

**Toward a right to housing for Australia:
Reframing Affordability Debates through Article 11(1) of the International Covenant
on Economic, Social and Cultural Rights**

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Abstract

This paper argues that engaging the content of, and state obligations for, the right to housing under Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) can contribute to an important shift in how we think about, and mobilise around, housing affordability issues in Australia. Against a background of a widely acknowledged housing affordability crisis, the paper argues that debates over affordability unfold in particular ways in Australia, and the right to housing shows the paradoxes and problems of the housing affordability picture in a new light. The article examines three facets of housing affordability: affordability for the vulnerable or disadvantaged; housing as wealth and savings; and housing financialisation for speculation and investment. It argues that the right to housing as enshrined in ICESCR can be used as a foundation on which to build a new discourse around the right to housing in Australia; to hold governments' actions up against an international standard; and to imagine and guide creative policy proposals.

Keywords

Right to housing; International Covenant on Economic, Social and Cultural Rights; affordability; housing policy; social rights.

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Introduction

The way people are housed reflects a social and political agreement about what standards of living, levels of inequality and social exclusion we tolerate or condone, thus housing provides not just material shelter, but helps set physical boundaries of belonging and community. As the packaging of space, housing can be a form of collective cultural expression, and is often invoked in service of visions of social order and transformation, while it plays important roles in underpinning freedom, identity and privacy. (Hohmann 2013, 143). In 2020, lockdown measures during the Covid-19 Pandemic, coupled with sudden job losses, have made it startlingly clear that safe, adequate and secure housing is a central personal and societal need, and that a lack of adequate housing has stark implications for physical and mental health, the ability to care for others, and to participate in the economic life of the state. Decent housing is thus fundamental, a prism through which to view complex questions about inclusion and equality. (ibid, 249). Reflecting its vital importance, the right to housing was included in Article 11(1) of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), which Australia Ratified in 1975. In ratifying, Australia accepted international legal obligations to work progressively toward the full enjoyment of the right.

Yet campaigns around housing in Australia have seldom included explicit attention to housing as a right, either as a legal standard, or a discursive and activist platform, though there are some notable exceptions particularly around the issue of homelessness (AJHR 2004; HREOC 2008; Farrell 2009). The general neglect of the right to housing as a platform for activism and advocacy to drive legal and policy change could be attributed in part to the lack of traction that rights, particularly economic, social and cultural rights, have domestically. But it may also be because the right to housing – among economic, social and cultural rights

more generally – has often appeared technical and complex, posing an additional challenge when meaningful change should be community driven and bottom up (Otto and Lynch 2004, 1).

But housing has been in the news for all the wrong reasons in Australia. The country has experienced sharply rising housing costs, leading to a widely acknowledged and deeply experienced affordability crisis. In June 2018, ‘housing stress’ hit record levels in Sydney – the nation’s biggest and most expensive city (Kozaki 2018). In 2017, the UN Special Rapporteur on housing reported that single working women were unable to afford to rent in *any* suburb in Sydney in 2016, and only one in Melbourne (Report of Special Rapporteur 2017, [11]; see also Anglicare 2019), while Perth is currently the least affordable city for those in rental tenures (BCEC 2019). A leading international housing affordability survey, which calculates affordability by dividing the median dwelling price by the median household income, found Sydney the second least affordable housing market in the world in 2017 (Demographia 2018). And Australian household debt is some of the highest in the world, largely driven by mortgages (Kohler and Hobday 2019; ABS 2015-2016).

Meeting housing costs is a major factor in poverty in Australia, across tenure types (Pawson et al 2020, 68-9). In 2018, there were 140,600 people on waiting lists for social housing across Australia (AIHW 2019c), evidence of the failure of the sector to meet need, and the inability of private rental and ownership tenures to provide for all. Rising homelessness sits alongside ‘growing numbers of grossly underoccupied homes’ (Pawson et al 2020, 37). Yet in the 2019 Federal election, commentators note, housing reform was an election losing issue (Randolph 2020, vi). With housing problems so prominent, and experienced across tenures, this paper argues that the right to housing under the International Covenant on Economic,

Social and Cultural Rights (ICESCR) could be used to change how we conceive of housing in Australia. In potentially radical ways, we might harness housing as a human right to contribute to a shift in how we think about, and mobilise around, housing affordability issues in Australia, in ways that would lead to the better realisation of an adequate standard of living for everyone.

Focusing on the issue of affordability, I argue that the norms and standards, and the discursive power, of the right to housing can help to reframe struggles, both legal and discursive. The right can help move the debate on housing forward in Australia in ways that contest raising inequality, the marginalisation of social goods and rights, and the prioritising of housing for wealth and investment over its role as a place to live, in safety, dignity and security. The paper precedes on the assumption that the first step in the realisation of any human right is a robust discursive, political and activist discussion, without which legal or policy change is unlikely to be adequate in human rights terms; is open to co-optation (by finance and construction industries, for example); or will not be forthcoming at all (see eg Baxi 2007, 250). For this reason, the article concentrates on how the right can be used to shift the underlying terrain of debate, rather than advocating specific legal changes. Such legal changes should flow from those debates, not pre-empt them.

The next section provides a justification for the article's focus on the right under ICESCR, and sets out the scope of the content of the right under the Covenant, as well as states' obligations for it. Following that, it turns specifically to affordability, focussing on three different facets of the housing affordability debate in Australia that the right to housing helps to illuminate in new ways. These are: housing affordability and the vulnerable or disadvantaged; housing as wealth and savings; and housing financialisation for speculation

and investment. Measuring housing against the standards set out in ICESCR demonstrates the shortcomings of housing in Australia, as well as the potential power that the right to housing has to open up a much needed debate and generate a new discourse around housing and an adequate standard of living more broadly.

The right to housing in international law

What Justifies a Focus on Right to Housing under ICESCR?

There are three important justifications for focusing on the right to housing under ICESCR. First, while housing is included as a right in a range of regional human rights Covenants (see Moons 2018 Ch 3; Hohmann 2013 Part 1; Kenna 2005), Australia does not bear legal obligations for these rights, not being a party to these treaties. The right is also protected in over 50 national constitutions (see Oren, Alterman and Zilbershatz 2014), and while constitutional provisions – as in South Africa or France – may provide compelling examples from which Australia could draw in any future process of constitutional change, foreign constitutional rights have no legal status in Australia. Having ratified ICESCR, however, Australia has accepted international legal obligations for the rights in the Convention. These obligations remain binding on Australia as a basic principle of public international law, regardless of whether Australia has taken steps to translate the rights of the Covenant into domestic legal norms. In addition, although Australia has not incorporated ICESCR in the form of directly opposable rights, its formal position is that it ‘ensure[s] that Australia’s domestic legislation, policy and practice are

consistent with Australia's international human rights obligations' and that it has mechanisms in place to achieve this compliance (UNCESCR 2016, [24]-[27]).

Second, the right under ICESCR is explicitly global in its applicability, and has been crafted as a legal standard that is appropriate to all states: rich and poor; with state-driven, market-driven, or mixed housing markets; in good times or bad. For this reason, it is applicable in the Australian context, and is not limited by geographic specificity or the limitations and difficulties of comparative law.

Third, and most importantly, under ICESCR, the right to housing is the central focal point for concern and protection. Unlike other human rights that protect aspects of people's relationships to housing and home, such as the right to privacy, property, or family life (see eg ICCPR Article 17 and ECHR Article 8), the right to housing makes housing the primary focus, and it is the most significant legal codification of the right. The right to housing is an insistence on the fact that adequate housing is *itself* fundamental, rather than incidental, deserving special recognition and protection. For this reason, it is qualitatively different to rights that protect people's relationships with their houses and homes incidentally to the fulfilment of other human rights, as important as these rights may also be.

Content, Scope, and State Obligations for the Right to Housing under ICESCR

The right to housing is found in Article 11(1) of ICESCR, formulated as follows:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and *housing*, and to the continuous improvement of living conditions...

Housing is included as an aspect of the right to an adequate standard of living. Accordingly, housing is protected as a building block for a life in community with others; a right that is economic, social and cultural. This is not a right to shelter, but to *adequate housing*, a place to live in dignity, peace and security (UNCESCR 1991). States' obligations for realising the rights in the Covenant are set out in Article 2(1):

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

Early commentators pointed to the vagueness of the rights and the difficulty in applying the obligations clause of the Covenant (Craven 1995, 151). And while much has been made of the difference in state obligations between the ICCPR – which are thought to be immediate in nature – and those under the ICESCR – often cast as aspirational or merely future-focussed, such a clear-cut distinction is misleading (Sepúlveda-Carmona 2003; Ssenyonjo 2011, 997). In fact, under ICESCR states have a number of hard obligations, some of which are immediate in nature; and the scope of the right, while elastic so as to allow for growth and development, is clear enough that both political and legal claims may usefully be made under

it. This clarity has emerged from the sustained attention given to the right by the Committee on Economic Social and Cultural Rights (CESCR), the expert body which monitors compliance with the Convention. Its work includes the periodic examination of State Parties' progress in fulfilling obligations; examination of individual complaints under the Optional Protocol to the Covenant, and a number of important General Comments and occasional statements which provide important and authoritative – although generally soft law – interpretations of the rights under the Covenant (CESCR nd). The UN Special Rapporteurs on Housing (OHCHR nd), as well as leading NGOs (see eg FEANTSA nd; Just Fair nd; COHRE nd), have significantly contributed to this process of clarification, as have scholars and academics. Governments' obligations are now clearer and more precisely delineated, and there are more resources available for grassroots campaigners to harness and to use to push for change.

The right to housing under ICESCR is not an entitlement to state-provided or subsidised dwellings for all. Rather, Article 11(1), coupled with Article 2(1) provides a sophisticated mix – of negative and positive; immediate and longer-term obligations – which aim to realise improvement in peoples' living conditions through the protection of housing. The article now turns to spell out this scheme of rights and obligations in further detail.

The CESCR's General Comment No. 4 is the authoritative starting point for understanding the right to housing under ICESCR. It represents an important attempt to capture the multiple aspects of the right to housing, identifying seven features of adequacy, commonly referred to as 'elements' of the right. These are: (i) security of tenure; (ii) availability of services, materials, facilities and infrastructure; (iii) affordability; (iv) habitability; (v) accessibility; (vi) location; and (vii) cultural adequacy (UNCESCR 1991). These elements represent an attempt

to separate out the multifaceted roles that housing plays in the lives of individuals, households and communities, and to bring clarity to how adequate housing can be protected and ensured across widely different social, political and economic circumstances both within, but also beyond, any one state.

In ensuring the right to housing, each of the elements must be present at a ‘minimum core’ level in order to meet a State’s threshold obligation for the right, and this obligation is immediate (UNCESCR 1990). For instance, homelessness clearly violates the minimum core of the right, as do forced evictions (UNCESCR 1997; UNCESCR 1991). Other immediate obligations include those which do not impose significant resource commitments on the state, such as the repeal of discriminatory laws or the regulation of private sector actors, for example the construction or real estate industry.

Second, beyond immediate obligations, the state is to take appropriate steps *toward* the *full realisation* of the right. Limited exceptions to this obligation of progressive realisation – that is, where states can raise an acceptable excuse for going backwards (retrogression) include situations of natural disaster or war, as well as serious economic crisis (UNECOSOC 1978, para 72; UNCESCR 2012). Deliberate retrogressive steps constitute a *prima facie* violation of the ICESCR, which states have the burden of proof to discharge (UNCESCR 1999). For instance, if housing is *increasingly* unaffordable over time, this is *prima facie* retrogression, and serious evidence that the state is not meeting its obligations under the Covenant.

Third, in pursuit of full enjoyment of the right, the State must use all available resources (UNCESCR 1990). Resources include ‘the budget’, other dimensions of public finance (such as monetary policy and government borrowing) and can encompass human, technological,

organisational, natural and informational resources (Elson, Balakrishnan and Heintz 2014, 14). States can adopt different strategies – they have a ‘margin of appreciation’ in their choice of means to fulfil the right (UNCESCR 2007). However, they should be held closely to account for policy or budgetary decisions that are arbitrary or discriminatory in nature, or that fail to consider the disadvantaged, marginalised, and most vulnerable, or those in situations of grave risk (ibid). Where there are various policy options, the state should choose a course which is the least detrimental to the fulfilment of human rights (ibid).

It is not the right’s vagueness, nor the weakness of obligations *per se* that make the right to housing difficult to realise in Australia. Rather, the Federal Government generally appears sceptical of economic, social and cultural rights, and is a ‘reluctant implementer’ of its international obligations for them (Solomon 2017, 376). There are no express or implied constitutional protections of the right to housing at Commonwealth, or State and territory, level. Social welfare provisions and laws undoubtedly protect some aspects of peoples’ housing rights (see Whiteford and Angenent 2002; Bell 2012-13), but the safety net provided by welfare provisions has been weakened over time (Chenoweth 2008; Goldblatt 2017; Martin 2017) and is precarious in times of crisis and economic downturn. For these reasons, domestic human rights advocacy remains crucial. In this context, the right to housing has critical potential as a standard against which to measure government failure, and to press for change.

The following section focuses on the element of affordability. While all seven elements of the right are intertwined in practice, this focus is justified for two reasons. First, the chronic housing affordability crisis in Australia foregrounds the element; and second, debates over affordability unfold in particular ways in Australia, and the right to housing shows the

paradoxes and problems of the Australian housing affordability picture in a new and seldom examined light, having the potential to move the debate forward in important ways. The right as enshrined in ICESCR can thus be used as a foundation on which to build a new discourse around the right to housing in Australia and to imagine and guide creative policy proposals which might help to move Australia towards a position where everyone enjoys adequate housing: a place to live in peace, security and dignity.

The Right to Housing as a Response to the Affordability Crisis: Reframing the Housing Debate in Australia

This section examines housing in Australia, in light of element of the requirement under the right to housing that it be affordable. It illuminates the distance between enjoyment of the right to housing and the current Australian situation, as well as the ways in which the right to housing might help shift the discourse around specific housing problems. First, it sets out in more detail what constitutes affordability as an element of the right to adequate housing under ICESCR, and then turns to discuss how debates around housing affordability play out in the Australian context, with reference to housing accessibility for the marginalised; housing as wealth and security; and financialised housing for investment and speculation.

Affordability as an Element of the Right to Housing

Affordability requires that financial costs associated with housing should not threaten or compromise a household's ability to satisfy other basic needs (UNCESCR 1991, [8c]). It is

not tied to tenure type – thus this is not a discussion about ‘affordable housing’ in the sense of specific subsidised housing ‘social housing’ units. As the current affordability crisis in Australia so clearly demonstrates, is not confined to the most economically vulnerable, though these households are most affected, and the state is required to take particular account of their needs in crafting any legal or policy response (UNCESCR 2007).

Measuring Affordability:

There is no question that there is a severe problem of housing affordability in Australia, (see section 1, above). This is recognised under a range of measures and indicators. How affordability is measured is contentious both internationally and domestically (see Padley and Marshall 2019, 1309-1315; Pawson et al 2020, 58-64). The simplest measure of housing affordability is calculated as the ratio of housing costs to gross household income (ABS 2017) with those households spending more than 30% on housing costs considered to be in unaffordable housing (Padley and Marshall 2019, 1311).

In Australia, ‘housing affordability stress’ is experienced when households in the bottom 40% of income distribution spend more than 30% of gross income on housing costs (AHURI 2018). The focus on lower income households is justified by the fact that these households are likely to have to sacrifice other necessities in order to pay housing costs (AHURI 2019). This 30:40 ratio is widely applied in Australia. Even so, it is a blunt instrument. The measure excludes households with no income (AIHW 2019b, Table 1 Note 1). It does not take into account household size (particularly the balance of earners to dependants) or other aspects of housing that may be sacrificed due to cost – such as safety, or adequate space. It fails to capture both vulnerabilities which add expenses (such as a member of the household

with a disability), or pre-existing wealth, which lessens financial burdens. Even despite these shortcomings, this is the widely recognised and accepted indicator for housing affordability, and under it housing is unaffordable for many households with housing stress increasing, as set out in section 1.

Examining housing affordability through the right to housing highlights systemic issues and assumptions that underlie Australian housing policy, often unexamined or unremarked. The debate over affordability plays out in specific, but ultimately highly illuminating, ways in Australia, and using the right to housing as a lens allows us to contest a number of assumptions, as well as providing principles to guide alternate policy options, as illustrated in the following section.

Facets of (Un)Affordability

From Rich to Poor: Redirecting Housing Subsidies for Access to Adequate Housing

Accessing adequate housing is particularly difficult for those who are economically marginalised, in poverty, or who suffer from discrimination in access to housing. For this reason, the elements of affordability and *accessibility* within the right to housing are closely intertwined. As an element of the right to housing, accessibility ensures that disadvantaged groups are not excluded, but have meaningful and sustainable access to housing (UNCESCR 1991, [8e]; see also CRPD Art 19). Positive state measures, including housing subsidies in a market-driven system, are particularly relevant in ensuring access to adequate housing for these groups (UNCESCR 1991, [8c]).

In fact, priority consideration in housing law and policy should be given to disadvantaged groups, including the elderly, children, those with a physical or mental disability, and those with a persistent medical problem (ibid, [8e]). This list is not exhaustive, and other groups – from women to Indigenous people – should be recognised as falling within this category. (UNCESCR 2005; UNCESCR 2009). Accessibility has clear links with the requirement of non-discrimination (found in Article 2(2) ICESCR), which, as customary international law, imposes an obligation of immediate action on states regardless of treaty commitments (Shaw 2017, 217). Yet it is clear that Australian housing policy is failing disadvantaged groups, and that despite a suite of policies, the record of Australian governments is ‘generally poor ... in terms of recognising, providing and improving housing for vulnerable people (Faulkner, Tually and Cornell 2019, 142). Older persons who do not own their own homes are particularly vulnerable to non-enjoyment of the right to housing (ibid 136; Morris 2010; Davidson et al 2018, 12), as are Indigenous Australians (AIHW 2019a, 58) and women (Council to Homeless Persons 2016). Those with lower incomes or falling below the poverty threshold find themselves pushed out of the housing market, with inadequate social housing or other social protections to fall back on.

Under the right to housing, states should establish housing subsidies ‘for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs.’ (UNCESCR 1991, [8c]). This might involve innovative tax policy, welfare initiatives, and new forms of housing or tenure. In the case of Indigenous Australians, it might demand self-determination and meaningful recognition of land and political rights. It does not *require*, though might obviously include, investment in social housing.

At present, however, government housing subsidies work in diametric opposition to the function they should serve under the right to housing. While the government ploughs more than \$50 billion into housing annually (Gurran and Phibbs 2015, 712), the vast majority of subsidies in the area of housing go to those who are more likely to already enjoy adequate housing. As Pawson et al show, tax subsidies disproportionately benefit those in the top income quintile and those who own their homes outright, while renters on low incomes receive the fewest benefits (Pawson et al 2020, 155-56). And as Jacobs notes, ‘in budgetary terms housing policy is primarily oriented towards the well off or better off rather than the socially disadvantaged’ (Jacobs 2015b, 695).

As Behrendt argues, ‘the best litmus test on how laws, institutions and policies perform is the extent to which they work to assist and protect the marginalised, the culturally distinct, and the historically disadvantaged.’ (Behrendt 2017, 79). Under this test, Australian housing policy is failing. For this reason, the right to housing can be used to contest government policy around housing subsidy and the government’s obligations to the marginalised. The right to housing requires that the economically vulnerable be given priority consideration in access to housing, and that the state take care to ensure the minimum core of adequate housing for each person. Those whose housing is unaffordable, or whose housing affordability situation places them in financial stress, are not adequately protected, while those who already have adequate housing benefit from significant public resources. Arguments that there are insufficient resources to subsidise or create affordable housing for the least well off and for disadvantaged groups lack credibility when the resources flowing to those who already enjoy an adequate standard of living are put in the spotlight.

'The Australian Dream': Homeownership for Security, or for Wealth?

As the UN Special Rapporteur on Housing writes, '[h]ousing is the basis of stability and security for an individual or family. The centre of our social, emotional and sometimes economic lives, a home should be a sanctuary; a place to live in peace, security and dignity.' (OHCHR nd; see also Hohmann 2013, 231-2). A safe, secure and adequate house is of fundamental importance to all people, a fact reflected in its protection as a human right.

Yet in Australia, the security which adequate housing protects has come to be seen as increasingly economic in nature. Housing has taken on a role as an asset and form of wealth savings, with perverse effects on housing affordability. This also entrenches homeownership as a privileged tenure, which itself leads to increasing inequality, and marginalises the social role of the home – its use value – at the same time that it foregrounds the fact that there are inadequate social protections available for many households *beyond* the house as asset. The pervasive home-as-wealth discourse makes it difficult to open up a discussion of whether owner occupation *is* an inherent good, or how to balance the rights and social needs of owners with the rights and social needs of other tenure holders. It also makes it difficult to contest the role of the market in supplying housing, or to raise seriously the issue that there are those for whom rising house prices are a devastating burden (either in terms of debt, or inability to access the market), as discussed in this section.

A useful starting point is an analysis of the approach to 'housing stress' (see above 'measuring affordability'). Across rental tenures there is little debate: there is no redemption for unaffordable rent. However, with respect to high mortgage costs, different justifications are offered. For instance, for homeowners with mortgages whose household expenses are in

excess of 30%, AHURI argues that housing stress may actually be a strategic, sensible choice, because in repaying their mortgages ‘households are both paying for housing and also actually saving their money in a tax-effective wealth asset that they may draw upon in the future’ (AHURI 2018). In addition, paying a mortgage more quickly might eat up more than 30% of household income, but ‘can save the household significant amounts of money on interest repayments in the future’ (ibid). Or, a household may choose ‘to drawdown on their housing loan ... for non-housing purchases such as a new car or an expensive holiday’ (ibid). For these reasons, AHURI ‘doesn’t readily employ mortgage stress as an accurate indicator of housing affordability’ although they recognise that ‘mortgage stress may act as a broad indicator of housing affordability in a region or economic zone.’ (ibid) Immediately, AHURI’s analysis foregrounds a deep seated assumption about housing: that housing is a private asset crucial to a household’s future security and wealth (see also Commonwealth of Australia 2008, ch 2). There are several important points to be made here, each of which signals the structural and overarching economic and policy context for housing in Australia, and each of which considering a right to housing might prompt us to look at in different ways.

The first is the broader context in which to understand the lack of housing affordability: that of falling wages and the increased casualization of work; of austerity measures; the privatisation of public goods, and the weakening of substantive welfare rights more broadly, in which the discourse around homeownership as savings and wealth creation unfolds. Since at least 2013, Australians have experienced stagnation in average real earnings, negatively affecting household financial stability, consumer spending power and government revenues (Stanford and Hardy 2018, 6). The overall picture is of falling wages, but this has been experienced highly unequally: ‘The wealth share held by the top 1% of households in

Australia has been growing almost continuously over the past two decades. The wealth share held by the poorest 50% of Australians has been falling almost continuously over the same period.’ (Kinsella and Howe 2018, 51-52). The erosion of workers’ rights has been a key factor in the decline of wages and rise of income inequality (ibid, 54; see also Hardy and Stewart 2018). Australia has become ‘a labour market dominated by insecure and unreliable employment patterns, in which the ability of working people to find and keep reliable work is increasingly in question’ (Carney and Stanford 2018, 19). The sudden job losses brought on by the Covid-19 pandemic highlight and exacerbate existing precariousness (Beale 2020). However, as Kinsella and Howe argue, falling wages and income inequality are not inevitable market outcomes but policy choices which successive governments have made (Kinsella and Howe 2018, 54). Not only are wages falling and work increasingly precarious, but public goods have been privatized, austerity measures imposed, and other social rights stripped back, particularly for vulnerable and marginalised households. (see Carney 1997; Goldblatt 2017, 189-195; Whitfield 2013, 7-13).

In this context, for many households who own their own homes, the wealth of their house-as-asset is the most significant option for economic and social security. And with precarious protections elsewhere, coupled with the significant subsidies for homeowners discussed in the previous section, the lure of homeownership for financial security is large. But it is not only individual households – who have been able to use the equity in their homes as a ‘bank’ – who are counting on continued property price increases for their economic security. As Pawson et al write, when house prices fall, it ‘poses a threat to macro-economic stability’ including ‘of the banking system’ (Pawson et al 2020, 39). This is particularly the case in Australia, they explain, as Australian banks’ exposure to residential property is the highest of the developed world (ibid). Meanwhile, other sectors – such as construction – will likely be

negatively impacted, as will commercial property interests, where land or property prices used as debt collateral are depressed (ibid). This background context helps perpetuate a discourse where every house-price rise is celebrated by media, government, and homeowners, despite longstanding official Government commitments to housing affordability (Australian Government Treasury nd; Gurrans and Phibbs 2015; Jacobs 2015a, 55-56). Yet on the flipside are increasing numbers of households which bear unsustainable debt burdens; those living in the private rental sector who are paying very high rents, and denied the advantages of the significant subsidies available for owners; and those who simply cannot afford to rent or buy in the private sector and are left with only a residual, poorly supported and overburdened social housing sector to rely on.

Owning a home has been described as ‘the Australian Dream’ to which there is deep cultural attachment (Beer 1993; Daley, Coates and Wiltshire 2018) While the ‘dream’ of homeownership can be constructed through concerted policy action as much as through cultural myth (see eg Hohmann 2017, 11-13), and the *inherent* superiority of ownership should be scrutinised, even with this commitment in place there remain important ways to ensure adequate housing and to work against the inequality that currently results in Australia. These include better social protections across the range of social rights – from the right to work to the right to social security; and an open discussion about whether homeownership deserves the special protection it receives as a matter of public policy. However, with housing increasingly financialised, inflating its price in ways seemingly divorced from local contexts, it is unlikely that other social rights will be able to ensure housing affordability, a factor discussed in the next section.

Financialisation: Investment and Speculation in Housing

Financialisation refers to ‘the increasing dominance of financial actors, markets, practices, measurements and narratives’ across all aspects of the economy (Aalbers 2016, 2). *Housing* is financialised when it is instrumentalised for and on global financial circuits. In this process housing becomes ‘critical’ to, or even a ‘central pillar of’ the broader financial market (Rolnik and Rabinovich 2014, 62-63; See also Aalbers 2008; 2019, 41). Financialised housing ‘is treated as a commodity, a means of accumulating wealth and often as security for financial instruments that are traded and sold on global markets’ (Report of Special Rapporteur 2017, [1]). Houses have long been a commodity but where housing financialisation is qualitatively different is in the way that housing comes to underpin accumulation of wealth not only as an individual asset, but also as security for further financial trading.

When housing is financialised, it is valuable whether it is empty or lived in, and its role as a home is subsumed by its speculative value. The UN Special Rapporteur on Housing notes that the financialisation of housing has led to ‘unprecedented housing precarity’ (ibid, [26], [35]) and argues that by its nature, financialised housing cannot ensure the right to housing (ibid, [5]).

Australia has embraced housing financialisation (Morris 2018, 64) and while financialisation is often seen as a new phenomenon, it can also be understood as the current manifestation of a central colonial mode – to extract wealth from the land – as Sisson, Rogers and Gibson remind us (Sisson, Rogers and Gibson 2018, 3). This move to financialised housing in Australia has involved: favourable treatment of domestic investors through tax, credit, low interest borrowing, and active encouragement of investment in housing as a ‘safe’ option;

disinvestment in or privatization of housing that is non-commodified, such as social housing; and encouraging significant foreign investment in Australian real estate (Morris 2018, 64). In the context of housing financialisation, a discourse that focuses on a right to housing as somewhere to *live* in peace, dignity and security (UNCESCR 1991), can help to open up a new discussion. That discussion can use the norms and standards around housing as a right to insist that whatever the role of the privately owned home-as-asset in Australian housing policy, housing which is financialised – that is, used primarily as security for financial trading and speculative gain – does not fulfil this role, and is owed no special treatment in law or policy that protects housing as somewhere for people to live: its primary and fundamental role. In order to protect and fulfil the right to housing, states' housing strategies must, as the UN Special Rapporteur on Housing argues 'affirm the social function of land and housing and adopt measures to curb speculation, stop the production of unneeded luxury housing and prevent the privatization of public land' (Report of Special Rapporteur 2018, [122]). Indeed policy and law that favours financialised housing is likely to contribute to the breach of Australia's international legal obligations for the right. The right to housing demands a distinction between the important need for housing as a social good, and the speculative potential of housing. While Australians may remain committed to the idea of private ownership of a *home* as an important one, it is imperative that investment and speculation are not given protection under cover of it.

Conclusion

In 2004, Otto and Lynch noted that 'adopting the language of human rights to assert a claim to housing is only the first, and perhaps the easiest, step' (Otto and Lynch 2004, 4). In

Australia, this step has itself proved a difficult one to take. The government has maintained the ‘imperviousness’ to critique in human rights terms that Otto and Lynch noted (ibid, 6). Yet many would agree that something is wrong with housing in Australia. Dominant housing narratives, and the policies that support them, centre on private acquisition of housing as a platform to wealth and an important form of family saving, against a backdrop of dwindling social protections and rights. The private rental market is generally seen as a second best option, and is indeed given second-best policy support. Yet it is also increasingly inaccessible given high rental costs. Social housing is viewed a last resort, a residual tenure for those with multiple disadvantages, and the long waiting lists indicate that it is an unattainable solution for many whose problems are very real right now.

Arguing that decent housing is a right, rather than only a market good, could help open up housing policy for bold new solutions that focus on those who are unable to access adequate, safe and secure housing, and who continue to suffer while others live in luxury. A debate around the right to housing in Australia can help generate conversations about enduring injustice, discrimination and vulnerabilities, and the role of social protection more broadly. With human rights centring on the inherent worth and dignity of each individual, the right to housing has particular power to push against housing markets – and policies – which sacrifice the vulnerable and disadvantaged. The right to housing is not only a challenge to the government – showing in stark terms its failure to move toward the fulfilment of the right – it is also an opportunity. As Randolph has argued, lack of coordination across levels of government, vested interest lobby groups, and sustained disinvestment in housing issues have seriously weakened the capacity of Australian governments to respond to the complex housing challenges now facing Australia (Randolph 2020, vi). These challenges are further highlighted by the Covid-19 Pandemic, which at the same time has foregrounded the

fundamental personal and social need for safe, secure and adequate housing. But having taken on obligations for a right to housing is an opportunity for Australian governments to reassert a social role. As the UN Special Rapporteur on Housing writes: '[h]uman rights make it clear that, while ensuring access to adequate housing for all involves many actors, it is in fact a legal obligation of States to be both a key actor and a regulator of private actors.' (Report of Special Rapporteur 2018, [13]).

The realisation of a right to housing for all might require radical social and economic change, change that is unlikely without the underlying demand for it. Articulating this demand in terms of the human right to housing would, this article has argued, be a potent step in the current housing climate. Discussions around affordability are alive and pressing in public debate, but they have rarely been discussed in terms of a right to housing. The standards and principles that frame the right to housing in ICESCR Article 11(1) – already part of Australia's international legal obligations – are available to help make the argument for a new approach to housing, one framed around a place for everyone to live in dignity and security. The right to housing provides powerful ways in which to make the argument for housing policy reform, to hold governments' actions up against an international standard, and to push for change.

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