

Mercy Foundation Contribution to the List of Issues Prior to Reporting

Australia

6th Reporting Cycle to the UN Committee on Economic Social and Cultural Rights, 70th Session (March 2022)

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Note by the NGO (Mercy Foundation), on submission on the list of issues for the 6th periodic review of Australia

On the occasion of the Committee on Economic, Social and Cultural Rights' review of Australia during its 70th session, we submit the following questions to inform the Committee's preparation of a list of issues, with a view to guiding and focusing the dialogue between the State party's delegation and the Committee, under the Simplified Reporting Procedure.

The Mercy Foundation strives to end homelessness, end human trafficking and slavery and bring about greater social justice in communities across Australia. The Mercy Foundation is committed to social justice and addressing the root causes of poverty and inequality in our community.¹

The submission to inform the list of issues reflects the Mercy Foundation's Mission, but the Foundation recognises the indivisibility and interdependency among all human rights,² and stresses that the State party's fulfilment of its obligations with respect to any of the rights will lead to greater enjoyment of all ICESCR rights.

Incorporation of Convention Rights in Domestic Law and Ability to Claim and Enforce Covenant Rights:

1. Provide information, in accordance with the Committee's recommendation in the Concluding Obligations on the State's Fifth Periodic Report³ on:
 - a. the State party's immediate steps to incorporate fully the Covenant rights into domestic law;
 - b. the State party's progress in ensuring legal access to the Covenant rights and individuals' ability to claim and enforce the Covenant rights.
2. Provide information on plans to ratify the Optional Protocol to the Covenant.

¹ Mercy Foundation <https://www.mercyfoundation.com.au/>.

² United Nations, Vienna Declaration and Programme of Action A/Conf.157/23 (1993) Part 1, para 5.

³ CESCR, Concluding Observations on the Fifth Periodic Report of Australia (11 July 2017) E/C.12/AUS/CO/5 paras 5-6.

Federal/Commonwealth Government's International Obligations for the Right to Housing:

3. Provide information on how the State party supports States and Territories within Australia's federal system to progressively realise the right to housing, including through financial arrangements, in accordance with the State's ultimate obligations for the Covenant rights under international law.

Self-Determination (Article 1):

4. Provide information on steps taken to guarantee meaningful self-determination to Australia's First Nations Peoples, including through the State party's immediate steps to incorporate fully the UNDRIP into domestic law.

Non Discrimination and Equality in the Enjoyment of Covenant Rights (Article 2(2); Article 3):

5. Provide information on steps to end discrimination in housing policy on an immediate basis, reflecting the status of non-discrimination as a norm of customary international law as well as a Covenant right. The State party should provide specific information on:
 - a. Discriminatory policy with respect to housing for Australia's First Nations Peoples including in the provision and quality of housing;
 - b. Broader discriminatory policy and law – such as restrictive income management schemes for Aboriginal people noted as of concern in the Committee's previous Concluding Observations⁴ – and their impact on ability to enjoy the right to housing, and Covenant rights more broadly;
 - c. Ability of women to enjoy Covenant rights on an equal basis with men, as brought to the State party's attention in previous Concluding Observations.⁵The state should provide information in particular on:
 - i. high and rising levels of homelessness among older women;⁶
 - ii. poverty among women and its impact on the ability to access adequate housing, and;
 - iii. broader social policy such as superannuation and pension entitlements for women.⁷

⁴ CESCR Concluding Observations Australia (2017) (note 3) para 31(c).

⁵ Ibid. para 21.

⁶ Mercy Foundation 'Older Women and Homelessness' <https://www.mercyfoundation.com.au/our-focus/ending-homelessness/older-women-and-homelessness/>; Ageing on the Edge NSW Forum, 'Home at Last: Solutions to End Homelessness of Older People in NSW' December 2021 https://www.mercyfoundation.com.au/wp-content/uploads/2021/12/home_at_last_report_web.pdf.

⁷ Workplace Gender Equality Agency 'Women's economic security in retirement' <https://www.wgea.gov.au/sites/default/files/documents/Women%27s%20economic%20security%20in%20retirement.pdf>.

6. Please also provide information on the State party's ability to suspend the Racial Discrimination Act,⁸ and its plans to end this practice, which the State party uses to enact discriminatory laws and policies against First Nations Peoples, including with respect to their land and housing rights.⁹
7. Provide information on the State party's policies to address growing social inequity, where income and wealth continues to be unfairly distributed across households in Australia.¹⁰

Right to Social Security and Social Insurance (Article 9):

8. Provide information on how social security and social insurance is adequate to ensure an adequate standard of living, and to ensure people can access adequate housing and are not pushed into insecure housing or homelessness. The State party should provide information on how it has addressed concerns around poverty,¹¹ unemployment, and income support in previous Concluding Observations.¹² The State party should make particular reference to:
 - a. people seeking asylum;¹³
 - b. people on income support, which in real terms has not risen in 25 years;¹⁴
 - c. First Nations Peoples;
 - d. young people;¹⁵
 - e. those subjected to family and domestic violence, particularly women and children;¹⁶

⁸ Racial Discrimination Act (1975) (Commonwealth) <https://www.legislation.gov.au/Details/C2016C00089>.

⁹ Australian Human Rights Commission (AHRC) 'The Suspension and Reinstatement of the RDA and Special Measures in the NTER' <https://humanrights.gov.au/our-work/suspension-and-reinstatement-rda-and-special-measures-nter-0>.

¹⁰ In Australia, a person in the highest 20% of the income scale lives in a household with almost six times as much income as a person in the lowest 20% of the income scale. See Australian Council of Social Services (ACOSS) 'Inequality in Australia: What is Inequality?' (2020) <https://povertyandinequality.acoss.org.au/inequality/>. Income inequality has risen significantly since 2015-16, when the ratio was five times as much income for the highest 20%. See D Taylor 'Rich getting richer and poor slipping further back, with youth inequality growing fastest, ACOSS says' ABC News (2 Sept 2020) at <https://www.abc.net.au/news/2020-09-02/wealth-inequality-rising-sharply-especially-among-young-acoss/12618120>.

¹¹ More than one in eight adults and more than one in six children are living in poverty in Australia. See Australian Council of Social Services (ACOSS) <https://povertyandinequality.acoss.org.au/poverty/#what-is-poverty>.

¹² CESCR Concluding Observations Australia (2017) (note 3) para 23-4, 31-32, 39-40.

¹³ A Roberts, E Conroy & N Rego, 'A Place to Call Home: Experiences of homelessness and housing exclusion among people seeking asylum in Greater Sydney' (2021) <https://aus.jrs.net/en/housing-research/>.

¹⁴ Australian Council of Social Services (ACOSS) 'Income Support and Employment' <https://www.acoss.org.au/employment-income-support/>.

¹⁵ Raise the Rate, 'Starved of Opportunity: Young People's Experience of Youth Allowance and Newstart' <https://raisetherate.org.au/wp-content/uploads/2020/02/Starved-Of-Opportunity-Young-Peoples-Experience-Of-Youth-Allowance-And-Newstart-November-25th.pdf>.

¹⁶ National Social Security Rights Network 'How well does Australia's Social Security System Support Victims of Family and Domestic Violence?' (August 2018) http://ejaustralia.org.au/wp/wp-content/uploads/2018/08/NSSRN_Report2018_FamilyViolence_SocialSecurity_sm.pdf p 22.

- f. victim/survivors of trafficking and forced labour.¹⁷

**Right to an Adequate Standard of Living with a focus on access to adequate housing
(Article 11(1)):**

Homelessness

9. Homelessness is a violation of the core of the right to housing,¹⁸ yet homelessness continues to increase in the State party,¹⁹ and was a subject of concern in the Committee's previous Concluding Observations,²⁰ indicating retrogression in enjoyment of Article 11(1). Accordingly, the State party should:
- a. provide information on steps taken to reduce and eliminate homelessness, including with attention to efforts to increase social and affordable housing,²¹ and to pursue 'housing first' policies;
 - b. provide information on steps taken to ensure pathways out of homelessness, which remains at very high levels, with particular attention to pathways into appropriate, secure and long-term housing;²²
 - c. provide information on steps taken to provide adequate housing for those in hidden homelessness and overcrowded²³ or inadequate housing;
 - d. provide information on steps taken to ensure domestic and family violence does not lead to homelessness, as domestic and family violence is the leading cause of homelessness for women and their children.²⁴

¹⁷ Parliament of the Commonwealth of Australia Joint Standing Committee on Foreign Affairs, Defence and Trade, 'Hidden in Plain Sight: An inquiry into establishing a Modern Slavery Act in Australia' (December 2017), Recommendation 24.

¹⁸ CESCR General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant) (14 December 1990) E/1991/23, para 10.

¹⁹ The number of people experiencing homelessness is consistently growing nationally with an estimated national homelessness rate of 50 persons for every 10,000 people. P Flatau et al 'Ending homelessness in Australia: An evidence and policy deep dive' (2021) Centre for Social Impact, The University of Western Australia and the University of New South Wales, p xx; Australian Bureau of Statistics, Census of population and housing: Estimating homelessness (2018) <https://www.abs.gov.au/statistics/people/housing/census-population-and-housing-estimating-homelessness/latest-release>.

²⁰ CESCR Concluding Observations Australia (2017) (note 3) para 41(b), (d).

²¹ A 2018 study estimated a national shortfall of social and affordable housing of 437,586 dwellings. It also estimated that by 2036 there will be a shortfall of nearly 730,000 dwellings. Lawson et al, 'Social housing as infrastructure: an investment pathway' AHURI Final Report 306, (Australian Housing and Urban Research Institute 2018) <http://www.ahuri.edu.au/research/final-reports/306>. Social housing as a proportion of total housing stock has declined across Australia, from 6% in 1994 to just over 4% see Australian Bureau of Statistics (ABS), 'Social Trends' (2021).

²² Eg, a Parliamentary inquiry into homelessness (in the sub-national state of Victoria) found in 2021 that lack of secure and affordable housing was a major contributor to homelessness. See Legal and Social Issues Committee, Parliament of Victoria, 'Inquiry into Homelessness in Victoria' (Final Report, March 2021) Ch 6.

²³ Overcrowding accounts for 44% of homeless persons in Australia. Flatau et al (note 19) p 25.

²⁴ Australian Institute of Health and Welfare (AIHW) 'Specialist homelessness services annual report (No. HOU 322)' (2020) <https://www.aihw.gov.au/reports/homelessness-services/specialist-homelessness-services->

Security of Tenure

10. Security of tenure forms the cornerstone of a right to housing.²⁵ The State party should provide information on:
- a. the impact of no-fault evictions on tenure security in the State party and the efforts taken to improve tenure security, particularly in private rentals;²⁶
 - b. efforts taken to improve tenure security in light of ongoing pandemic-related job losses and income insecurity;²⁷
 - c. the impact of very high rents, very high mortgage debt, and rapidly rising house prices on security of tenure.²⁸

Housing Affordability

11. Given rapidly rising housing prices across rental and owned homes,²⁹ leading to widely experienced housing insecurity and inability to access adequate housing, and to homelessness³⁰ the State party should provide information on policies, legislation, and other efforts to ensure housing affordability. Specifically:
- a. provide information on steps taken to make social and affordable housing available and accessible, given current lack of supply and long waiting lists;³¹

annual-report/contents/summary; Equity Economics estimates that 7,690 women have returned to a violent partner because there was nowhere to go, and that 9,120 women and children face homelessness each year after leaving a violent partner. Equity Economics, 'Nowhere to go: The benefits of providing long term social housing to women that have experienced domestic and family violence' (2021).

²⁵ J Hohmann *The Right to Housing: Law, Concepts, Possibilities* (Hart, 2013), p 21.

²⁶ S Convery 'Calls for end to 'no-grounds' evictions in NSW as lockdown moratorium lifts' *The Guardian*, 14 Feb 2022 <https://www.theguardian.com/australia-news/2022/feb/14/calls-for-end-to-no-grounds-evictions-in-nsw-as-lockdown-moratorium-lifts>; Tenants Union of New South Wales 'Eviction, Hardship and the Housing Crisis: Building a Crisis-Resilient Renting System' (February 2022) <https://files.tenants.org.au/policy/2022-Eviction-Hardship-and-the-Housing-Crisis-TUNSW.pdf>.

²⁷ Convery, *ibid*.

²⁸ A Duncan, A James & S Rowley, 'Getting Our House in Order: BCEC Housing Affordability Report 2019' Bankwest Curtin Economic Centre, Focus on Western Australia Series, Issue 12, (May 2019).

²⁹ In the year to December 2021, rents increased by 9.4% across Australia and 12.1% in regional areas, and house prices exploded by 22.4%. (Corelogic data, <https://www.corelogic.com.au/>); See also Editorial 'Through the Roof Home Prices Nothing Short of a Crisis' *The Age* (2 August 2021) <https://www.theage.com.au/national/through-the-roof-home-prices-nothing-short-of-a-crisis-20210801-p58erx.html>.

³⁰ J Hohmann, 'Toward a right to housing for Australia: Reframing affordability debates through article 11(1) of the International Covenant on Economic, Social and Cultural Rights' (2020) 26(2) *Australian Journal of Human Rights* 292-307.

³¹ Lawson et al, (note 21). In NSW, for example, the current expected wait for social housing in some areas tops 10 years for all property types, with a total of 46,087 applicants on the waiting list. See NSW Communities and Justice, 'Expected Waiting Times', <https://www.facs.nsw.gov.au/housing/help/applying-assistance/expected-waiting-times>. Figures are similar in Queensland, where numbers on the waitlist have increased by 70% in three years. See Brisbane Times, 'Social Housing Waiting List Could Fill a Town Larger than Gladstone', <https://www.brisbanetimes.com.au/politics/queensland/social-housing-waiting-list-could-fill-a-town-larger-than-gladstone-20210429-p57nd3.html>.

- b. provide information on how the State party is taking steps to ensure investment in housing (and housing financialization) does not lead to retrogression in the enjoyment of the right to housing, particularly with regard to housing affordability. The State party should provide information with respect to 'negative gearing' and capital gains tax concessions that encourage high income earners to invest in housing at the expense of homeownership for low income earners.³²

Access to Housing for Vulnerable Groups

12. State parties must take additional steps to ensure that adequate housing is accessible for vulnerable groups, yet vulnerable groups are experiencing serious impediments in access to adequate housing. The State party should provide information on:
 - a. steps to combat homelessness in older women, the fastest growing cohort of homeless people;³³
 - b. steps to support First Nations people in housing, rectifying past and ongoing discrimination and disadvantage (as recognised in the Committee's Past Concluding Observations³⁴) and including self-determined housing choices;
 - c. support for young people leaving care;³⁵
 - d. support for vulnerable people exiting prison;³⁶
 - e. support for people seeking asylum;³⁷
 - f. support for children;³⁸
 - g. support for people with disabilities.³⁹

Housing Quality and Habitability

13. As a developed State, with well-developed housing infrastructure, all Australian housing should meet quality standards commensurate with human dignity, peace and security. However some housing falls well below basic standards of habitability. Accordingly, the State party should provide information on the following:

³² See 'Editorial' (note 29).

³³ Mercy Foundation 'Older Women and Homelessness' (note 6) Ageing on the Edge (note 6).

³⁴ CESCR Concluding Observations Australia (2017) (note 3) para 15-16.

³⁵ P Flatau, et al, 'The cost of youth homelessness in Australia study: snapshot report 1. Analysis & Policy Operatory' (2015) <http://doi.org/10.4225/50/55AC3D19B3DAE>.

³⁶ Flatau et al (note 19).

³⁷ Roberts, Conroy & Rego (note 13).

³⁸ Australian Institute of Health and Welfare (AIHW) 'Australia's Children: Homelessness' (03 April 2020) <https://www.aihw.gov.au/reports/children-youth/australias-children/contents/housing/homelessness>.

³⁹ Australian Human Rights Commission (AHRC) 'The Rights of People with Disabilities: Areas of Need for Increased Protection' <https://humanrights.gov.au/our-work/rights-people-disabilities-areas-need-increased-protection-chapter-4-accommodation> Ch 4 - accommodation.

- a. steps taken to end poor housing conditions for Australia’s First Nations Peoples;⁴⁰
 - b. steps taken to remedy disinvestment in social housing, which has led to poor standards and disrepair in social housing; and to improve housing quality in that sector.⁴¹
14. With climate change contributing to unprecedented fires⁴² and flooding,⁴³ destroying houses and communities across Australia in recent years, provide information on the State party’s climate and emissions policy and human rights impact assessment of these policies.

The Right to the Highest Attainable Standard of Physical and Mental Health (Article 12):

15. Housing is a key social determinant of health. As the global Corona virus pandemic has demonstrated, housing is of fundamental importance to the physical and mental health of all individuals and broader communities. Accordingly, the State party should:
- a. provide information on how its housing policies and legislation are targeted to protect physical and mental health;
 - b. provide information on its policies to secure access to housing for all, with particular attention to the vulnerable, amid the continuing impact of Covid-19 on health, and housing insecurity caused by job losses and lockdowns.

⁴⁰ The Australian Institute of Health and Welfare (AIHW) found that in 2018–19, 20% of Indigenous households were living in dwellings that did not meet an acceptable standard – defined as having at least 1 basic household facility that was unavailable or having more than 2 major structural problems. 33% of Indigenous households were living in dwellings with at least 1 major structural problem. Indigenous households in remote areas were more likely to live in dwellings with structural problems than those in non-remote areas (46% and 31%, respectively), and 9.1% of Indigenous households had no access to working facilities for food preparation, 4.5% had no access to working facilities to wash clothes and bedding and 2.8% had no access to working facilities to wash household residents. AIHW Indigenous housing Snapshot (16 Sep 2021) <https://www.aihw.gov.au/reports/australias-welfare/indigenous-housing>.

⁴¹ Lawson et al (note 21).

⁴² ‘The bushfires burned more than 46 million acres (72,000 square miles) – roughly the same area as the entire country of Syria. At least 3,500 homes and thousands of other buildings were lost and 34 people died in the thousands of fires between September 2019 and March 2020.’ Center for Disaster Philanthropy, ‘2019–2020 Australian Bushfires’ <https://disasterphilanthropy.org/disaster/2019-australian-wildfires/>.

⁴³ SBS News ‘Floods in Australia among most expensive climate events of 2021, report finds’ (21 February 2022) <https://www.sbs.com.au/news/floods-in-australia-among-most-expensive-climate-events-of-2021-report-finds/1c863e45-f319-49d4-b991-4100fbc02f1>.