how to cope with different legal, social service, employment and housing systems in their place of resettlement….Housing plays a critical role in the successful settlement and integration of refugees. Without appropriate and affordable housing, refugees will remain on the periphery of Australian society.

3.6.1 Government policies for accommodation assistance for refugees

Each of the refugee visa categories are eligible for different levels of settlement services, including accommodation assistance. The variation in the type and

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186 All information for this context piece has been obtained from Foley & Beer, (2003) unless otherwise indicated.
187 ibid.
188 This is supported by international and national literature such as European Council on Refugees and Exiles (1999), Zetter and Pearl (1999), Campbell, (1997) and Jupp (1994) as cited in Foley & Beer (2003).
extent of accommodation assistance has a significant impact on the level of access refugees have to adequate housing.

Persons admitted entry to Australia through the offshore resettlement programs are granted permanent residency immediately upon their arrival, and may be eligible for extensive settlement services, including four weeks on arrival accommodation. Furthermore, they are eligible for citizenship after two years of permanent residence. Special Humanitarian Program entrants are provided accommodation by their sponsors.

No federally funded accommodation is provided for Temporary Protection Visa holders. Furthermore, they are not allowed to access the full array of settlement services provided to offshore refugees.

3.6.2 Factors contributing to lack of adequate housing for refugees

Anecdotal evidence suggests that refugees, especially TPV holders, are experiencing increasing accommodation problems and many end up homeless in Australian cities, or are at high risk of becoming homeless. TPV refugees have encountered numerous difficulties in their search for adequate and affordable accommodation because they do not have the government services available to conventional refugees. The difficulties that TPV refugees experience are likely to have long-term impacts on their settlement and integration in Australia.

As most refugee arrivals in Australia lack the resources to purchase housing immediately, they must rely on the private or public rental markets for accommodation. Obstacles that recently arrived refugees encounter in their search for affordable and appropriate housing, which places them at a high risk of becoming homeless include:

- Financial barriers such as low income levels, unemployment due to lack of English skills and non-recognition of qualifications, inability to accrue bonds/rent and utility deposits in advance.
- High cost of private accommodation forces refugees to forgo other necessities such as food, clothing, electricity, gas, telephones and furniture.
- Long wait lists for public accommodation caused by the reduction in available housing stock and the increased demand for affordable housing, has pushed more refugees into the private rental sector.

189 The Australian Government reduced the term for on-arrival accommodation from 13 weeks to 4 weeks in 2000 and privatized the accommodation services.
190 An earlier study by Foley (2000) on Vietnamese refugee migration to Australia it was found that there are considerable disparities in the provision of accommodation by sponsoring organisations.
191 It is arguable that the differential treatment between refugees is in contravention of the Refugee Convention as certain categories of refugees are treated differently to other non-nationals in Australia.
• Discrimination by real estate agents and landlords on the grounds of race, gender, age and social status lack of references and lack of English heightens these problems.

• Affordable housing is only available in inappropriate locations where there is poor access to public transport, cultural services, shops and high crime. It is important to be located in areas with other community members to avoid isolation.\(^{193}\)

• Lack of access to support services such as lack of transport, lack of childcare, lack of culturally appropriate health facilities, particularly in rural areas, lack of trauma services and aged care services for elderly refugees.

• Lack of suitable housing options because houses cannot accommodate large families and often housing designs are culturally inappropriate.

• Lack of familiarity with Australian housing and legal systems.

• Denial of government services dependent upon visa category.

3.6.3 Additional obstacles faced by women refugees

Women refugees face additional obstacles. Many refugee women have experienced torture and trauma prior to their arrival in Australia. Lack of secure and safe housing further entrenches the effects of trauma and torture on women and their children, with potentially long term impacts.

The stress caused by lack of housing and other problems such as unemployment and language difficulties can also manifest as or contribute to incidents of domestic violence. Women refugees who are victims of domestic violence are often afraid to leave the situation or access services, fearing that separation or the authorities might threaten their refugee status. Women refugees who do leave the perpetrator face the added trauma of having to leave the family home even though they are not the perpetrators of the violence. There is very little culturally appropriate support for refugee women suffering from domestic violence. Financial support, health care, accommodation support and shelters are often inadequately equipped to address the needs of refugee women, who are also living with the effects of trauma. Many cannot afford to find independent accommodation and face secondary homelessness, living temporarily with various families in the community.

Other obstacles relating to housing experienced specifically by women refugees include lack of access to suitable child-care and lack of transport. Furthermore, fulfilling role of primary homemaker often prevents them from taking English classes and employment necessary to afford housing costs.\(^{194}\) The lack of culturally appropriate counselling services and support systems, particularly in

\(^{193}\) Centre for Refugee Research, *You never stop being a refugee: The special needs of older refugees*, UNSW.

rural areas, prevents refugee women from addressing their trauma issues and from successfully integrating into Australian society.\textsuperscript{195}

“Women at risk” are refugee women whose settlement in Australia was fast-tracked because of the extreme risks they faced. Given the high levels of trauma and instability they faced, placing them in safe, affordable and appropriate housing, which is close to essential services, such as appropriate trauma services is imperative. Limited housing options, financial restrictions, difficulty in relations with real estate agents and large family numbers, are factors that greatly impact on their ability to acquire private rental accommodation.\textsuperscript{196} Consequently, many women are required to spend longer than intended in on-arrival accommodation. Many women have stated that their fear and vulnerability is triggered in the insecure and isolated on-arrival accommodation that they are placed in. After 4 weeks they are required to pay market rates for such inadequate accommodation. Further, moving to new neighbourhoods can add to the trauma and impact on the children who need to change schools.

\textsuperscript{195} Pittaway & Bartolomei, \textit{Women at risk program}, Centre for Refugee Research, UNSW.
\textsuperscript{196} Centre for Refugee Research, (2004).
3.7 Women in Prison

Women in prison constitute a cross section of ‘vulnerable’ groups. Housing issues are a pertinent concern for women in prison both in regards to their living arrangements inside prison and also in regards to their post-release accommodation options.

Women currently constitute 7% of the prison population, which is a rapidly growing sector of the Australian prison population. Generally, women in prison are not serving long sentences. 84% are serving shorter than 2-year sentences with an average serving only 2.1 months. Despite this short time frame, incarceration has a huge effect on women and their families and inhibits their access to safe, secure and dignified accommodation.

Women in prison and their children have many unmet needs in relation to accessing adequate accommodation inside prison and post release. The extreme disadvantage that faces this group of women prior to incarceration is only compounded by time spent in prison. Conditions inside prison do not meet UN standards of appropriate accommodation and fail to provide women with a safe and dignified residence. This is not justifiable by the fact that these women have committed a crime, as is evidenced by the Standard Minimum Rules for the Treatment of Prisoners. Upon release, women who have been incarcerated are even more disadvantaged than before their incarceration and have still fewer appropriate housing options. The consequences include inappropriate housing, multiple forced relocations, increased poverty and family breakdown.

3.7.1 Groups within prison that are particularly vulnerable

Some of the groups represented in prison that are identified as needing more attention include the following.

Women-headed households

85% of incarcerated women are the primary carers of their children. This creates extra barriers for women attempting to find accommodation post release and for those attempting family reunification. Women who are sole parents often live in short-term public housing, in priority public housing, in long-term public housing and many are homeless. 67% of all homeless women prior to imprisonment are sole mothers.

When women are incarcerated the standard of living of their children is greatly affected. Children become displaced when their mother is taken away and many emotional and physical needs are no longer met. Basic human rights that are

198 www.ahuri.edu.au
endangered by the incarceration of mothers include the right to food, clothing and housing (Article 11 ICESCR), the protection of the family unit (Article 10 ICESCR) and the right to pursue education (Article 13 ICESCR).

Survivors of Violence

89% of incarcerated women are survivors of sexual abuse. 98% percent of women in prison have experienced physical violence. Horrific stories of domestic violence form the backgrounds to many of the more serious crimes committed by women.

Minority Women

10% of women in prison are from culturally and linguistically diverse (CALD) backgrounds. Women in prison from minority backgrounds are placed in an extremely disadvantaged position due to systemic discrimination and inability to access resources and community. Failure by the prison to provide professional interpreters or to translate rules and rights make such rules and rights inaccessible for non-English speakers. The isolation felt by such women is extreme.

Indigenous Women

Indigenous women are vastly over represented in prisons. In Queensland, to take one state as an example, Indigenous women comprise up to 28% of women in prison. Indigenous women prisoners are also, proportionally, the fastest growing group of prisoners in Australia. A large proportion of Indigenous women are incarcerated for minor offences such as public order offences, including swearing or drinking alcohol in public, resisting arrest. The over-policing of Indigenous women and crime can be seen as a violation of the UN Convention on the Elimination of Racial Discrimination that was incorporated into Australian law in 1975.

This is further discussed in the section on this Report on Indigenous Women.

Women living in debt and poverty

Poverty and debt are issues that directly affects many women in prison. One study showed that 80% of women prisoners had debts averaging $3,417. Hand in hand with poverty come low levels of literacy, education and employment. As a result of poverty, drug and alcohol problems and mental illness, many women have dubious housing arrangements before incarceration, living on the streets, in caravan parks, in boarding houses or in situations of

199 Office of Economic and Statistical Research: www.oesr.qld.gov.au
201 Stringer (2001)
domestic violence. The increase of debts during incarceration exaggerates this unstable living environment.

**Women with disabilities/mental illness**

Women in prison are often coping with a range of complex mental health concerns. Sisters Inside has observed women in prison suffering from post traumatic stress, depression and bi-polar disorder. The accommodation and support available for women in prison with such mental health issues is inappropriate and cruel.

### 3.7.2 Conditions inside prison

Once incarcerated, women find themselves facing a situation that can be both isolating and degrading. Governments have a responsibility to the women in its care to ensure that human rights are not abused and our submission argues that it has failed in this respect. The failure to guarantee rights outlined in the *ICCPR*, 202 and the Standard Minimum Rule for the Treatment of Prisoners affects the quality of the accommodation offered to women in prison. In evaluating the adequacy of prison as a housing option, this submission refers to these documents and also to the aspects of the right to adequate housing articulated in UN Doc E/1992/23, Annex III.

### Isolation and lack of privacy

The isolation that women face inside prison demonstrates another problematic aspect of women’s accommodation in prison. The isolation from community, family and friends causes powerful emotional responses from women in prison. This is especially felt by Indigenous women and women from culturally and linguistically diverse backgrounds. The right to housing includes accessibility and cultural adequacy is inadequate in prison accommodation. The geographically remote areas where prisons are situated reduce accessibility for family and other support persons and contribute to isolation for women inside.

Other factors also affect this feeling of isolation. Within the prison, the capacity of women to interact with each other is restrained by the norms of prison life and also by the physical isolation that women are subjected to when they placed in the Detention Unit (DU) or when they are removed from the communal sections of the prison because of suicidal or self-harming behaviour. Living conditions in both the CSU and the DU deny women the right to adequate accommodation.

Women are sent to the DU for “breaches” such as assault, drug use, insubordination to prison authorities, hanging towels on cell doors, walking on the grass, having a towel with a hole in it or even in some cases as punishment for

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202 Article 10.1 ICCPR - All persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person.
self harming behaviour. Women are placed in the DU for up to 7 days and are in total isolation during this time. Cameras observe the DU on a 24-hour basis, including the toilet and shower facilities. Women are aware that there could be men watching through the cameras at any time. This is clearly violates these women’s right to privacy and is especially concerning given the likelihood that women in prison are survivors of sexual abuse.

Similar isolation is experienced in the CSU due to the segregated nature of the unit and the conditions of solitary confinement. High levels of intrusive monitoring exist in order to prevent deaths in custody, but little effort is made to address the issues that motivate suicidal behaviour. We estimate that about half of the women currently housed in the CSU are Indigenous.

Mandatory Strip Searching

The practice of mandatory strip-searching women in prison is carried out under the guise of stopping prohibited items from entering the prison. However, the reality is that it does not prevent drugs or other contraband from entering prisons and it in fact amounts to an abusive, degrading assault by the state. Furthermore, common experiences of violence and sexual assault mean that women in prison are particularly vulnerable to being re-traumatized through this process. This practice is also of concern for Indigenous women as it offends against cultural standards of dignity and modesty.

Some comments from prisoners concerning this issue include:

> I was never allowed to forget that, being a prisoner, even by body was not my own…I was compelled to submit to being undressed and searched.

> On the one hand you would feel great about the visit but really raped and angry about the strip search afterwards. It was impossible to ‘get used to it’ or ‘switch off from it’ or be objective to it, in fact some women preferred not to have a visit because they couldn’t handle the strip search afterwards.

This practice has been institutionalized by legislation. The practice and legislation allowing strip-searching of women in prison is in contradiction to the right detailed in Article 10.1 of the ICCPR, namely that

“All persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person.”

Privacy and security of person in prison is identified as one of the obstacles to adequate housing that women face. Women in prison cannot be said to have access to appropriate housing inside prison whist being forced to endure unnecessary and unjustified strip searches.
Medical care

Another aspect of the right to adequate housing is availability of services. It has been the experience of Sisters Inside that medical facilities in Queensland prisons are of poor quality, badly organised, lacking in sensitivity and sometimes overtly neglectful. A recent example of medical neglect in prison was the case of a pregnant woman who repeatedly requested medical attention over a period of 12 hours. She subsequently miscarried in the toilet block. Her baby died and she was then taken to a hospital in shackles. It has been reported to Sisters Inside that women who require medical attention in hospitals are always escorted in shackles. On one occasion a woman was kept in shackles while giving birth.

A number of women have reported to Sisters Inside that their requests for medical attention are most frequently met with the response “take 2 Panadol”, usually without any further inquiry. Sisters Inside is also aware of a woman who complained of abdominal pain. She was effectively ignored until her condition deteriorated and she died. It was subsequently discovered that she had a twisted bowel which may have responded to treatment had proper medical attention been provided. A common and recurrent practice is to over-prescribe anti-depressant drugs for women in prison.

3.7.3 Post release housing difficulties

While there are no official sex-disaggregated figures available, it is estimated that women constitute between 9 -11% of the releasee population, which is in absolute terms is about 4,000 women per year (many of which may be the same woman going in and out of prison twice or three times in one year). Approximately 30-40% of these women releasees are likely to be Indigenous women.203

Sisters Inside has consistently encountered difficulty when assisting women to find stable and appropriate housing options upon release from prison. Finding stable and affordable accommodation is essential to the recovery of children, the reunification of families, the prevention re-offending, the reduction of post-release mortality rates and ensuring that options exist beyond returning to violent partners.

Through the organization’s work with women who are about to be released and who have already been released, Sisters Inside has identified a series of issues that impact upon women attempting to find suitable accommodation for themselves and their children.

Poverty

203 Baldry & Maplestone (2003)
Women in prison are likely to come from economically disadvantaged backgrounds and incarceration merely increases poverty levels. This makes finding accommodation that is affordable is very difficult. Many women owe debts to the Department of Housing, making it difficult to secure public housing. Often these debts are incurred during incarceration are not due to the fault of the prisoner, such as where other tenants cause damage or owe rent after the prisoner is taken away or where a plan to pay a debt is interrupted by the loss of income experienced during incarceration. Poverty severely effects women’s housing options because many prisoners are released with merely a crisis payment from Centrelink at a total of $170 and must pay costs such as bond, rent, phone and electricity. Up to 92% of women have no employment organised for post release.\textsuperscript{204}

Lack of public housing

For those eligible for public housing, waiting lists are very long. We know of cases where women have waited ten years on lists. Imprisonment also affects the waiting list and causes confusion. Additionally, public housing is often only available as a short-term option.

Disempowerment of women in prison

Prison conditions make it hard for women to look for suitable accommodation in preparation for their release date. Access to information in prison is limited and the telephone system does not allow more than ten numbers on each prisoners approved list at any given time. The institutionalisation of life in prison disempowers women and robs them of skills and confidence necessary to take such steps. Furthermore, women are often not able to know the precise date upon which they will be released on bail or parole until after their hearing which makes it very difficult to secure accommodation.

Barriers for entry into boarding houses and shelters

Boarding houses, domestic violence shelters and other such organisations regularly have specific requirements that create barriers for women. Many such accommodation options reject women with drug or alcohol issues, or those with mental health issues. Others cannot take women with children whilst some only take women with children.

Discrimination

Women coming from prison often face discrimination when looking for accommodation. The stigma and marginalisation associated with imprisonment is difficult to overcome. Sometimes this is given directly as a reason for rejection

\textsuperscript{204} ibid.
or eviction. At other times it is subtler and other bookings or arrangements suddenly arise when it is discovered that the woman has been in prison. A lack of previous referrals from real estates and landlords make it difficult to apply for rental accommodation without this fact becoming known. The added discrimination faced by groups such as Indigenous women and migrants compounds these issues.

**Women with mental illness susceptible to homelessness**

Women with a mental illness post-release have also been found to be particularly susceptible to homelessness. As judges and magistrates will not release mentally ill offenders without support, gender specific support services are desperately needed in the community to provide alternatives to prison and post-release supported accommodation.\(^{205}\)

All of these factors contribute to the difficulty women in prison face when looking for suitable accommodation upon their release. Studies in Australia have found that many post release women are homeless upon release. 14% of women expected to be homeless or did not know where they were going post-release.\(^{206}\) The effect of these difficulties is that women are forced to take unsuitable accommodation in inappropriate locations. The difficulties associated with finding accommodation detract from women’s genuine efforts to find work and to stay away from crime. In some areas a de facto situation of segregation arises. For example, a study in NSW showed that 30% of Indigenous women prisoners (and presumably ex-prisoners) came from just two suburbs in Sydney.\(^ {207}\)

**Mobility**

Many women are forced to move numerous times upon their release from prison. Forced evictions due to the discovery of incarceration and other perils, outlined above, all mean that a woman released from prison can go through many different accommodation placements in a short period of time. Sisters Inside has assisted women who have been forced to move up to seven times over a period of two months, through no fault of their own. Stability is found to be the most reliable predictor of return to prison and the more often women move, the more likely they are to return. One study showed that more than half of women consulted post release moved twice or more and that 90% of those who moved three times or more returned to prison.\(^{208}\)

**Family breakdown**

Family breakdown is also a direct result of difficulties with accommodation. Failure to find appropriate accommodation that is free from violence results in

\(^{205}\) ibid.
\(^{206}\) ibid.
\(^{207}\) ibid.
\(^{208}\) ibid.
women being unable to regain control of their children from the Department of Families and Community Services. Without appropriate accommodation and support the family reunification process is destined to fail. Extra factors that must be considered for women with children include the number of children, the proximity of schools, the presence of child protection orders and domestic violence orders.

**Effect on children post-release**

The inability to find stable and appropriate housing effects the children of women released from prison by interrupting education or training for these young people. The child’s right to an adequate standard of living (Article 27 *CROC*) and their right to live in their family environment (Article 9 *CROC*) is severely jeopardized by the dubious housing arrangements available to their mother.

**Housing and difficulties adjusting to outside life**

Lack of affordable and suitable housing has been identified as a key factor in the unsuccessful transition of post-release women to outside life. Studies show that 90% of the women who died shortly after their release from prison had no fixed address at the time of death.\(^\text{209}\) Lack of housing has also been connected to incidence of imprisonment/re-offending - 20% of women prisoners interviewed in NSW were homeless prior to imprisonment.\(^\text{210}\) Studies in Australia, which have similar findings to studies undertaken in UK and USA, concluded that suitable, stable, supported accommodation, with access to support services would reduce the high numbers of deaths of post-release women, enable post release women to establish positive social connections, and stem the high rates of re-offending. Satisfactory accommodation arrangements are also crucial for women regaining access to children who have been placed in “care” situations for the duration of their prison term.

Existing prison and housing policies fail to address post release women fail to be covered. For example, post release women are not able to apply for priority public housing because they are not deemed to be “homeless” in prison. The waiting lists for non-priority housing are so long, that currently only priority housing needs are being met.\(^\text{211}\) In response, the Victorian government has committed $13m over 3 years to build up post-release supported housing options, some for women specifically.\(^\text{212}\)

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\(^{209}\) *Ibid*

\(^{210}\) *Ibid*. ACT Department of Disability, Housing and Community Services’ Report, *Breaking the Cycle – the ACT Homelessness Strategy*, (2004), also found that “people leaving custodial care often have no home or job to return to. They are more likely than the general population to have no financial reserve and receive income support while facing discrimination in the labour market. Unstable accommodation post release is a major predictor, along with drug and alcohol abuse, of an offender’s return to prison”.

\(^{211}\) Baldry, McDonnell, Maplestone & Peeters, (2002). This study shows that the majority of post-release women are likely to seek non-priority public housing.

\(^{212}\) *Ibid.*
An adequate housing policy, that includes increasing public housing stock, further funding for emergency and transitional accommodation and providing appropriate support services, could assist in addressing the housing needs of post-release women and contribute to lower crime rates and re-offending.
3.8 Women With Disabilities

3.8.1 The position of women with disabilities in Australia

Women with disabilities in Australia are one of the most disadvantaged groups in society. There are 3.6 million people in Australia with a disability, making up 19% of the total population. The proportion of males and females with a disability is similar (around 9.5% each) although it varies across age groups. Women with disabilities are less likely to be in paid work than other women, men with disabilities or the population as a whole. Women with disabilities are less likely than men with disabilities to receive vocational rehabilitation or entry to labour market programs. Women with disabilities earn less than their male counterparts and are less likely to receive a senior secondary and/or tertiary education than men with disabilities. Women with disabilities are substantially over represented in public housing, and are less likely than other women without disabilities to receive appropriate health services, particularly breast and cervical cancer screening programs. Women with disabilities are more likely to be institutionalised than their male counterparts and are often forced to live in situations in which they are vulnerable to violence. Girls and women with disabilities are more likely to be unlawfully sterilised than their male counterparts and are assaulted, raped and abused at a rate of at least two times greater than non-disabled women.\(^{213}\)

Housing situations are precarious for many women with disabilities. A decline in the supply of low cost housing, an increase in unemployment and the level of poverty as well as changes in the service delivery policies of specialist services, have increased the risk of homelessness for many Australians. The impact of these changes is even greater on the more vulnerable among the homeless, most notably, women with disabilities. There are a range of factors, which make women with disabilities the group most vulnerable to homelessness, or risk of homelessness in our society.

3.8.2 General issues that impact on the risk of homelessness for women with disabilities

The following issues contribute directly to the homelessness of women with disabilities or construct an environment in which the risk of homelessness becomes an aspect of the daily life of many women with disabilities.

Additional costs of living with a disability

Women with disabilities carry the additional costs of their disability, which compound their lack of options in the housing market. There are a range of such

costs, including those of modifying dwellings internally and externally to provide access. Furthermore high costs are incurred by the need to purchase personal care and accommodation support services, without which quality of life and level of independence would be severely restricted. In addition, health care costs are an enormous drain on the resources of many women with disabilities. These additional costs, which women with disabilities require to do the ordinary activities, which human beings do, reduce the real value of incomes and can potentially lead to a situation of risk.

**Discrimination**

Women with disabilities face discrimination in accessing housing, in the private and public rental market. Security of tenure is a matter for concern, particularly in private rental accommodation. Anecdotal evidence collected by a Women With Disabilities, a national non government organisation, indicates that women with disabilities have experienced substantial levels of discrimination against them by private landlords. Discrimination is rarely overt, but many women with disabilities who have been rejected as tenants feel that they are perceived to be incapable of caring for a rental property and that landlords are unwilling to “risk” their property.

**Safety/location**

Safety is a concern for women with disabilities. Many dwellings have inadequate safe guards, such as security screens and doors, and lack smoke detectors. Access streets to homes are often poorly lit. Women with disabilities need access to support services in order to maintain their independent living style. The location of their accommodation needs to be close to transport and all other amenities. Access to such purpose-built dwellings is limited and often makes security of tenure a crucial issue for many women with disabilities. Without access to safe, accessible and secure housing the risk associated with potential homelessness is made greater.

**Deinstitutionalisation**

Deinstitutionalisation has been heralded as a breakthrough for women with disabilities to provide them with the opportunity to become part of the wider community, especially to those who are able, and who wish to, live by themselves or as autonomously as possible. However, the reality is that while institutions have been closing, the essential support services for women attempting to integrate into the community have not kept pace with their needs. Consequently, many live in inappropriate accommodation, where they are

vulnerable to abuse. Alternatively, women live without adequate support in the community. Women with disabilities experience considerable difficulties in obtaining relevant information about leaving an institution, finding accommodation elsewhere. The lack of supports available in the community is a major disincentive to women to leave institutions. Selection procedures for public housing are also identified as a source of frustration and discrimination for women with disabilities.

3.8.3 Specific issues with SAAP services that lead to homelessness or risk of homelessness for women with disabilities

The following issues mean that many women with disabilities cannot access the services specifically set up to assist with homelessness and risk of homelessness. It is fundamental for women with disabilities to have access to the same accommodation as non-disabled women.

Lack of information

There is very little information targeted to women with disabilities with regard to SAAP services. Many women with disabilities are unaware that services exist, how to reach them, or how accessible they are. Existing information is often not available in a range of formats. Information in PDF format sent via e-mail is unable to be accessed by many women with disabilities.

Because of the lack of Telephone Typewriter (TTY) services in domestic violence referral/outreach services, the only option for deaf women would be to use the relay service. This is often inappropriate as it has an operator listening in who may know the person or leave the woman uncertain that her view of the situation is being appropriately relayed. Once inside a refuge communicating refuge/service procedures and rules often do not take account of the particular needs of a woman. For example a woman with memory difficulties may be presented with everything in one main sitting.

Attitudes/staff training

There is very little training available to workers in SAAP services regarding women with disabilities. Commonly disability services and non-government agencies tended not to have knowledge or expertise on domestic violence issues for women with a range of disabilities. Domestic violence services more often than not do not have awareness or the skills to work with women with disabilities.

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218 Cooper, (1993).
Physical environment/access to personal care

Often “purpose build housing” only provides access via an often precarious ramp, through the rear entrance into the main part of the house, where a bathroom and toilet are (usually) accessible. No other facilities, such as kitchen and laundry equipment, are generally accessible. This means that women with disabilities are rendered unable to manage daily personal tasks, like cooking and washing, and are forced to seek assistance. They are then not “self-managing” and they are ineligible for access to crisis accommodation.

The lack of personal care available in SAAP services can prevent women with disabilities from accessing them. This can be a result of services not knowing what support is available. It can also be due to a service’s policy that requires clients to be self-managing or not allowing care agencies to provide services within services, such as refuges for security reasons.

Referral

Referral agencies know that most refuges are physically inaccessible and will not accept women who require assistance in personal care; therefore, applicants with such needs are not even referred to a refuge.

Equipment

Lack of access to aids and appliances can prevent women with disabilities from using a SAAP service. It may not be necessary for each service to carry all types of equipment. Equipment “pools” should be developed so that services within geographic areas can share the resources. TTY telephones should be installed in all SAAP services and referral agencies to be used by deaf and/or hearing-impaired women.
3.9 Young People

3.9.1 Young People and Homelessness

In 1989 the Human Rights and Equal Opportunity Commission released a report called “Our Homeless Children” (the Burdekin Report). This report highlighted that there have been a number of human rights breaches in relation to homeless young people in Australia, such as a lack of safe and affordable housing. Over ten years later, youth homelessness is still a national crisis.\(^\text{220}\) It is estimated that there are just under 30,000 young people in Australia that are homeless.\(^\text{221}\) There has also been a significant increase in the incidence of homelessness amongst young women.\(^\text{222}\)

Many homeless young people have become homeless due to a serious breakdown in their family relationship and by failure of the care and protection system to meet their practical and emotional needs.\(^\text{223}\) Young women are especially vulnerable to homelessness and may leave home for a variety of reasons such as sexual, physical and emotional abuse.\(^\text{224}\) It has been estimated that approximately 75% of homeless women have been victims of domestic violence.\(^\text{225}\)

Homelessness is a chaotic and disruptive influence on people, especially children’s lives. Homeless young people must spend time and energy searching for suitable accommodation, which often means foregoing the other necessities of life such as food and sleep, with subsequent detrimental impacts on health.\(^\text{226}\)

In Australia, the major Commonwealth financial assistance programs that are available for young people in independent living are Youth Allowance and Rent Assistance programs. Despite the availability of this monetary assistance, one major charity has suggested that the main issues for homeless young women are:

- Availability - demand for low cost accommodation far exceeds its availability.
- Housing discrimination - discrimination against young people in the private rental market is common.
- Affordability - lack of exit points from homelessness into secure and affordable accommodation.
- Employment - getting and keeping a job becomes difficult with insecure housing.

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\(^\text{221}\) Chamberlain & Johnson, (2003), p i.
\(^\text{222}\) Chamberlain & Johnson (2003), p 8.
Education - continuing study is difficult when housing is insecure. The Council of Homeless Persons estimated that 69% of homeless young people aged 15 to 19 years old and 93% aged 20 to 24 years old are not in education.  

Safety - high incidence of violence on the streets.

Health issues - homelessness detrimentally affects health, including mental health.

Services - lack of accessible support services to assist young people to maintain any type of independent housing.

Young people who do not have access to private or public rental and cannot find informal accommodation with friends or relatives, are reliant on SAAP, youth shelters, refuges and boarding houses. They are likely to drift from one form of accommodation to another and will often live on the streets for some period of time.

3.9.2 SAAP

The Commonwealth/State Supported Accommodation and Assistance Program (SAAP) plays a vital role in assisting homeless youth. In 2000, approximately 35% of people using refuges and other services provided by SAAP were under 24 years old. Of the 391 services funded by SAAP in NSW in 2000/2001, 44.7% targeted young people.

Although many young people gain access to SAAP, it does not necessarily have sufficient housing to meet the needs of all young people as it is not readily available in some regional areas and it excludes young people affected by mental illness, drugs and alcohol or those who are pregnant. Most housing services fail to see a child as a whole person and there is a need for these services to work co-operatively with other services, such mental health services, in order to adequately accommodate homeless children. As stated by a major charity:

The system…does not provide a coherent continuum of services required to prevent homelessness among young people, assist them out of homelessness or support them over the long period needed to restore their sense of self and place in the community.

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227 Chamberlain & Johnson (2003), p 6
228 Mission Australia, *Youth Homelessness: Fact Sheet*, (2001)
229 ibid.
230 ibid.
232 ibid.
234 Ibid.
Accommodation services need to respond to clients’ needs in a holistic manner, responding to complex and multiple needs such as accommodating drug users and clients with mental health issues.\(^{236}\) As stated in a recent report the NSW Ombudsman:

\[\text{we accept that it is not the ‘core business’ of SAAP to provide primary health services to people who are acutely ill and who require health, mental health or drug and alcohol services in the first instance…it is not sufficient for SAAP to consider these groups of people to be outside its responsibility. It is the role of SAAP, in conjunction with other service systems, to cater to a diversity of individuals who are homeless, including people with mental illness, disabilities and/or substance abuse issues. This means they may need to develop skills, undertake training, and review and amend policies and practice.}^{237}\]

However the reality for many SAAP services is that some find it difficult to access mental health support and other adjunct services when it is needed. Many SAAP services believe that they are underfunded and expected to carry the load of systems failure. SAAP is only intended to be a short-term form of assistance to meet the needs of young people at imminent risk of abuse and not a substitute for long-term housing.

### 3.9.3 Public housing

There are currently serious gaps in the provision of long-term accommodation by the Department of Housing. Public housing is not sufficient to meet the needs of homeless young women due to long waiting lists and lack of housing stock.\(^{238}\) In a recent study conducted in western Sydney, which focused on the high incidence of squatting by young people, at least half of the respondents raised the issue that there is no suitable accommodation available whilst waiting for Department of Housing accommodation.\(^{239}\)

### 3.9.4 Private rental

Private landlords are often reluctant to offer accommodation to young people unless they have written references and proof of employment. Many young people experience this as discrimination.\(^{240}\) Women face particular issues in accessing the private housing market and young women are not easily able to find secure accommodation. There are special difficulties for young women who are pregnant or have children due to discriminatory attitudes of some landlords who hold assumptions about their inability to afford rent or their unreliability.

\(^{238}\) Robinson (2003), p 20.  
\(^{239}\) Ibid.  
\(^{240}\) Chamberlain & Johnson (2003), p 7.
Unemployment also makes it difficult for young people to enter into the private rental market. The Australian Council of Homelessness estimated that 50% of young people under 24 years old who are homeless are not employed. Apart from issues relating to affordability due to unemployment, youth are also for the purposes of ongoing tenure often unable to demonstrate the capacity to pay rent or a bond. Where young people are in employment, a substantial number of young people living independently spend more than 30% of their income on rent, causing what has been described as “housing stress”. The single biggest housing related problem identified by young people is high rent and affordability, with 80% nominating high housing costs as their most important problem.

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243 AHURI (2002), op cit p 4
3.10 Older Women

3.10.1 Australia has an ageing population

In the 12 months to 30 June 2003, the number of people aged 65 years and over in Australia increased by 2.2% to just over 2.5 million, or 12.8% of the total population.\(^{244}\) This number is expected to grow to between 6.2 million and 7.9 million by 2051 (approximately 25% of the population).\(^{245}\)

Proportionally, the fastest growth rate, at 4.6%, in this same period occurred among people aged 85 years and over.\(^{246}\) Of this group, there were over twice as many females (198,100) than males (91,400).\(^{247}\)

3.10.2 Housing types for older people

In 2001, 87.6% of couples aged 65 years or over were homeowners without a mortgage, 3.8% were homeowners with a mortgage and 6.8% were renting. A lower proportion of single people aged 65 years owned their own homes, with 72.8% being homeowners without a mortgage, 3.3% being homeowners with a mortgage and 19.3% renting.\(^{248}\)

With respect to homeownership, these figures can be further desegregated. In 2001, 85% of males and 86% of females aged between 55-64 live in owner-occupied dwellings. These figures move to 87% of men and 86.5% of women for people aged between 65-74 and for both men and women over 75.\(^{249}\)

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See also 2002-03 Budget Paper No. 5 – Part II: Australia’s Long-Term Demographic and Economic Prospects. Available at: http://www.budget.gov.au/2002-03/bp5/html/04_BP5Part2.html#P10_113


\(^{247}\) Ibid

\(^{248}\) ABS 2001


3.10.3 Issues for older women and housing

Elder abuse

Elder abuse has been an issue of growing concern in Australia over the last 15 years.250 The majority of victims are women, due to the gender proportions among older people.251

Close family members constitute the majority of abusers and usually live with the victim, some in the capacity of ‘carer’.252 The reasons for elder abuse are often related to their dependence on others, psychopathology in the abuser, or a long history of family violence.253

The physical consequences may include the actual injuries inflicted as well as the results of neglect, such as malnutrition, ulceration, and inappropriate use of medication.254 The psychological consequences include feelings of powerlessness, shame, fear of retaliation from the abuser, and particularly fear of institutionalisation if the abuse is reported.255

Financial housing stress

As indicated above, in 2000-2001, 89% of older persons living in a couple owned their home outright, while 74% of older sole-person households owned their home outright.256 Generally these groups of older people have few immediate

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253 Ibid.
254 Ibid.
255 Ibid.
256 ABS 2001 http://www.abs.gov.au/ausstats/abs@.nsf/46d1bc47ac9d0c7bca256c470025ff87/db4f6881b8cd8538ca256dea00053a4a?OpenDocument
housing costs stress. However, housing repair and maintenance does accentuate financial stresses for elderly people.

In comparison, older households in private rental experience significantly higher levels of housing affordability stress compared with averages for all-age households.257 These economic pressures are particularly high for older women in the private rental sector. This is because rental costs have been escalating and are generally higher than rents in public housing, non-resident retirement villages or homeowner’s maintenance costs.258 Single older women may spend most of their pensioner’s income on rent.259 Moreover, high rental prices often force elderly women on a limited income to live in substandard accommodation, often in poorer and higher risk areas.260

These financial concerns are compounded by insecurity of tenure. Older women, like other tenants, are subject to the vicissitudes of changing owners or to their houses being renovated, and being forced to find new accommodation as a result. Moving becomes increasingly difficult with age and disabilities.261

**Problems with residential mobility**

Propensity to change residence declines steadily with age. Members of the older population may suffer constraints in their mobility due to lack of choice, limited economic resources, poor health and disability.262 The need for assistance in the form of a carer may also act as either an incentive or disincentive to adjust housing or move house.

**Accessibility issues**

Accessibility is closely tied to questions of mobility. Older Australians tend to experience constrained choice in their access to services such as hospitals, transport or leisure activities.263 Older people require access to services such as meals, housework, personal care and general nursing because of illness and disability. These requirements, in addition to an individual’s ability to live independently, and the possible presence of a carer in the home, impact directly on the housing requirements of older persons.

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259 Ibid.
260 Ibid.
261 Anecdotal information provided by the Older Persons Tenants Service, Combined Pensioners Superannuants Association NSW, August 2004.
263 Ibid, p 15.
3.11 Sex Industry Workers

It is estimated that Australia has approximately 20,000 sex industry workers. According to authorities within the sex industry, including the peak organization in Australia, Scarlet Alliance, most of these are women. Between 2% -10% of sex industry workers are said to be street based. Although it is difficult to precisely quantify the proportion of sex industry workers that are tenants, anecdotal evidence suggests that as women generally enter the industry is for economic reasons, it follows that a high proportion of sex industry workers are tenants. Sex workers are commonly discriminated against as consumers in relation to housing.

Due to the illegality of prostitution within many parts of Australia, it is not possible to keep premises for the purposes of sex work. As a result, many women are forced to work from their residential address. This immediately places them in breach of tenancy legislation, and therefore threatens their housing status given that a tenancy agreement may be terminated as a result of a breach. The tenancy agreement may be terminated if permission has not been sought from the owner and included as an added condition contained within the lease. Workers are forced to work alone due to the legal definition of “brothel” involving more than one worker on the premises. This also prevents employment of security guards, drivers and reception staff. In an effort to legitimize the business, a worker may seek a business permit through the local council, on the basis that it is not an illegal activity, however these are not often granted.

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266 Scarlet Alliance, (1997).
Chapter 4. Elements of the right to adequate housing – violations and good practices

This part of the report is looking in more detail of the individual elements of the right to adequate housing. We have chosen to work with 13 elements. The first seven elements, identified as minimum core obligations of Governments by the Committee on Economic Social and Cultural Rights in General Comment 4, are:

1. Legal security of tenure
2. Availability of public and environmental services – including materials, facilities and infrastructure
3. Affordability
4. Habitability
5. Accessibility
6. Location
7. Cultural adequacy.

We have then added six more elements, following the work of the Housing International Coalition – Housing and Land Rights Network. These are

8. Freedom of dispossession
9. Right to information
10. Right to participation and self-expression
11. Resettlement
12. Safe Environment
13. Security (physical) and privacy.

The Case Studies and Good Practices which are contained in this part of the report have been provided by a variety of organisations from across Australia. Although we invited a large number of organisations to provide such case studies, some groups were more enthusiastic than others. We acknowledge that there is dominance by NSW groups. We hope that in the process of circulating this report to groups across Australia, further case studies will be added to this collection.

We requested organisations to alter names and identifying material. We also edited the case studies for consistency and readability. However the case studies are very real examples of instances where women are being routinely denied their right to adequate housing.

268 See HIC-HLRN Tool Kit “Reporting and monitoring housing rights violations and housing policies and programmes”, available from hic-mena@hic-mena.org
269 Note that in the tool kit, HIC-HLRN split Element No. 2 (of those listed by the Committee on Economic Social and Cultural Rights) into two elements: so number 2 becomes Public Goods and Services, with a new Number 3 as Environmental Goods and Services. For ease of reporting we have kept to the seven elements articulated by the Committee, and not adopted HIC-HLRN’s split of Element No.2.
Element 1. Security of tenure

All persons, regardless of their form of tenure, should have a degree of security of tenure, which guarantees legal protection against forced eviction, harassment and other threats.\textsuperscript{270}

A person or household can be said to have secure tenure when they are protected from involuntary removal from their land or residence, except in exceptional circumstances, and then only by means of a known and agreed legal procedure.\textsuperscript{271}

“Forced evictions” are “the permanent or temporary removal against their will of individuals, families and/or communities from their homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”\textsuperscript{272}

Governments have an obligation to implement legislation which forbids such evictions, and they also have an obligation not to approve or implement such evictions themselves. When evictions do occur, the UN Commission on Human Rights has advised that governments must offer immediate, appropriate and sufficient compensation and/or alternative accommodation in consultation with the people who have been evicted.\textsuperscript{273} Governments are also obliged to take measures to guard against homelessness which is the “most severe violation of housing rights” and “reflects a status where all aspects of universally accepted human rights are open to abuse, violation and unfulfilment.”\textsuperscript{274}

In consultations with housing and women’s groups in Melbourne on 10 March 2004, and in discussions with community workers after this date, the following issues were raised in relation to the issue of the right to security of tenure and the right to adequate housing.

Failure of tenancy legislation across Australia to give security of tenure to all people

A recent report released by the National Organisation of Tenants Associations highlights the various deficiencies in the current legislation.\textsuperscript{275}

\textsuperscript{273} UN Commission on Human Rights “Resolution 1993/877 on Forced Evictions” UN Doc E/CON.4/1993/65/122
\textsuperscript{274} UNCHS (Habitat), “Position Paper on Housing Rights”, p. 7
\textsuperscript{275} Blunden & Martin (2004), pp 98-113
Specific reforms needed include (but are not restricted to) the following:

**Residential Tenancies Act 1997 (ACT)**

There is currently a failure to provide tenancy rights for boarders and lodgers as well as residents of caravan parks. These renters rely on the terms of their residency agreements and the common law of contract, which is an inadequate protection of their right to housing.

**Residential Tenancies Act 1987 (NSW)**

Boarders and lodgers, which are an economically vulnerable group in a highly pressurised sector of the rental housing system, have no protection under the Act.

Public housing tenants are subject to specific ‘anti-social behaviour’ clauses which allow for easier eviction. The NSW Government has increased the number of these sorts of clauses, with the most recent being passed in June 2004.

**Residential Tenancies Act 1999 (NT)**

Caravan park residents, who are often women, are not protected by law and are subject to summary eviction.

**Residential Tenancies Act 1994 (Qld)**

There is currently no specialist tenancy tribunal in Queensland. There is only an ability to review tenancy disputes in the Small Claims Tribunal where legally flawed decisions are very difficult to appeal.

**Residential Tenancies Act 1995 (SA)**

Landlords can currently terminate tenancy without grounds, which leads to a general lack of accountability. Furthermore, South Australia does not have any specialist, independent tenant’s advice service.

**Residential Tenancy Act 1997 (Tas)**

In the absence of any regulation of tenancy applications, many owners and agents go far beyond ascertaining the identity of an applicant for tenancy and whether they can pay the rent. Some application forms demand sensitive personal information and are especially problematic in relation to possible discrimination towards women who are from vulnerable and disadvantaged groups. There is also inadequate regulation of rent increases under the current Act and no habitability standards that premises are required to meet.
**Residential Tenancies Act 1997 (Vic)**

Notices to vacate without grounds and notices to vacate at the end of the fixed term of the agreement, allow a landlord, rooming house owner or caravan park owner to evict a resident without having to provide a reason.

**Residential Tenancies Act 1987 (WA)**

There is also a significant lack of access to justice in Western Australia in relation to the Small Dispute Division of the Local Court, with up to 95% of owners orders currently being secured uncontested. This is arguably due to lack of information provided to tenants about their rights and inadequate access to effective advocacy services.

**Case study A: Mental illness and security of tenure**

**What happened?**

Jane lives in a large estate with Sam, her 12 year old daughter. Jane has schizophrenia and is on a Community Treatment Order, which legally obliges her to take medication. She has regular contact and support from the local mental health team and gets on well with her neighbours who over the years have become supportive during Jane’s periods of illness.

A Client Service Officer issued Jane with an ultimatum that she would have to relocate or seek a subsidized private rental flat because new neighbours had put in complaints to the Department of Housing alleging that Jane kept them up at night, behaved strangely and appeared threatening. Jane could not bear to leave her support networks and the trusted relationships she had built up in the area. The new neighbours continued to make complaints to the Department accusing Jane of breaching their rights to quiet enjoyment. They collected statements that her behaviour was erratic and threatening from some of Jane’s neighbours.

At the Tribunal the Department failed to prove that Jane was a threat to her neighbours. In fact one of the ‘key’ witnesses failed to appear. Significantly, the Department also failed to provide any substantial evidence regarding any of the alleged breaches. Jane remained in her flat but the stress and strain of the Tribunal hearing took its toll and Jane was in care for a period whilst she regained her confidence, her trust and faith in people around her, and her health.

**Who was affected:**

Jane and her daughter Sam.

**Impacts:**

Jane and her daughter may be evicted and made homeless. Their next option is a SAAP service. However many SAAP services are not equipped to deal with people with mental illnesses. The only other option is private rental which may not be affordable or accessible given the discrimination single parents face from landlords and real estate agents.
Government’s responsibility:

The Government should conform to its responsibilities under the UN’s Covenants on ESCR and the Rights of the Child. The adversarial culture of the Good Neighbour Policy (a policy of the Department of Housing in NSW) encourages unproductive responses from all parties. Instead of evicting Jane and her daughter, the government should provide adequate and supported housing so that Jane can maintain her tenancy.

Source: Tenant’s Union of NSW

Case study B: Discrimination and security of tenure

What happened:

Mandy was looking for rental accommodation as a result of divorce. She had a stable job and a respectable income. Upon her fourth application for a tenancy, she met with the landlord at the premises. The landlord was happy with her interest in the property and satisfied with her income and references and indicated that she would be welcome to rent the property. They began to discuss when would be a good time to sign the relevant paperwork etc. and he asked her to call him the next day to sort this out. As she was leaving, she mentioned that she was most pleased with how close the property was to her disabled son’s special school. The landlord’s demeanour changed at this (up until then she hadn’t mentioned her parental status) and the next day when she called him as agreed, he told her he had rented the property to someone else.

She asked one of her friends to call him later that week to check on this and the property was still available for rent. The tenancy advisor was obliged to inform Mandy that until there is a tenancy agreement in place, there is no legal relationship between them so she had no recourse under tenancy legislation, and that the landlord had no obligation to tell her why he no longer wanted to consider her application for a lease. The Victorian Residential Tenancies Act 1997 has a section (30) that makes a landlord liable to a penalty (currently $500) if they refuse to rent to someone on the grounds that they intend to live in the premises with a child, however this is very difficult to prove unless the landlord actually confesses to this - the landlord in this case could easily state that they had arranged to rent to someone else who had later changed their mind, for example. The woman was referred to the tenancy service by the Equal Opportunity Commission, who was unable to assist with her complaint.

It is not unusual for landlords and agents to be reluctant to rent to single mothers, particularly those with small children or in this case, if they are disabled. They assume there will be crayon drawings on the walls and cordial stains through the carpet. The fact that landlords have recourse to the bond as security, and can claim extra compensation if necessary as with any tenant who damages the property, does not seem to have any impact on these prejudices. In addition, they tend to view single mothers (not without some justification unfortunately) as having low and/or insecure incomes and therefore not attractive propositions as tenants. It can take a long time for a single mother to secure any rented property at all, much less appropriate and affordable housing, especially if their only income source is a single parent’s pension.

Who was affected:

Mandy and her child.
Impacts:

Mandy and her son would have difficulty finding private rental accommodation due to the discrimination directed at single parents, and people with disabilities (her son). However, due to the discrimination being covert, there is little Mandy can do as landlords are free to rent to whomever they choose and discriminate as they like, as long as they do not get caught voicing their discrimination.

Government's responsibility:

To minimise discrimination by landlords. To ensure that where a person cannot access the private rental market, that they can access public and community housing.

Source: Tenants Union of Victoria

Case study C: New laws regarding “acceptable behaviour agreements”

In July 2004 the NSW Parliament passed the Residential Tenancies Amendment (Public housing) Act 2004.

These amendments deny public tenants fundamental rights and freedoms that the original Residential Tenancies Act NSW 1987 sought to protect.

The reforms centre around the impositions of "acceptable behaviour agreements". The Department of Housing can ask a tenant to sign an acceptable behaviour agreement if they consider that they or their family may engage in anti-social behaviour. Anti-social behaviour is not clearly defined.

If the tenant refuses to sign, then the Department can issue a notice of termination, and if the tenant does not vacate, take them to the Tribunal where the Tribunal MUST evict the tenant. Under the new law the Tribunal cannot consider the tenants' circumstances, such as the fact that they are elderly, sick, or have nowhere else to go.

If the tenant does sign the agreement and the Department of Housing then thinks they have broken the agreement the Department can take the tenant to the Tribunal. At the Tribunal the tenant must prove that they did not breach this agreement. The reforms reverse the onus of proof in these cases. The tenant may have difficulty proving that they have not breached the agreement. e.g. if the agreement is that the tenant shall not deface public property, and the Department alleges that the tenant has done certain graffiti, how could the tenant possibly prove that they did not do it?

If the Tribunal is satisfied that the tenant did seriously and persistently breach the agreement, they MUST terminate the tenancy. Again, the Tribunal cannot consider the tenants' circumstances.

If one person in the house signs one of these acceptable behaviour agreements, then all the other people who live in the house are bound to the agreement as well. For example if the tenant signs an agreement not to congregate in the communal areas and then their teenage son is caught hanging out in the corridors, even if they didn't know he was doing it, then the whole family could be evicted. If it goes to the Tribunal, the Tribunal cannot consider the fact that the rest of the family have not done anything wrong and that if evicted the whole family will be homeless.
The new law also makes it possible to evict a tenant for harassing Department of Housing staff. This includes making repeated phone calls, even if no threats are made. It is easy to see how this could be used to intimidate tenants, and make them less confident to report repairs and other problems.

Tenants advocates across NSW believe the reforms give too much discretionary power to Department of Housing workers. This leaves public tenants open to discrimination and removes the Tribunals power to consider the appropriateness of the Departments actions. We believe these reforms will be used to evict the most vulnerable of tenants, in particular those with mental illness, without proper judicial scrutiny.

Source: Inner Sydney Tenants Advice Service

Element 2: Public and environmental goods and services

Adequacy of housing means sustainable access to public services such as safe drinking water, sanitation, sewage and waste disposal, washing facilities, energy for cooking, heating lighting, transport, fuel, communication. These must be accessible and adequate, based on the needs of the community. The government must regulate any distribution and provision by private industry and prevent corruption. The government must also ensure sufficient infrastructure is in place.276

In Australia, privatisation is an issue in relation to services such as electricity and gas. If people cannot afford to pay their bills, they lose this basic right. Although there are Ombudsmen which often oversee the private suppliers of such services, many disadvantaged communities simply do not know that they have rights to get services re-supplied.

“Environmental goods and services” refer to the natural resources communities require for survival and livelihoods (i.e. energy, water, land, building materials). Access to natural resources must be sufficient to meet community’s needs and the State must regulate distribution and efficient delivery. Governments must ensure reasonable access to land, equitable distribution of land (particularly for poor households and other marginalised and vulnerable groups), implement land reforms, and protect the landed property rights of land-based and Indigenous peoples from encroachment. Governments must also ensure clean and safe water is reliably accessible in adequate quantities for individual, family and community use and agricultural needs. Adequate infrastructure must be in place to ensure sufficient, affordable and easy access. The State must ensure against pollution, and protect against environmental degradation of water sources.277

In Australia, access to land for Indigenous people is a crucial issue. Refer to the information earlier in this report regarding Indigenous people.

Homeless people are a group which face an uphill battle getting access to basic services.

During consultation with groups in Canberra on 23 April 2004, the following issues were raised in relation to the issue of the right to access to services and the right to adequate housing:

**Case study D: Intellectual disability and access to services**

*What happened:*

Betty is a young woman, 19 years old, with an intellectual disability and a background of significant sexual abuse. She was provided a government house - this was her first experience of independent living. But for her accommodation to be adequate she needed 24 hour support, as she did not know how to cook, what to do when her periods arrived, had limited independent living skills and was not able to ensure her own safety in the home.

However, as her impairment was never assessed by the government, she did not receive any support to address her mental health issues and or her lack of independent living skills. To get help, she asked strangers to live with her and ended up with drug deals and sex work taking place at her property. Consequently, an uncle she did not know very well moved into her government house, with her, at her family’s request. However, he denied her access to finances and her freedom of movement by controlling her money and keycard, not giving her keys to her property and often verbally abusing her. Unhappy in the situation she stopped staying in the house, staying out on the streets instead, which resulted in several sexual assaults.

In August 2003 the young woman went missing and ended up in Far North Queensland in a domestic violence shelter. She has since been moving from one shelter to another all over the country. Recently she stayed in an unregistered boarding house in Red Hill, where she again faced risks of violence from other boarders.

In November 2003 the Queensland Department of Housing ended her tenancy for the government house, because she had stopped paying the rent when she left the house because her uncle had moved in. The Department is now claiming rental arrears from her.

If her mental health problems were classified as a disability she would be able to make a claim for supported accommodation. The Disability Services Queensland (DSQ) were willing to assess the level of her impairment, but are not willing to commit services to assist her secure safe and adequate housing.

*Who was affected:*

The young woman.

*Impacts:*
The specific housing needs of women with mental health and women with disability, including supported accommodation, 24 hour assistance, are critical for them to be able to have long-term, safe housing. Due to the lack of adequate housing and support services, she became homeless and transient, she was unable to find stable employment (because she constantly missed appointments and was not able to attend employment training as her life was in such a state of crisis); she was more vulnerable to sexual assault and physical health problems (i.e. STIs, poor nutrition, hygiene); she lost much of her furniture and belongings; and the continuing trauma exasperated her mental health problems.

Government's Responsibility:

• To assess the young woman’s impairment levels and consequent support needs
• To ensure that adequate support systems were made available to allow her to live independently
• To ensure that adequate and appropriate housing was provided
• To prioritise provision of accommodation and support services for her as was at significant risk of violence and health problems due to her housing situation
• To take her situation into consideration in determining their claim for rental arrears.

Source: Othila’s Young Women’s Housing and Support Service, Qld.

Case study E: Access to services and homelessness

What happened:

Xena is a woman in her early 30s, with an intellectual disability and a history of chronic homelessness. Her mother died when Xena was young and she had been living with her father, a chronic alcoholic, in a squat with several other men.

Xena became known to welfare services over many years, but because of her disability and non-compliance with welfare workers’ instructions, Xena was not considered suitable for emergency accommodation programmes. She was not considered eligible for Department of Housing because it was felt she could not live independently and needed a high level of support. Disability Services were reluctant to work with her because of her chronic homelessness and because there is no emergency accommodation for disabled people.

Xena was therefore left alternating between the squat and the streets. She was unable to manage her money, and was regularly exploited and robbed by other street people.

Xena was physically and sexually abused in the squat, resulting in an unplanned pregnancy, and a child who was adopted out. The pregnancy left the client with chronic incontinence, which increased the reluctance of housing services to give her accommodation.

A community organisation began casework with Xena. It applied for a financial protection order, to manage her money so that other people did not steal it. The organisation applied to the Guardianship Board for a public guardian to be appointed. With the help of the Guardian, the organisation persuaded Disability Services to provide Xena with accommodation and a disability package, which included carers. The process took 2 years largely because of the reluctance of one government department to assist Xena.

Who was affected:
Xena, her child and the organisation who spent time attempting to find her appropriate housing.

Impacts:

While living in these conditions Xena suffered from poor health, loneliness and isolation, lack of support and education, and was at high risk of violence and exploitation on an almost daily basis. Her child, conceived as a result of sexual abuse, was adopted out and will not know her biological mother. Xena continues to grieve over the loss of her child.

For 15 years she was denied basic rights, including housing. Between the death of her mother and the day she entered her own home, Xena was malnourished, abused, robbed, reviled, lonely, poor, neglected and left to fend for herself by a system that ought to have protected and nurtured her. Once Xena was given the opportunity to be housed and cared for, her life improved immeasurably. Her health improved, she is happier and living free from abuse and exploitation. She is learning living skills and is involved in the community.

Government’s responsibility:

To protect children at risk of violence or abuse
To ensure children are educated
To provide adequate housing which is appropriate to the needs of the individual
To have access to specialised disability support services
To be given financial support

Source: Women and Girl’s Emergency Centre, NSW.

Case study F: Immigrant status, divorce and access to services

What happened:

The family violence Housing Pilot was contacted with a request to assist Anna and her daughter Indigo to leave Maribyrnong Detention Centre and find housing.

Anna and Indigo entered the refuge after escaping a violent relationship with Anna’s husband, who had sponsored them to come to Australia from Bulgaria. At the time Anna and Indigo remained in Australia on Anna’s provisional spousal visa. They had been in Australia for approximately 18 months. The staff of the refuge did the appropriate thing and informed the Department of Immigration and Multicultural Affairs (DIMIA) that Anna and Indigo’s residential details had changed. DIMIA requested that Anna and Indigo attend at DIMIA in person. At the meeting at DIMIA, they were told that they were illegal as their application for a permanent spousal visa had been rejected Anna’s husband had not informed DIMIA of their whereabouts. Anna and Indigo had not known this as Anna’s husband had reportedly hid all DIMIA correspondence from them and had not informed them that their application for a permanent spousal visa had been rejected. DIMIA took them straight from the DIMIA office to Maribyrnong Detention Centre. They were not permitted to return to the refuge to collect their belongings.

Anna and Indigo would not be released from detention without accommodation. On the day that Anna and Indigo were due to be released from detention, I received a phone call from the client’s lawyer who needed me to confirm to DIMIA that I would guarantee the clients housing and all other material support until their first court hearing in 2 months time. I stated that I could not provide them with material support as I was only a housing
worker and had only guaranteed to find them housing, and that I had assumed they would receive a special Centrelink payment. Their lawyer said DIMIA had refused to grant them a Centrelink benefit and that they would not be released unless I could guarantee their material needs would be met.

I faxed a letter to DIMIA stating that I would guarantee their housing and immediately received a phone call from their case manager at DIMIA who stated that they would not be released unless I would guarantee their material needs would be met for the subsequent two months. In the conversation that followed he stated that they would not receive Centrelink benefits and put to me that “if you cannot guarantee their material needs will be met they will not be released from detention. It’s your decision- yes or no.” I wanted for him not to refuse to release them but to agree to provide them with a Centrelink payment. Eventually I stated “It is impossible for two people to live in this country for two months without money for food, transport and medical needs.” He replied “No it’s not”. I asked, “How?” He replied, “In our detention centres”.

I agreed to guarantee the fulfilment of their material needs as I could not in conscience allow them to remain in detention. For the next 4 I assisted Anna and Indigo almost daily to obtain food vouchers, food parcels, utilities relief for electricity and telephone bills, emergency medical treatment, travel tickets and assistance for Indigo (who was 18) to remain in school, from a vast number of charitable organisations around Melbourne. Eventually, after being told at their last adjournment that their case had been adjourned for almost one year for DIMIA to obtain sufficient evidence, their provisional spousal visa was re-granted.

Who was affected:

Two women, Anna (aged in her mid-forties) and her daughter Indigo (aged 18).

Impacts:

Short-term:
Extreme financial hardship for over 4 as the women received no income uncertainty regarding food security; lack of services (heating in winter, telephone) as uncertainty around payment of bills; difficulty in obtaining medical attention; inability to leave apartment (particularly in Anna’s case) where unable to obtain travel tickets; extreme psychological stress due to uncertainty of situation and precariousness of living situation; fear engendered by thought partner in order to obtain living assistance; domestic violence-related homelessness and fear of continued homelessness (fear of eviction by transitional housing manager as housing was supposed to be short-term, and Anna and Indigo were unable to pay requisite percentage of rent).

Long-term:
Re-victimisation by DIMIA and Australian immigration system of two women who had already been victimized because of domestic violence; failure of State to take responsibility for domestic violence-induced homelessness of these two women, but forcing them (and their support services) to accept this responsibility, thus perpetrating feelings of self-blame by these women; failure of State to recognise women’s circumstances as resulting from domestic violence (they were ‘illegal’ because as part of that Anna and Indigo would have to re-initiate contact with violent husband’s abuse, he had allowed their visa application to be rejected, and had withheld vital information from them) but holding them accountable, thus perpetrating feelings of self-blame by the women; fear of 3 only apparent “choices” available to these women- forced initiation of contact with violent ex-partner, return to detention, or deportation- as State refused to accept responsibility for their material and housing needs; perpetration of attitude by
DIMIA that detention is an appropriate accommodation option for women escaping domestic violence in Australia.

Government’s responsibility:

Federal Government- responsibility to support women escaping domestic violence; responsibility for humane detention system; responsibility to provide ‘adequate housing’- which is NOT fulfilled by provision of incarceration in detention centre.

Source: Family Violence Housing Pilot Project at Women’s Health West.

Case study G: Mental illness and access to services

What happened:

Two women contacted the tenancy service. They were related and were non-English speaking migrants. Both have schizophrenia and delusions of persecution. There were many complaints from neighbours due to noise caused by the tenants. The police came to serve summons for AVOs brought by the neighbour and the tenants allegedly set the door on fire to prevent the police entering.

The NSW Department of Health told the NSW Department of Housing that they should arrange for guardianship and a community treatment order before they could rehouse them. The Department of Health lodged an application for guardianship and told the department that they could not issue a treatment order before they were released. The Department of Health told the Department of Housing that they would keep the women in the hospital and not release them back into the property as they believed that this would create a threat to other neighbours. This was unsuitable for the women as they were detained in hospital for 3 months without their consent. They were also separated which caused them anguish.

After 3 months the Department of Housing initiated termination proceedings in the Tribunal. The Tribunal terminated the tenancy on the basis that they created a danger to other tenants. The tenancy service assisting them led evidence from the psychiatric nurses that there was no supported accommodation available and the women would effectively be made homeless if evicted. The Tribunal Member ignored this evidence and said that she was sure that a church organization could be found to house the clients.

The Department of Housing NSW made undertakings that the clients would be rehoused if they were under a guardianship order and on a community treatment order. These requirements have now been met.

The Department of Housing has rejected the client’s application for rehousing. The women are now living in a private boarding house. There is no security in this accommodation and they do not have any protection under the Residential Tenancies Act. The boarding house is up for sale and will most probably be shut down.

Who was affected:

The women and their neighbours were adversely affected because the women were not housed in adequate housing.
The staff of the advocacy service and the nurses at the psychiatric wards were traumatized by the case and the way the women were evicted so easily by the Tribunal.

**Impacts:**

If the women are not housed in supported accommodation it is likely that they will be unable to manage their illnesses. This places their lives, and potentially those around them, at risk. Living in the private market means that they are paying more rent and will have very little money left from their pension to live on.

**Government's responsibility:**

The government must provide adequate housing. Supported accommodation is at present at critically low levels. This means that many people with serious mental illnesses are living in Department of Housing properties without proper medical care and support. This has negative ramifications for them and their neighbours.

The Federal and State governments should provide more money for health so that there is adequate care for people with mental illness in the community.

The separate arms of government should better communicate to produce more cohesive and compatible solutions to inter-departmental problems.

The Tribunal members should receive more factual information about the shortage of supported accommodation, and the responsibility of the state to provide adequate housing.

*Source: Inner Sydney Tenants Advice and Advocacy Service, NSW.*

**Good Practice 3: The Come in Youth Resource Centre – Young Mother’s Program**

The Come in Youth Resource Centre in Paddington, an inner-Sydney youth service, sees clients aged from 14 to 24. All are marginalised in some way whether through homelessness, sexual abuse, mental illness or disability. The centre provides a variety of services including a drop in centre, recreational activities, counselling, housing, literacy tuition and a Young Mother’s Program.

The Young Mother’s Program was established 13 years ago in response to young women accessing the youth centre while pregnant or with children. The program aims to break the cycle of abuse and trans-generational homelessness by supporting young women to make different choices in the way that they raise their children. The program has a weekly group component as well as access to individual and family therapeutic and casework support. The group is staffed by professionals and volunteer staff, with early childhood, parentcraft and counselling expertise. The service is free and potential participants contact the program coordinator in order to arrange access to the program.


**Element 3. Affordability**
Adequacy of housing means that the costs of housing are not so high as to threaten other basic needs. Governments must regulate the market and provide access to financial resources (i.e. wages, loans, grants, cooperative schemes, subsidies etc…) so decent housing is affordable. Finance should be provided on an equitable basis particularly for vulnerable and marginal groups and victims of injustices of historic discrimination.278

In Australia, there is no universally accepted benchmark for affordability. While most State housing authorities use a 25% benchmark, the 1991 National Housing Strategy Housing used a 30% benchmark. Affordable housing advocates have argued that for people on low incomes, even 25% is too high a rental cost to leave adequate income remaining to meet other costs of living.279

At the consultation held in Canberra on 23 April 2004, the following issues were raised in relation to the issue of the right to affordability and the right to adequate housing:

**Case study H: Women with complex needs and affordability**

*What happened:*

Jessica is a young woman, identifying as a lesbian, with a history of drug and alcohol problems and mild psychiatric illness. As a child Jessica had been in several foster care placements. Since becoming an adult had stayed at several youth shelters, women’s shelters and supported accommodation services. Due to her problematic behaviour the young woman was banned from most of the emergency accommodation services in Brisbane. Additionally she was blacklisted on TICA (a ‘bad tenant’ data base run by a private company) and has a bond loan debt with the Queensland Department of Housing.

She was placed in a Community Rent Scheme. However, the CRS rent policy assessed rent on her gross income which came to $95 per week. This did not leave her sufficient income to make her repayments to the Department of Housing, outstanding fines and other debts. As a result she incurred further debt and was evicted because of rent arrears. She is currently living in a boarding house, which is not a safe culture or a culture good for her emotional status.

*Who was affected:*

The young woman; the Community Rent Scheme.

*Impacts:*

This young woman’s housing distress compounded her underlying psychological issues and financial disadvantage.

**Government’s responsibility:**

Commonwealth: Women on Centrelink benefits experience financial stress and poverty particularly if they have come in contact with the justice system. Tenancy databases exclude many women from the private rental market.

State: State housing services need to be held accountable for discrimination against women accessing services (i.e. young women, old women, lack of bond, drug and alcohol issues, history of behaviour etc.). There are large waitlists for emergency accommodation and CRS services and women with multiple issues are often not provided with adequate support to maintain tenancies even if they are housed. Young people leaving the care of the Department of Families should be provided appropriate support for transition into independent living.

*Source: Homeless Outreach Program, Inner City Brisbane, Queensland.*

**Case study I: Serious illness and affordability**

**What happened:**

Lisa, a 34-year-old single woman suffering from cancer explained her housing problems thus:

“Being a single woman with a single income left me with no financial support except for sickness benefits. Apart from the sudden loss of income from not being able to continue in my job, other expenses such as medications, doctors’ fees, transport to appointments stretched my ability to pay for food, electricity and rent. My Centrelink benefit simply did not cover my living costs and I had to find alternative accommodation, as I have no family in Victoria. The only accommodation I could afford was in a boarding house. This presented a new list of problems, which hindered my long-term health needs.

“The treatment I received left me with permanent muscular spasms in my back, which requires daily doses of morphine. Without these painkillers, I would not be able to live independently. The boarding house in which I lived was all female. The ages ranged from 20 to 85 years. Each tenant faced some type of illness from alcohol and drug abuse to psychiatric or other illness such as me. However the broadness of these medical problems made co-habitation very problematic and therefore made housing an issue that was detrimental to my overall recovery from cancer and long-term health needs. The problems I faced were violence from other tenants with psychiatric problems, health risks associated with drug users such as syringes being left around common areas, disruption to sleep by drunken behaviour….”

When seeking help from various welfare agencies and even the chemist who dispensed my medication, people were aware of the boarding house where I lived and … I was therefore judged accordingly – that because I lived there, I must have a drug or alcohol problem when in fact it was the only form of accommodation I could afford. I found myself in a situation where I had no control and experienced severe depression and isolation, as I couldn't let people see how I lived. I had gone from a full time job and part time university studies to living each day with violence, ill health and despair all because I couldn't afford to live in private rental and the public housing waiting list, even for early housing is years.
“If it wasn’t for the help I eventually received after 3 years to move to a transitional housing flat I would still be unable to continue with tests to check if my cancer has returned.”

Who was affected:
Lisa.

Impacts:
In Lisa’s words, “It shows that without one’s health, even a small issue like housing becomes one of the most important issues in your life. Without appropriate housing, my right to proper health care was taken from me. Without housing, my rights to fair treatment within society was taken from me and without housing every area of my life and well being, my right to just exist fairly is taken away.”

Government’s responsibility:
To ensure Lisa was able to locate permanent accommodation which was appropriate to her health and other needs
To prioritise the location of such housing, given Lisa’s precarious health situation
To increase funding to public housing so that people in Lisa’s situation would have better access to such housing

Source: AASW Response to the Productivity Commission’s Inquiry into First Home Ownership

Element 4. Habitability

Adequate housing requires sufficient space and protection from the elements. Conditions conducive to disease and structural hazards should be removed.280

At the consultation held in Canberra on 23 April 2004, the following issues were raised in relation to the issue of the right to habitability and the right to adequate housing:

Case study J: Women with larger families and habitability

What happened:
Amy accessed a refuge with four of her children and stayed there for four months. She had been on the Queensland Department of Housing waiting list for three years before this. She was offered a house in a country area however her support worker stated that it was an unsafe area for a single mother and children. The father also needed visitation access to the children. She refused the accommodation. She was put at the bottom of the housing wait list.

She then moved in with her mother, sister and brother-in-law. Altogether there were 11 people in the one house and she has remained in the house for 11 months now. She worked with an advocate to have her waiting time reduced and this was successful.

*Who was affected:*

Amy, her children and extended family.

*Impacts:*

Stress on family members who own the house. The stress of Amy and her children not having privacy and too many other house members. Depression and helplessness, instability for children in relation to school. Not being able to continue study as environment not conducive to study.

*Government’s responsibility:*

To help a woman and her family who are escaping from domestic violence to have an easy transition to stable housing to minimise further stress and disruption to children and mother.


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**Case study K: Detention centres and habitability**

*What happened:*

A family of five were placed in a detention centre. They were allocated a small cubicle about the size of a railway compartment. Instead of a door there was a curtain that did not reach the ground and would cover an adult of average height from about the neck to the knees. The beds were bunks. There were six such compartments in a small, enclosed area. There was therefore very little privacy or soundproofing.

Being winter, it was very cold. The building was poorly insulated and there was only one small heater between the six families. There were constant fights over who would have the heater near their compartment. To keep warm, families huddled together on their beds wrapped in blankets.

*Who was affected:*

The family of five. The other people in detention.

*Impacts:*

Adverse psychological impact from being in detention. Pressure on adult relationships from being deprived of privacy. Psychological impact of being in conflict with other families for essentials such as heat.

Physical impacts from being exposed to the cold and overcrowding.

*Government’s responsibility*

Not to detain people without just cause. There is no basis in UN covenants for detention of asylum seekers.
To provide accommodation which is habitable i.e. protects people from extremes in temperature, provides privacy and is not overcrowded.


Case study L: Health and habitability

What happened:

Vera is an older woman who resided in public housing. She had been a tenant for over ten years. At the time her tenancy commenced, the family included herself and one son. From the time she commenced the tenancy, the NSW Department of Housing did very little maintenance on the property. The only repairs done were repairs to the stove. The house was a basic 2 bedroom fibro cottage and was already in need of repair when she took occupation.

By the late 1990 the household had changed. Her son had formed a de facto relationship and they had a young child. The son had also been diagnosed with a very serious medical condition. His condition did not respond to medical treatment and the only hope was for an organ transplant. For cultural and medical reasons the son and his family lived with his mother.

The premises had become a health hazard to the family as basic things such as windows could not be opened. Adequate ventilation was essential to maintain the son’s health. The Department refused to do repairs. Vera had also requested a transfer to larger accommodation to reflect the needs of the growing family. The Department refused to approve the transfer on the grounds that it was the family’s problem that the son was in a relationship and could move away from his mother. There was no recognition by the Department that the family needed to stay together, or even acknowledgement that it was a very traumatic time for the family and that the mother wanted to spend time with her son. The family eventually relocated to the private rental market.

After the son’s transplant he could not return to the premises because the house was a health risk to anyone with suppressed immunity. In order that the son could have adequate housing Vera was forced to give up the security of public housing and return to the private rental market. In Sydney today secure rented housing is priceless.

After moving out the house was left vacant by the Department and eventually declared excess to needs. The cost of bringing the house up to Departmental standards was too high, especially as the house was on a large block of land. The house and neighbouring properties have now been sold to a private developer.

Who was affected:

The family.

Impacts:

The family lost the security and affordability provided by a Department of Housing tenure.

Government’s responsibility:
The Department of Housing could have agreed to transfer the family to more suitable premises where the son’s health requirements could have been met.

*Source: Southern Sydney Tenants Advice and Advocacy Service.*

**Case study M: Housing policies, overcrowding and habitability**

*What happened?*

Jacqui and her 8-year-old daughter were granted approval to move into her parents’ 2-bedroom NSW Department of Housing property. This was done so that the grandparents could share in the child raising responsibilities.

The neighbour said that he would do a mutual exchange so that the family could live in his 3-bedroom property and he could live in their 2-bedroom property. This arrangement was agreeable to both parties.

The Department rejected the application on the basis that the household income was too great. No one in the house was employed; all received a government benefit. Despite this they were above the policy limit for mutual exchange.

The Department said that they should apply for a separate unit instead of living with the parents. The family did not wish to be separated.

*Who was affected:*

Jacqui and her daughter.

*Impacts:*

Jacqui and her daughter are denied privacy by having to share the same bed. The situation will only get worse as the child goes into puberty.

*Government responsibility:*

The government has a duty to provide adequate housing. The income limit imposed in their policy is arbitrary and creates damaging overcrowding situations.

*Source: Inner Sydney Tenants’ Advice & Advocacy Service.*

**Element 5. Accessibility**

The government is obliged to make sure everyone has equal access to secure place to live in peace and dignity. This includes access to adequate housing and resources, including land, infrastructure and sources of livelihood, and special housing needs for disadvantaged communities, including the elderly, mentally and physically ill and the disabled.\(^{281}\)

During consultation with groups in Melbourne on 10 March 2004, the following issues were raised in relation to the issue of accessibility and the right to adequate housing:

- Public housing often fails to adequately provide for the special needs of disadvantaged members of the community, such as the elderly, people who have mental or physical health issues, and people who have caring obligations.
- Welfare recipients, single mothers and people with special needs are often discriminated against in the private rental markets, seriously affecting the accessibility of housing to those groups.
- There are many barriers to the provision of modifications to homes to make them accessible to people with disabilities, the elderly, or women with young children. For example:
  - within public housing, there is often a long waiting list for modifications;
  - private tenants must return the property to the original condition at the end of their tenancy;
  - if the home is privately owned, the owner in NSW must pay for the modifications; and
  - in WA modifications are made only at the discretion of the building manager.

Case study N: Inappropriate housing, disability and accessibility

What happened:
Sue, a single woman in her 30s has multiple impairments including Multiple Sclerosis (MS) and diabetes. She was forced to live in a refuge in a regional area within NSW because the Department of Housing were unable to provide her with an appropriately modified residence.

Who was affected:
Sue, the refuge and other women requiring accommodation at the refuge.

Impacts:
Due to the fact that Sue had to live in a refuge on a long-term permanent basis, the refuge was unable to assist other women who were in desperate need of temporary accommodation.

As the refuge is designed as a short-term place of residence, it was unable to provide Sue with an environment that would allow her to settle and maintain an independent lifestyle. Sue started to question whether she would actually obtain appropriate housing, and this doubt caused her to develop depression.

Government’s responsibility:
It is the responsibility of the NSW Government to have adequately modified housing dispersed throughout the state including in regional areas to avoid the situation outlined within this case study occurring again. The Department of Housing needs to increase its stock of modified and adaptable housing stock and ensure that this increase occurs across the State.

Local governments need to develop Development Control Plans that insist on 100% adaptable housing.

Source: People With Disability Australia Incorporated

Case study O: Inappropriate housing, disability and accessibility

What happened:

Elizabeth, an epileptic woman, who had been given inadequate housing and treated inappropriately by the Department of Housing.

Elizabeth had a traumatic childhood. She was one of 13 children removed from her parents by DOCS when she was aged 10. She lived in an orphanage in a number of foster homes and was under the State’s protection until she was 21. She was also raped by her father when she was 12.

She has quite severe epilepsy, which may have been caused by her traumatic experiences, and as a result she has been in and out of hospitals over the years.

She applied for public housing in early 1980s after epileptic fits put her in hospital. She was not accepted. Due to her condition she didn’t follow this up. The NSW Department of Housing later claimed that they lost her application form.

She spent a significant period of time in hospital. Some nurses put in a priority housing application for her which was approved. The Department of Housing took her straight from hospital and showed her a property in a complex built for people with disabilities. She agreed, under some duress as the Department told her that if she did not accept it she would go back to the bottom of the list.

The complex housed mainly elderly people. She moved in but started to experience problems. Many of her neighbours had hearing impairments. She claimed that they played their TVs and radios so loudly that she experienced a greater number of epileptic fits. There was conflict between herself and her neighbours.

She received a notice of termination for noise and nuisance. This was because she had asked her neighbour to turn their radio and television down. The Department has informed her that they are definitely going for termination.

Who was affected:

Elizabeth; the other tenants.

Impacts:

Elizabeth is living in an inappropriate facility where she is isolated from her neighbours. Many of her neighbours are quite deaf and a lot of them do not speak English. There is also a stigma surrounding her epilepsy, which adds to the isolation.
Her doctors are concerned that she is living by herself in this way. There does not seem to be a steady stream of help for her medical condition.

If she is evicted she has nowhere to go. She has no family to support her and is quite ill. She is due to go into hospital in a few weeks.

Whilst she claims she is not depressed, it is clear that she is experiencing immense psychological pressures. She is distraught about being evicted and has been living in an unworkable situation having signed the agreement under duress.

Government’s responsibility:

The Department of Housing had a clear responsibility to provide appropriate housing for her needs but instead have placed her in an isolated environment where there is no support for her condition. The Department of Housing behaved improperly in coercing her to sign the agreement.

Source: Inner West Tenants Advice and Advocacy Service, Sydney NSW.

Case study P: Inappropriate allocation and accessibility

What happened:

A young Indigenous woman named June and her young child were approved for priority housing with the Department of Housing. The first offer was for a unit which was up a few flights of steps. The client rejected the offer on the basis that it was not reasonable as she could not transport her child, the pram and any shopping she had up the stairs.

The Department said that the offer was reasonable, and also offered her another property which was up flights of stairs as well. The Department of Housing client service officer said that June could carry the baby up to the house, put her in the cot and then go down and pick up the shopping and the pram. This is not an adequate solution as it requires leaving the baby unattended, and also risks the theft of the shopping and pram as the property is in a high crime area.

We advised the client that she could appeal this decision but she decided to accept the property because if her appeal had been unsuccessful she would have lost her priority status. The client is now applying for transfer.

Who was affected:

June is stressed by having to leave her baby unattended. The baby is being placed in danger by being left unattended.

Government responsibilities:

The Department of Housing must provide adequate housing. A single mother with small child must be recognised as having access issues due to the use of a pram. It is inappropriate to house her in a property with stair access and no lift.

Source: Inner Sydney Tenants’ Advice and Advocacy Service
Element 6. Location

Housing must be in a location where there is access to employment options, health care, schools and other social services. Transport must not be excessive in either time or cost.²⁸²

During consultation with groups in Melbourne on 10 March 2004, the following issues were raised in relation to the issue of location and the right to adequate housing:

• Choice of location is a real issue for women – public housing will not allow them to specify a the specific area in which they wish to live, rental assistance is insufficient to provide choice within the private rental market, discrimination affects the level of choice available to Centrelink recipients and single mothers, and Centrelink penalises people who move to rural areas or areas of low employment.

• The location of public housing does not adequately respond to the special needs of particularly groups, such as those with mental or physically health issues, the elderly or those with caring obligations.

• Culturally specific needs, such as proximately to community or Aboriginal medical services, impact on the appropriateness of the location of housing for Indigenous women.

Case study Q: Small towns, domestic violence and location

What happened:

The lease was in both names of a couple with small children. Jesse, the woman in the relationship, was subject to domestic violence. Her partner trashed the house they lived in and left. She is now trying to repay the damage but is finding it extremely difficult. If she is evicted she it is unlikely she will be able to find a new place to live in town. In a small country town people will know her history, and she will be marked as a bad tenant due to the damage to the first property.

Her ex-partner still comes around and causes problems. Her mother and sister live in the town and they are the only family she has.

Who was affected:

Jesse and her children.

Impacts:

Living in a small town, access to services is extremely limited. It is difficult to leave a DV situation and move to another town because mothers are often dependent on their extended family for support.

The financial impact is that women stay in poverty much longer. With larger families women have the onerous task of trying to pay the rent of multi-bedroom premises. This results in health problems – overcrowding people living in poor accommodation; children

suffering nutritionally due to inadequate diets; children missing school; people without water and living within extremely isolated communities.

Psychologically there is the ongoing anxiety of living in such conditions not to mention the trauma of specific incidents. There is also anxiety and stress over future events, particularly regarding the threat of eviction.

**Government’s responsibility:**

The government has responsibilities in rural towns which haven’t been met. This is particularly the case with the Department of Housing, which have severely abrogated their responsibility to provide adequate housing.

Overcrowding as a result of DOH evictions has led to unsanitary living conditions of which the Department of Health and Department of Community Services have responsibilities. The provision of education for these families is also very poor.

Tenancy workers in rural towns are consistently faced with these problems particularly in relation to women and their families who are trying to survive in an unworkable situation.

*Source: New England Tenants Advice and Advocacy Service, NSW.*

**Case study R: Housing allocation and location**

**What happened:**

Nyree is a domestic violence survivor. She is a New Zealand Indigenous person. Her son is in his early twenties. Her daughter is in high school.

She sought the assistance of a tenancy service when she was in a refuge for domestic violence victims after she was physically assaulted by her ex-partner. She has taken out a number of Apprehended Violence Orders (AVOs) throughout the years. Due to various reasons including her need to care for her children, the AVOs had not been very effective in protecting her from the violence.

She and her family lived in one of the eastern suburbs for a number of years after she migrated from New Zealand approximately 20 years ago. All her family support is in the eastern suburbs.

Approximately 15 years ago, Nyree left her home, leaving her son and the DV perpetrator shortly after the birth of daughter. The NSW Department of Housing allocated her a property in the western suburbs despite the women’s strong locational need for the eastern suburbs. She developed depression as a result of being away from her support network and her fears for the well-being of her son (who remained with his father). She left her public housing and returned to live with the perpetrator about 6 months later.

The perpetrator continued to exert control over Nyree and her children by aggravating the son’s aggressive behaviour e.g. kicking his dog. Her daughter also developed problems at school.

Despite her desire to move with her children away from the continual violence, she had no financial means to do so. She continued to live between her family home, refuges and her friend’s place for many years.
She sought the tenancy service’s assistance in mid 2003 when the refuge she was in served her a notice of termination. Her priority housing application was declined during her stay at the refuge. The tenancy service assisted with internal appeal at Department of Housing, which was declined. We subsequently assisted with appeal to the Housing Appeals Committee, which recommended approval of her priority housing. She was finally allocated with public housing in her local area close to her supports.

Who was affected:

Nyree and her 2 children.

Impacts:

Nyree was forced to live in an unsafe home in which she had to endure physical and emotional abuse on an on-going basis until she received public housing despite the DV policy of Department of Housing to provide DV victims with priority housing. She did not have the financial independence to set up a home with her 2 children in the private rental market.

The delay of 15-20 years in granting her adequate public housing meant that she has to endure physical and emotional abuses. She has developed a long history of depression. She has low self-esteem. She was unable to re-skill herself to secure employment that would provide her with sufficient income to secure her own housing in the private rental market. Her children have developed aggressive behaviour after years of witnessing violence. Her daughter has problems at school.

Government’s responsibility:

The NSW state government through Department of Housing has instigated a DV policy to house DV victims but there appears to be gaps or deficiency in understanding the cycle of DV and the needs of DV victims. Upon discharge from the refuge, the client was left with the options of either being homeless or to return to the perpetrator with her children. This case highlights the difficulties whereby despite the State providing legal redress in the form of an Apprehended Violence Order under the Crimes Act as well as Department of Housing domestic violence policy to assist DV victims, women can still be dispossessed of her home as a result of violence.

Source: Eastern Area Tenancy Advice and Advocacy Service, Bondi, NSW.

Element 7. Cultural Appropriateness

The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Governments should ensure the participation of all cultural/religious groups in planning.283

During consultation with groups in Melbourne on 10 March 2004, the following issues were raised in relation to the issue of cultural appropriateness and the right to adequate housing:

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• Few public housing authorities refer to cultural appropriateness in their guidelines for allocation of housing.

• Particular cultural issues include:
  - Some cultural groups don’t want open plan living – they may require separate rooms for men and for women.
  - Some communities may wish to cook on the floor and find it difficult to find housing that is not carpeted.
  - Public housing often restricts the ability of families from having their extended family stay with them.

• The different ways in which people use their houses could expose them to complaints by neighbours or landlords – eg cooking outside or on a BBQ in the front yard.

Case study S: Large refugee families, housing allocation and cultural appropriateness

What happened:

Abok, a Sudanese widow whose husband was murdered, came to Australia on humanitarian grounds with her 9 children. Her case illustrates a common problem among refugee women and their families coming to Australia on humanitarian grounds and particularly those coming from African countries where many of their husbands have either been killed or imprisoned.

The government did not make any housing provisions for her and her family. The Federal Government (Department of Immigration and Multicultural Affairs) said it was the State’s responsibility. The State (through the NSW Department of Housing) inadequately dealt with the problem and the family of 10 was homeless. They were locked out of the private rental market because, coupled with racial discrimination, no landlord wanted to rent out their premises to such a large family. The woman was forced to hide her children from landlords and lie to them so as not to get evicted.

Finally the DOH provided housing but forced her to move away to a regional location where there weren’t appropriate services for the family. They were forced to move away from employment and the support of their ethnic community in the Ashfield area in Sydney. Moreover they could not access any of the settlement services that DIMIA provided.

Who was affected:

Abok and her nine children.

Impacts:

The family suffered severe impacts that were both financially and psychologically crippling. Having fled persecution in their home country they were first ignored by both Federal and State governments and were left homeless. Then they were further displaced to a location away from employment, settlement services and a supportive community. They suffered racial discrimination in the private rental market and were forced to lie and hide from landlords.
The impacts are particularly severe when one considers that the family consisted of a single parent and nine children. Such dislocation from services and support is hardly an appropriate way to raise nine children by oneself, particularly considering the difficulty for a single African woman in regional Australia in finding employment.

**Government's responsibility:**

The Federal government had a responsibility to provide settlement services (which could be accessed) and to ensure that they were adequately housed in an appropriate community. The Federal Government must accept responsibility for the people they bring here on humanitarian grounds.

The State Government, through the Department of Housing, also had a responsibility to provide adequate housing in an appropriate community quickly and proficiently.

Both governments clearly did not meet their obligations.

*Source: Youth Action and Policy Association, NSW.*

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**Case study T: Racism on housing estates and cultural appropriateness**

**What happened:**

Elsie is a sole parent with two young adult children, and has lived in the same premises for 8 years.

Elsie held a 21st birthday celebration earlier this year. Elsie had never had a party at her place before and contacted all of the neighbours to let them know it was happening. Despite this, one of Elsie’s neighbours, a single elderly male who is an owner-occupier, called the police.

The neighbour unsuccessfully tried to get other neighbours to sign a petition and letter of complaint about Elsie and her family. Elsie had been having trouble with this neighbour’s racist abuse for some time and had heard him complain to others about the ‘trouble with blacks in the neighbourhood.’ Elsie’s family is the only Indigenous family in the street.

Rather than dismiss the neighbour’s complaints as frivolous and vexatious and take a positive stand for Elsie the Department of Housing has continued to push the needs of the neighbour who wants mediation arranged. Elsie simply wants the Department, which acknowledges a satisfactory tenancy, to support her and to appreciate that mediation is not appropriate in this instance.

**Who was affected:**

Elsie and her children.

**Impacts:**

The tenant felt victimised by the racist neighbour and unsupported by the Department of Housing.

*Government's responsibility:*
The State Government’s Department of Housing has a responsibility to support its tenants if they are the victim of racial abuse. Given that there was no tenancy problem as such they should have given more support to the tenant.


Element 8. Freedom from Dispossession

Each individual and community has a right to a place to live without threat of dispossession from land, all forms of property, homes and resources and individual and collective holdings required to sustain livelihood. Where dispossession takes place the State must compensate, resettle or provide restitution.284

During consultation with groups in Melbourne on 10 March 2004, the following issues were raised in relation to the issue of freedom from dispossession and the right to adequate housing:

- The ongoing impact of historical dispossession on Indigenous people needs to be considered.
- When responding to Indigenous land right claims, the role of women in the community and their specific claims over particularly sites where they go to do ‘women’s business’ needs to be acknowledged.

Case study U: Indigenous women on Crown land and dispossession

What happened

The Longgrass Association is an informal network of longgrass people and their supporters. Longgrass people are mainly Indigenous people living in bush areas throughout the region of Darwin, Northern Territory, Australia.

Longgrass people are warned, moved on, and fined under Darwin City Council By-laws 100 and 103. The by-laws prohibit the leaving of belongings in public places, and falling asleep between sunset and sunrise, respectively. The by-laws are enforced by the DCC Public Places Program Officers, who conduct daily morning and evening patrols of areas where longgrass people are known to regularly camp. Officers wake people up, and move them on under by-law 103. When officers locate unattended camps, they seize camping gear and other belongings, and impound them under by-law 100.

The applicant lodged a complaint against the Darwin City Council with the Australian Human Rights and Equal Opportunity Commission under s 9 of the Racial Discrimination Act 1975 (Commonwealth). The applicant is a non-Indigenous activist acting in a representative capacity under s 46P of the Act, which provides that a complaint may be

lodged by ‘a person or trade union on behalf of one or more other persons aggrieved by the alleged unlawful discrimination.’

The complaint alleged, *inter alia*, that the terms of the by-laws and their enforcement against Indigenous longgrass people constituted acts of indirect discrimination in that they are terms and conditions that are not reasonable having regard to the circumstances, that Indigenous longgrass people do not comply with them, and they have the effect of preventing Indigenous longgrass people from enjoying their human rights on an equal footing with non-Indigenous people.

The Commission found the complaint to be admissible. It terminated the complaint on the basis of it not being capable of settlement, in order for the matter to proceed to the Federal Court of Australia. The Commission indicated that it was considering appearing in the Federal Court proceedings as an Intervener.

The applicant commenced proceedings in the Federal Magistrates Court, but had to withdraw in 2003 due to the inability to find instructing solicitors.

**Who was affected:**

Indigenous longgrass people in Darwin NT.

**Impacts:**

The prevention of Indigenous longgrass people from enjoying their human rights on an equal footing with non-Indigenous people.

**Government’s responsibility:**

Whilst the government has a responsibility to provide housing, it also has the responsibility to respect Indigenous rights to land and culture.

In this case, the council was preventing Indigenous persons from camping on lands that were in the past controlled by Indigenous people, but are now subject to Anglo-based laws which forbid ‘camping’.

*Source: Centre on Housing Rights and Evictions (Australian office)*

**Element 9. Right to information**

Individuals and communities must have access to data, documents and intellectual resources that impact on their right to housing. This would include information of potential industrial and natural hazards, infrastructure, planning design. There must be space for public debate on the process of government, administration and finance procedures, market mechanisms and activities of the private sector. People must have access to technical assistance for improving their living standards, and for realising economic, social and cultural rights and development potential. Governments must ensure all citizens are aware of procedures for defending and realising their right to adequate housing.285

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During consultation with groups in Melbourne on 10 March 2004, the following issues were raised in relation to the issue of the right to information and the right to adequate housing:

- Information needs to be culturally appropriate, available in relevant languages and in several formats (both face-to-face and written).
- Women need to be made aware of where they can access information, and this information needs to be available outside of business hours, and in a comfortable and accessible location.
- It is problematic that much of the information is only available on the internet, because it puts the information beyond the reach of:
  - the homeless;
  - those in short-term accommodation;
  - the elderly;
  - low income earners who cannot afford computers; and
  - those people who are unfamiliar with technology.

Case study V: Few contested evictions in WA

There is a significant lack of access to justice in Western Australia in relation to the Small Dispute Division of the Local Court, with up to 95% of owners orders currently being secured uncontested. This is arguably due to lack of information provided to tenants about their rights and inadequate access to effective advocacy services.

Source: Tenants Advice Service WA

Element 10. Right to participation & self-expression

Governments must ensure the participation of individuals and groups at all levels of decision-making process related to building and housing laws and policies—self-expression (including religious and cultural diversity), consultations, contribute substantively to the process, access decision-making centres. States must also to take measures to combat corruption. 286

During consultation with groups in Melbourne on 10 March 2004, the following issues were raised in relation to the issue of the right to participation and self-expression and the right to adequate housing:

- The Department of Housing does not seek the input of its clients or provide any accessible method of providing feedback.
- There are many barriers to participation in consultation processes such as:
  - lack of, or high cost of, transport to consultation;

• lack of, or high cost of, childcare;
• lack of privacy or anonymity and concerns over repercussions; and
• lack of understanding of the system or perception that it is overly bureaucratic.

• There is also a lack of confidence in the system and a feeling, particularly strong amongst Indigenous people and those whose first language is not English, that people will not be listened to and that nothing will eventuate from their contribution.

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<th>Good Practice 1: The Homeless People’s Association (Victoria)</th>
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The Homeless People’s Association in Victoria (HPA) is a grassroots community organisation formed by people who have experienced homelessness. HPA is auspiced by a church agency, St Mary’s House of Welcome.

HPA’s core issue is to give homeless people a voice. To achieve this HPA organises people who are homeless, formerly homeless or at risk of homelessness to come together, to speak and be listened to, and together to work in partnership with services, government and the wider community to get their lives back on track.

HPA believes in ‘a hand up not a hand out’. Currently the predominant form of homelessness support is service delivery rather than partnerships with homeless people. This is economically, physically and morally unsustainable. HPA promotes participation by homeless people in the homeless sector and the wider community to encourage self-determination and citizenship.

To achieve its aim, HPA has the following objectives:

Growth in membership of people who are homeless / formerly homeless and of associates and entities to support and resource HPA
Development of a network of agencies, organisations, government and individuals to work collaboratively with HPA to achieve its aim
Activities and opportunities for members to be engaged with and to ‘own’ HPA in a variety of capacities
Workshops for homeless people which teach life skills, give information, and promote connections with services and the community

The founding members of HPA are formerly homeless service users of St Mary’s House of Welcome. From personal experience in negotiating the Homeless Service System (HSS), they consider that as an organised group they have a unique opportunity to actively work with the HSS agencies, government organisations and the wider community.

Since its inception in 2001, HPA members have:

Promoted HPA and increased membership through public meetings, pamphlets, articles, information stalls, personal contacts, BBQs, media publicity, presentations and meetings with agencies and their clients
Delivered training in partnership with Centre on Housing Rights and Evictions, Council to Homeless Persons, and the Homeless Persons’ Legal Clinic (Vic)
Worked with tertiary students on placements, in tutorials and as advisors/consultants to promote understanding of issues affecting homeless people

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Met with Centrelink to work on improving services to homeless people
Worked with Yarra Community Housing on an accommodation project for HPA members expected to be completed by end 2004
Become a recognised stakeholder in the Victorian homeless sector
Conducted research amongst homeless people and compiled a report for a local council
Responded to current issues affecting homeless people through submissions, correspondence, phone calls, media releases, articles and presentations.

Source: Homeless Persons Association, hpa@hpa.org.au

### Good practice 2: Sisters Inside, Queensland

Sisters Inside Inc. is an independent community organisation, which exists to advocate for the human rights of women in the criminal justice system in Queensland, and to address gaps in the services available to them. The organisation works alongside women in prison in determining the best way to fulfil these roles.

Some of the projects which Sisters Inside run in Queensland are:

**Women in Prison Journal**
This journal is a bi-annual publication that allows academics, government, women in prison, service providers and interested others to publish articles about current trends and research in relation to women in prison and young women in detention.

**Sexual Assault Counselling Service**
Sisters Inside has 2 sexual assault counsellors, one Indigenous and one non-Indigenous, who work with the women in Southeast Queensland prisons. This program was established in 1994 due to the high percentage (89%) of women in prison who have been sexually abused at some time in their life. Over 3,500 women access this counselling service annually.

**Women's Transition Program**
This program works with women about to be released back into the community and supports the women, their children and families through this process. In the last 12-month period 9 women have died just after their release back into the community from either drug overdoses, suicide or from a domestic violence situation. This pilot project aims to reduce the deaths, recidivism and provides support for the women, their children and families through this transition period.

**The Insider Newsletter**
The Insider is a newsletter written and produced by the women in prison. The women in prison produce these newsletters bimonthly. Workshops to develop skills on the computer program have been developed and implemented. The newsletter allows for communication between each of the 4 women's prisons in Southeast Queensland and information is distributed about dates of parole sittings etc.

**Kids of Mums in Jail Project**
These projects began in 1994 through one-off funding. Sisters Inside has been refunded recently non-recurrently for 3 more camp programs. These camps are for women in prison and their children over a number of school holiday periods. Throughout the project we assist with the development of parenting skills for women who are about to be released from prison.

WILL Program (Women Inside Living & Learning)
This program aims to reduce the transmission of HCV to women incarcerated in Southeast Queensland prisons and to provide harm minimisation strategies to those women who may have already contracted HCV. Sisters Inside has researched drug use in Southeast Queensland prisons and statistics prove that over half the population have injected drugs whilst in prison. Syringes are being used between 5 - 7 women and cleaned with hot water in most cases. Transmission of HCV is increasing in the women's prisons and this constitutes a public health risk.

Youth Crime Prevention Program
This program enabled a group of young people whose mothers are in prison to participate in the development a resource kit to assist them and other young people in the future about issues which are raised for them while their mums in jail and referral and information about organisations that can support young people while their mums in jail. These young people were involved in activities which enhanced their self esteem and confidence such as, participating in canoeing, ropes courses, art workshops and attend white water rafting camps and Indigenous camps.

Crying Walls
Drug & Alcohol Prevention Project funded by the Commonwealth of Australian National Illicit Drug Strategy Community Partnerships Initiative. The project educates young women in prison about the effects of drug and alcohol use with particular focus on harm minimisation; the social, physical and mental effects of drug and alcohol use (particularly intravenous drug use), and exploration of alternatives to drug and alcohol use.

Children's Booklets
These booklets focus on the children of women in prison to work through the trauma, grief and loss they experienced because of their mother's incarceration. The booklets were written by a young Aboriginal boy whose mother was in prison.

Release Kit - Indigenous and Non Indigenous Kit
These kits are invaluable for women when they are about to be released back into their community. They deal with issues including transport, accommodation, parole and home detention, finances, getting children back, legal issues, family, well being and relationships.

My Prison Experience
This is a book of short stories that describe a young Indigenous woman's experience when her mother was incarcerated and her experience now as she is incarcerated. Another young Indigenous woman who is also presently incarcerated did the artwork.

Crucial Connection Program
Improving the level of connection of homeless young people or those at risk of homelessness who have a mother incarcerated with extended family, work, education and training, and with their community.

Early Intervention Program - PEEK
This early intervention program is for mothers in the 4 prisons in Southeast Queensland and their children. The program focuses on pre and post release to ensure positive reunification on the family unit. The program will provide comprehensive services that are designed to build protective factors which seek to reduce the risk of delinquent behaviours and intergenerational cycles of crime.

Personal Support Program
Sisters Inside Inc. Personal Support Program (PSP) assists women released from prison to achieve their economic and social goals. The program will achieve this through counselling, personal support, guidance, referral and advocacy services.
Building On Women’s Strength’s Program (BOWS)
The BOWS Program is for women who are being release from prison who are primary
care givers and their children. BOWS workers provide intensive support for women and
their children in rebuilding their lives after the trauma of prison.

Source: Sisters Inside www.sistersinside.com.au

Element 11. Resettlement

Resettlement may be essential in cases of natural or human-made disasters. Resettlement must be consensual, fair and adequate to meet individual and collective needs. It must provide sufficient access to sources of livelihood, productive land, infrastructure, social services and civic amenities, and respect the freedom of movement. There must be fair and adequate restitution and/or compensation for losses, particularly in human made disasters.  

During consultation with groups in Melbourne on 10 March 2004, the following issues were raised in relation to the issue of resettlement and the right to adequate housing:

- People in public housing are being relocated from the inner city (particularly in Sydney and Melbourne, but likely to occur in every city experiencing a property market boom) to new suburbs without adequate infrastructure or additional government benefits to cover the higher costs that are necessarily incurred, such as relocation and transport costs.
- The Department of Housing is not taking into consideration the needs of the people who they are relocating, such as the current location of their job, their child’s school, their community, and their support (family, workers, doctors, counsellors).
- Women who reach nursing home age are often being relocated without consultation.

There are no case studies for this element as yet.

Element 12. Safe Environment

Housing and its location must be free from harm or threat of harm from natural or human made disasters, environmental pollution, disease and other avoidable hazards. There must also be access to natural resources and reasonable recreational areas.

During the consultations in Melbourne on 10 March 2004, the following issues were raised in relation to safe environment and women:

- Local governments are generally responsible for enforcing building safety and health codes – if there are hazards then the council has the power to order the property owner to fix the problems. However market forces play a part – if it will cost too much for an owner to fix, they may simply apply for permission to redevelop, which many times results in the eviction of residents from the building. This means people may be reluctant to report or insist upon basic repairs and maintenance, particularly where they lack tenancy rights (for example in some parts of Australia where boarding house residents are not covered by tenancy legislation).

- Some housing estates (whether public or private, rental or owned) have been poorly designed, making them unsafe at night – bad lighting, narrow back lanes, and a lack of public transport.

- Other housing estates completely lack green or recreational spaces. A growing trend regarding recreational areas is for them to be managed by private companies. There are then problems with forcing companies to properly maintain facilities.

There are no case studies for this element at present.

**Element 13. Security and Privacy**

Residents must be protected from acts or threats of physical, sexual and psychological violence. This is particularly important for women, the elderly, children and other vulnerable individuals and groups. While not infringing on privacy in the home, the State must address crimes of violence within the home, such as domestic violence. All members of the household must have sufficient privacy in the home.\(^\text{289}\)

During consultation with groups in Canberra on 23 April 2004, the following issues were raised in relation to the issue of the right to security and privacy and the right to adequate housing:

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**Case Study W: Inadequate Domestic Violence / tenancy laws in NSW**

The *Residential Tenancies Act 1987 (NSW)* does not have a specific domestic violence provision. Section 69A of the Act enables a tenant to apply to the Consumer Trader & Tenancy and Tribunal to terminate a lease due to undue hardship. On a strict reading the application cannot be made by one co-tenant against another. However, in *Humphries v Dasta & Tuntevsk*, the Tribunal terminated a lease on the basis that the perpetration of domestic violence by one co-tenant against the other constituted undue hardship.\(^\text{290}\) This is a very positive decision. Unfortunately, section 69A also allows for

\(^{290}\) [2003] NSWCTT 173 (18/2/03)
the Tribunal to make orders against the applicant for compensation, and thus although the agreement is terminated there may still be significant economic disadvantage that flows from doing so.

The lease can always be terminated by agreement between the landlord and the tenant. Even if the tenant does not consent, the landlord can issue a notice of termination and commence eviction procedures if they are aware that domestic violence is occurring in the home, as it is considered to be an illegal use of the property. The tenant is not liable for compensation for breaking the agreement early in either of these situations. However these remedies are rare because they rely on the landlord knowing of the violence, and being willing to bear the cost of having to find another tenant.

Source: Inner Sydney Tenants Advice Service

Good Practice 3: Inner Sydney Tenancy and DV legal advice

The Inner Sydney Tenants’ Advice & Advocacy Service has been running a pilot project at Redfern Local Court. A tenancy worker attends the court one morning a week and works in conjunction with the Women’s Domestic Violence Court Assistance Scheme, giving tenancy advice to survivors of domestic violence. This is an attempt to better resource these clients and overcome the difficulties caused by a lack of specific domestic violence provisions within the NSW tenancy law.

Case study X: Homelessness, family size, and security and privacy

What happened:

Christie is an Indigenous woman in her late thirties. In early 2004, she, her partner and 4 children were homeless in Brisbane. They were sleeping in her cousin’s lounge room in a 1 bedroom flat.

She was on a TICA (a ‘bad tenant’ database run by a private company) for damage caused to a rental property 7 years ago which was done by a violent ex-partner. She had debts with the Queensland Department of Housing for damage to a property caused by her teenage son. She also had debts due to rent arrears. The total debt amounted to $4600. The size of the debt made Christie ineligible to apply for a bond loan. None of the Indigenous Hostels were able to accommodate a family of that size, with teenage children. The Department of Housing was unwilling to negotiate the amount of the debt.

Who was affected:

Christie, her partner and her children. Christie’s relatives.

Impacts:

This situation affected not only Christie, her partner and children, but also the relative who was allowing them to stay with her. Conditions were cramped; there was a lack of privacy and general instability. Due to the length of her stay with her cousin, that tenancy was jeopardized by the presence of unauthorized occupants.
Lack of adequate accommodation meant that Family Services might take her children away, which raised her stress (NB. Many Indigenous people are still living with the effects of being part of the Stolen Generation, and such removals are viewed within that context). As a result of the stress, her alcohol abuse escalated, her children did not attend school and started exhibiting problematic behaviours such as substance abuse, staying out and getting in trouble with police. In the long term this could perpetuate the cycle of disadvantage experienced by so many Indigenous Australians.

Efforts to secure accommodation prevented Christie seeking employment and the family's financial situation worsened. Her self-esteem was depleted.

**Government's responsibility:**

*Nationally:* The Commonwealth Government has a responsibility to adequately fund the provision of adequate social housing for all Australians but particularly for Indigenous Australians to counter the discrimination they face in the private market. Housing policies need to reflect the cultural needs of different groups and incorporate flexibility and support programs. National guidelines need to be developed to regulate the tenancy database industry to prevent exclusion from the private rental market.

*State:* The Queensland Department of Housing need to give priority to interagency responses that support the victim rather than evicting them i.e. addressing the effects of domestic violence (e.g. property damage) and waiving debts for damage that were not the fault of the tenant. Further funding needed to rebuild the public housing stock for transitional housing programs such as the Community Rent Schemes and to accommodate tenants disadvantaged in the private rental market. Accommodation services for Indigenous people need to be resourced to accommodate larger family groups. Family Services need to assist Indigenous parents to meet their children's needs such as adequate housing, rather than removing them.

*Local Government:* Accommodation brokerage funds need to be flexible to allow support services to accommodate larger family groups and cover costs such as bonds and set up costs rather than solely focusing on emergency responses to homelessness. Brisbane City Council needs to further invest in social housing. Income gained from inner city developments should be recycled into affordable housing.

*Source: Women's Housing Network, Brisbane, Queensland.*

**Case study Y: Family violence, security and privacy**

*What happened:*

Kerry is in her mid-40s and lives with her 17 year old son Jason, who has Asperger’s Syndrome. Jason is verbally and physically violent towards Kerry and she is fearful for her safety. Kerry has serious long-term health problems and needs the aid of a cane to walk. Kerry and Jason live in a house supplied by the Department of Housing in Queensland. Kerry wants to live separately from Jason because of the violence she faces.

Kerry applied to the DOH to have the lease transferred into Jason's name so that she could move out and he could continue living in the home. The application was refused on the grounds that the policy within Department of Housing stated that persons under the age of 18 years old could not hold a lease with Department of Housing. This is contrary to
the Rental Tenancies Act 1994, which states that persons under the age of 18 can hold a lease in Queensland.

Kerry then tried to live with family members, leaving Jason in the home. The Department of Housing informed her she had to return to the home or they could lodge a “failure to reside” and evict her.

The Department of Families would not find Jason alternative accommodation unless Jason was removed from the home. Jason could not be removed from the home because, as a tenant, he had the same right to continue to live in the property as Kerry and therefore could not be removed by them as the lessors. The police were unable to remove Jason from the home due to his violent behaviour because parents cannot apply for domestic violence orders against their children who are under 18 years.

Finally, Disability Services Queensland assessed that Jason could not live independently because of his violence but approved a family support package for Jason and Kerry. The conditions of this package were that Kerry had to remain living with Jason, but there would be support workers working one on one with Jason to address the violence and his social skills

Who was affected:

Kerry and Jason. Both were not having their housing needs met.

Impacts:

Kerry remains in a situation where she faces a high risk of violence. Her emotional and physical health has been seriously affected. Her son’s behaviour continues to prevent Kerry accessing necessary services for herself because he often prevents Kerry from leaving the home.

The Housing Department’s policies contravened the law and misinformed Kerry about her rights, which left her with inadequate information to find a suitable solution.

Government’s Responsibility:

Department of Housing to provide secure, safe housing for its tenants;
Department of Families to take necessary steps when Jason was seen to be breaking the law or participating in inappropriate activities;
Disability Services Queensland to provide individual and family support for Kerry and Jason.

Source: Brisbane Domestic Violence Advocacy Service, Queensland.

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**Case study Z: Housing design, security and privacy**

**What happened:**

Catherine is a single parent with two school-aged boys. One of Catherine’s neighbours made a complaint about noise and nuisance from Catherine’s townhouse. The NSW Department of Housing encouraged the complainant to keep a diary of these incidents, and after more complaints from the neighbour, served Catherine a Notice of Termination. At the Tribunal it was revealed that the incidents from the diary included Catherine
swearing from inside her home, Catherine's boys wrestling in the house, parties in the
garage and front yard, and the times of visits by Catherine's boyfriend. Catherine was
surprised and very angry at the level of surveillance to which she had been subjected.

The design of the townhouse complex contributed to this. The dwellings are built close
together with small backyards and larger front yards open to the street. This means that
Catherine and other tenants use their front yards for socializing. It also means that
everyone can see and hear what everyone else is doing, and after the Department
became involved the dispute became public and affected other residents of the street.
Considering that the layout caused the tenants to see enough of each other anyway, the
Department should not have encouraged the complainant to put Catherine and her kids
under surveillance. At the level of planning the Department must recognise that space,
and particularly private space, is a vital need of all tenants. For tenants on low incomes or
experiencing some other social disadvantage this is especially true. Far too often the
other enjoyable spaces of our cities and towns are accessible only to those with money,
cars or the ability to negotiate the symbolic barriers of class and culture. When designing
or building new homes, the Department’s should prioritise the provision of private spaces
for tenants. Recent developments are more likely to adhere to these principles but these
are in the minority of public housing stock.

Who was affected:

Catherine, her children, and the neighbours.

Impacts:

Catherine and her children suffered because of the surveillance coming from their
neighbours.

Government's responsibility:

The State Government’s Department of Housing, as the largest landlord in the country, is
in a unique position to set the standards for being a model landlord. Housing and design
standards must be at the forefront of its policies for creating sustainable tenancies and
communities.

Source: Tenants Union of NSW.

Case Study AA: No security of tenure if tenants “suspected’ of being
street workers

Whilst the Residential Tenancies Act 1987 (WA) protects the privacy of tenants in relation
to property access, many basic civil rights and related protections are not afforded to sex
industry workers within Western Australia. Ordinarily, if police wish to enter premises, a
warrant must be obtained. However, under the Prostitution Act 2000 (WA) police have
the power to enter any premises “suspected” of being used for prostitution. This applies
to both public and private tenants. This is clearly problematic in relation to the right of
privacy, which is integral to the right to adequate housing.

Source: Scarlet Alliance, Response to Western Australian Prostitution Control Bill 2002

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Case study BB: Domestic violence, co-tenancy and security and privacy

What happened:

Lauren is a young domestic violence survivor with 1 child. She sought the assistance of a tenancy service after she was physically abused by her ex partner. She was a tenant in the private rental market. She took out an Apprehended Violence Orders to protect herself after the violence. Both she and the perpetrator’s name are on the tenancy agreement. The violence occurred before the fixed term of the lease agreement expired. She was too fearful to continue to live in her home despite exclusion orders. The real estate agent who knew about the violence originally agreed to sign an alternative agreement with her in another premises. The agent changed her mind at a later stage. The tenant had to find alternative housing for herself and her child.

Who was affected:

Lauren and the perpetrator are bound to the tenancy agreement to pay rent until the tenancy terminates. Both tenants are jointly and severally liable to pay for cleaning and intentional or negligent property damaged upon termination of the tenancy also. Notice of termination signed by one of the tenants during a fixed term tenancy is an invalid notice. So the client has to pay rent until the end of the fixed term agreement before she can provide a termination notice in writing to terminate her tenancy.

Lauren could apply to the Consumer, Trader and Tenancy Tribunal for termination of the joint tenants in common tenancy on the ground of hardship. However, under the current NSW Residential Tenancies Act, domestic violence is not a clearly defined ground to terminate tenancy. She has to rely on the hardship ground. If she applies on her own, the other tenant has to be joined as a party in order for the matter to be determined. The same section also allows for award of compensation to the landlord for early termination.

Impacts:

The short term impact is that the client is held to be financial liability to pay rent and property damages despite the fact that she has moved out of home.

Government’s responsibility:

The case highlights various difficulties associated with DV. Despite the State providing legal redress in the form of Apprehended Violence Orders under the Crimes Act and domestic violence policies providing assistance with DV victims by the Department of Housing, the client continued to live in the perpetual cycle of violence and control by her ex partner when she was fully aware that her home was unsafe. She continued to stay or visit there due to her desire to care for her children.

Source: Eastern Area Tenants Advice and Advocacy Service, Bondi, NSW.
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