

**"Tenancy and the right to adequate and affordable housing"**

**Ten Year Anniversary of Western Sydney Tenants' Service  
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## **"Tenancy and the right to adequate and affordable housing"**

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## **Introduction**

I am honoured to be guest speaker at the Ten Year Anniversary of Western Sydney Tenants' Service. I thank you for the invitation and I congratulate the organisation for its achievements over the past decade.

Your decision to include the Human Rights and Equal Opportunity Commission in this event is recognition that human rights are central to addressing tenancy issues. It is an acknowledgment that adequate and affordable housing is a basic human right. Wests recognised this from the beginning with its invitation to the then President of our Commission, Sir Ronald Wilson, to open the service. I am so pleased that I have been invited to speak on its 10<sup>th</sup> anniversary.

I would like to say a few words about the human right to adequate housing - what it means, how well our society has protected it and the role of organisations like yours as guardians of that right. Organisations like Western Sydney Tenants' Service play a vital role in protecting the human right to housing. As you celebrate your tenth anniversary I hope you will reflect on the importance of the role you play. That role will become even more important over the next decade as governments continue to wind down their involvement in these issues in the name of economic efficiency and economic reform.

## **Housing as a human right**

Reflecting on whether housing is a human rights issue may seem a bit semantic. Does it really make any difference how we characterise it? I think it does. Recognising that people have a right to a safe and secure place in which to live has a fundamental effect on the way in which governments and society as a whole must respond to that need. It means that providing an adequate response to this need becomes a matter of obligation and not of choice. It sets a level of response which is non-negotiable because to go below that standard would constitute a violation of human rights. It sets a standard of decent treatment that should not and must not be subject to the vagaries of political convenience and the changing economic priorities of government.

More than anything else, human rights is about dignity. Adequate housing is essential for human survival with dignity. Without a right to housing, it is impossible to enjoy many other basic rights which we take for granted, such as the right to family life and privacy, the right to be free from any form of discrimination, the right to assembly and association and the right to health

The right to housing is articulated in international laws which form the basis of Australia's human rights promises. The *Universal Declaration of Human Rights*, adopted by the United Nations in 1948, forms the very cornerstone of the international human rights system. Article 25 of the Declaration provides 'Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including ... housing'. (Unfortunately many of these treaties were formulated before people became conscious of inclusive language.)

Article 11 of the *International Covenant on Economic, Social and Cultural Rights*, to which Australia is a party, recognises the right of all people to adequate housing and commits parties to take appropriate steps to ensure the realisation of that right.

Further reference to housing can be found in other international human rights instruments including the *Convention on the Rights of the Child*. In the context of non-discrimination instruments such as the *Convention on the Elimination of All Forms of Racial Discrimination* and the *Convention on the Elimination of All Form of Discrimination Against Women* are also very important. They enshrine the principle that housing and other entitlements must be provided on a non-discriminatory basis.

More recently the right to an adequate standard of living, including housing, was reaffirmed by the international community at the World Congress on Human Rights in Vienna in 1993 and at the United Nations Conference on Human Settlements, also known as the HABITAT conference, in 1996.

So there can be no doubt that adequate housing is a basic human right.

These declarations and international treaties may seem a bit far removed from the gritty practical issues that the Western Sydney Tenants' Service deals with on a day to day basis. However, I think it is worth mentioning them because they provide the moral and philosophical framework for the work you do, and they give force to your arguments for governments to give more attention and support to these issues.

### **Australia=s response to the right to housing**

Australia=s response to the right to housing has been a mixed one to date. On the positive side, the right to housing is recognised and supported in such documents as Australia=s National Action Plan on Human Rights.

The National Action Plan states that all Australians should have access to affordable, adequate and appropriate housing. It re-affirms a commitment to improving the housing and living conditions of Australian citizens and the economic efficiency, social equity and environmental sustainability of our cities and regional areas.

Notwithstanding these commitments, there remains considerable room for improvement in Australia=s overall performance on the right to housing. The last Commonwealth census confirmed that there were 105,000 homeless people across Australia. It estimated that between 60 and 70% of them had been homeless for 6 months or more. These figures are bad enough in themselves but without doubt they under-state the extent of homelessness. They are a very conservative estimate.

ACOSS President Michael Raper recently described three key areas that have made access to housing increasingly difficult for many people in Australia.

- Unemployment: Despite the improvements in unemployment statistics, it is no exaggeration to say that we now have in this country an entrenched underclass of long-term unemployed. Approximately one-third of all unemployed people in Australia have been without work for a year or more. Unemployment continues to be the main cause of poverty in Australia. Support and assistance for those affected by unemployment have been undermined by large cuts in the public sector and public expenditure over recent years.

- Inadequate levels of income support: Levels of some income support payments are insufficient for people to enjoy their basic rights with respect to housing and the other necessities of life. Single people on unemployment benefits currently receive \$163 a week and young people living away from home on an independent basis receive \$133 a week youth allowance. These amounts may be supplemented by some limited rent assistance. They are well below the poverty line set as a very austere measure of quality of life.
- Lack of affordable housing: The supply of affordable housing has declined considerably in recent years. According to a 1999 study (Yates and Wulff) the availability of low-cost housing for people on limited incomes has decreased steadily over the past decade to a point where there is now a shortfall of approximately 150,000 residences. This trend has been exacerbated by reductions in the level of Commonwealth funding for public housing.

Declining access to housing is part of a broader picture of growing poverty and social inequality in Australia. Recent research suggests that there are more than two million Australians with income below the poverty line. The top 10% of Australians hold over 50% of all household wealth and the bottom 50% hold only 3%. From the late 1970s to the early 1990s, the income disparity between the top one-fifth and the bottom one-fifth increased by almost 50%. And during the 1990s inequality has grown further. ABS figures released late last year show that between 1995 and 1998 the income of the poorest 10% of the population increased by \$7 a week while the income of the richest 10% of the population increased by \$121 a week, more than 17 times the increase of the poorest people.

These trends raise serious questions about Australia's human rights performance. They create enormous challenges for your organisation and indeed for all of us who are committed to achieving a more just and fair society.

### **Tenancy issues for younger and older Australians**

The deficit in Australia's performance on the right to housing is demonstrated not just in the numbers of homeless people. It is also demonstrated in the discrimination and other problems faced by vulnerable groups when they seek to exercise their right to housing.

There are many groups we could talk about, all of whom face their own unique problems. However, because my time is limited I will make some brief comments about two groups - younger Australians and older Australians. I choose these two groups not to exclude others but because they encompass all of us at some stage in our existence.

### Younger Australians

The birth of the Western Sydney Tenants' Service coincided (roughly) with the conclusion of the National Inquiry into Homeless Children, undertaken by the Human Rights and Equal Opportunity Commission.

The inquiry heard considerable evidence to the effect that landlords and agents openly discriminated against young people, who were perceived as a high risk group. A homeless young person told the inquiry.

*Even if you did earn the wage to get into a private house or flat or something, they do not really want you there because you are young. I mean it is not worth going there because ... they just make it that hard for you that you cannot stay there. They want older people there. It is not for younger people.*

The inquiry highlighted the entrenched perception that young people were bad financial risks, particularly if they were in receipt of social security payments.

The inquiry also heard many stories about the unfair perception of young people as troublemakers. One community worker told us

*Real estate agents are not going to accept young people... Why should they when they can get an older person who is working and who is obviously going to be much quieter and cause no disruption for the neighbours.*

The Fremantle Youth Accommodation Service in Western Australia gave evidence about the way in which the requirements of landlords and agents in the rental market excluded low income young people and the homeless in particular. One of the workers from that service told us

*They have to be working and therefore prove their ability to pay the rent. They have to have references ... a previous agent through which they have rented, or a person with standing within the community ... When they make an appearance they should be clean especially their hair, their feet and their fingernails ... I do not know how you do that when you have not got a place to live and a shower to clean yourself in ... And with those sorts of attitudes, which are quite prevalent, and we are running up against them all the time with young people, it is very difficult for them to break into the market, let alone their ability to pay the rents that are asked for.*

Another theme that featured prominently in our inquiry was the stereotyping that led to certain groups of young people experiencing especially serious discrimination. Evidence was given that young males were regarded as "not particularly desirable, because they make lots of noise and cause damage". One witness described how discrimination against young people was intensified when they were not seen to be socially acceptable and that young people who fell into this category typically included migrants, Indigenous young people, gay and lesbian young people, young people with disabilities and young people who have children themselves.

Our national inquiry was extremely useful in encouraging budgetary measures to address the housing problems of young people in Australia. It generated approximately \$100 million over 4 years from Federal and State Governments for a range of youth related projects and programs. It was extensively covered by the media and increased public awareness of the problem very substantially.

However, the fact remains that a decade later young people still experience discrimination and unfair treatment in the housing market. In 1997 our Commission and the Australian Law Reform Commission released *Seen and heard* the report of the National Inquiry into Children and the Legal Process. The rights of young people in the area of accommodation emerged as a very serious concern in the inquiry.

The consultations for the inquiry included focus groups of young people in all States and Territories. Young men and women told us how private landowners often stereotype teenagers as high risk tenants and are reluctant to lease properties to them even when they



can demonstrate a capacity to pay. Young people also spoke about their difficulties in accessing public housing. One girl who participated in the Hobart focus group reported having to wait 18 months for public housing.

Most recently the Commission has undertaken national consultations on age discrimination, covering a wide range of areas including accommodation. A number of submissions have described the prohibitive nature of private rental accommodation for young people on low incomes. For some of these young people a very modest one-bedroom housing can absorb up to 70% of their income.

Our work on age discrimination has also highlighted misconceptions about the capacity of young people under the age of 18 to enter leases. Some lessors incorrectly assume that young people lack such a capacity and use this as basis for refusing to rent to them. Some young people who have not been sufficiently informed of their rights also assume they lack capacity to enter a lease. Clearly this indicates a need for more resources to be devoted to legal information and advocacy services for youth.

### Older Australians

For many frail elderly people, exercising their right to housing is problematic. The number of older people experiencing poverty and homelessness is likely to increase dramatically in coming years, given the ageing of the Australian population, the declining job market and the withdrawal and privatisation of many government services.

Phil Slattery, Chair person of the Housing for the Aged Action Group in Victoria, has written about the plight of older people forced to live a transient and insecure lifestyle because of escalating rental costs and inappropriate housing. He described the primary reasons for this as being 1) the lack of regulation of the private rental market 2) large increases in inner city real estate prices and 3) the lack of affordable housing choices for older people.

The private rental market is often completely alien to the needs of older people. The Housing for the Aged Action Group frequently works with older people whom pay 65% or more of their income on rent. It is not unusual for the style of rental accommodation to be unsuited

to the older person's living requirements. This includes units on the upper floors of apartment blocks, lack of disability access and inadequate security to ensure the tenant's safety.

Escalating rents has the effect of forcing some older to re-locate frequently, resulting in isolation from their communities and their friends, their communities and their support networks. Property developers have taken advantage of large price increases in inner-suburbs by buying up entire blocks of units, demolishing or renovating them and evicting elderly tenants who may have lived there for many years.

Older people have been affected more than any other group in the community by the massive cuts in the provision of public housing by the Federal and State Governments. Older people have also been subject to unfair conditions in the provision of public housing. In our recent consultations on age discrimination, one submission from New South Wales stated

*[O]lder clients ... were unable to obtain public housing in New South Wales as they did not fit the stated criteria in terms of age. There are certain cut off points related to age in the housing policy guidelines and we have heard of informal policies relating to allocation of priority housing where the applicant is required to be over 80. If Australian males have a life expectancy of 75.2 years this policy on the face of it is discriminatory in a number of areas.*

These hostile processes also have significant adverse effects on the wider health and well-being of older people by adding to their stress, loneliness and sense of insecurity.

The experience of older people in the rental market is symptomatic of a broader process of disregard and de-valuing of older people in our society. We need to change the way we look at older people, recognising the contribution they have made to society as well as the important and unique roles they continue to play in the life of the community. Older people should be seen as members of the community to be nurtured and celebrated, not shunned and left homeless or in inadequate housing.

## **Other issues**

My comments have focussed on two major segments of the community, but as I noted earlier, there are many other groups who experience discrimination and other forms of hardship in relation to tenancy, including Indigenous people, women, gay men and lesbians, people with disabilities and others.

In recent times, there have been a number of developments that raise major concerns for tenants. They include the establishment of tenancy databases in New South Wales, understandably a source of concern for your organisation and its clients. The operation of tenancy database increases potential for misuse of tenant information, arbitrary and discriminatory treatment of tenants and violations of tenants' privacy rights.

I have not had a great deal of direct involvement with these databases as they are more within the province of my colleague the federal Privacy Commissioner. His office has received a number of complaints about tenancy databases. Issues raised have included tenants not knowing the database existed and thus not knowing why they were being refused a tenancy, and not being allowed to check the accuracy of information about them on the database.

There is clearly a need for greater regulation of this area. Tenancy databases will in fact be subject to the regime for privacy regulation of the private sector. This is a very positive development and one which will I hope address many of the concerns you have about this issue.

## **Concluding remarks**

My intention was not to present you with a litany of despair, as today is above all else a celebration for your organisation. Rather, in describing the serious human rights issues faced by tenants in today's environment I have sought to underline the importance of the work you do. As I said at the beginning, the Western Sydney Tenants Service plays an invaluable role in protecting the right to adequate and affordable housing - a right that is coming increasingly under threat for many of the most vulnerable and marginalised

members of the community. The Human Rights and Equal Opportunity Commission supports you in this important endeavour. I congratulate you for your achievements over the past decade and wish you well as you face the challenges that lie ahead in the next decade.