



Homelessness, evictions and human rights law

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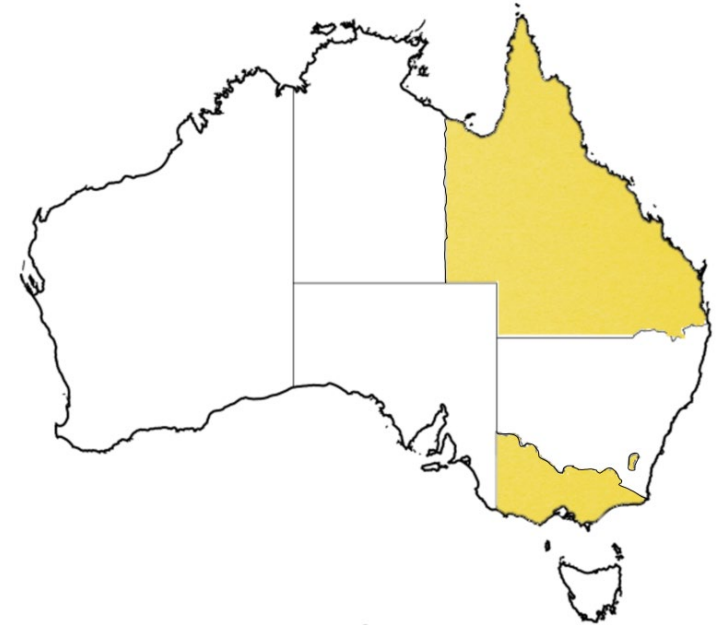
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An unexpected finding

- Homeless law services said their **main area of legal need was preventing evictions** from social housing to homelessness.
 - **social housing** includes public housing and community housing
 - administered by State/Territory governments
 - **shared funding arrangement** between Commonwealth and States/Territories (National Housing and Homelessness Agreement)
 - **waitlists remain long**: only 73% of ‘greatest need households’ receive housing within 1 year (AIHW 2019)
- ‘If people are evicted from public housing, it’s almost certain that they would have a period of homelessness.’

Human rights in Australian law

- Australia is the **only democratic nation in the world that does not have a Bill or Charter of Rights.**
- Federal system of law and government: Commonwealth + 8 States/Territories
 - Commonwealth has legislative responsibility for social security
 - States/Territories have legislative responsibility for housing, policing, health
- **Different laws** and policies in different jurisdictions.
- Australian Capital Territory (2004), Victoria (2006) and Queensland (2019) all have **human rights legislation** (but even these are different).



Australian Human Rights Acts

- **No right to housing** under any of the State/Territory human rights Acts. But they all include:
 - the right not to have one's privacy, family, home or correspondence unlawfully or arbitrarily interfered with;
 - the right of every child such protection as is in their best interests;
 - the right to protection of the family unit;
 - the right to a fair hearing (rules of procedural fairness apply as a matter of common law);
 - the right not to be discriminated against;
 - the right of people to enjoy and develop their culture.
- Public authorities must:
 - **act** in a manner that is **compatible** with human rights when making a decision;
 - **give proper consideration** to relevant human rights when making a decision.

(Human Rights Act 2004 (ACT); Charter of Human Rights and Responsibilities 2006 (Vic); Human Rights Act 2019 (Qld))

Reasons for eviction: Case analysis

| | QLD (n=7) | NSW (n=34) | ACT (n=24) | VIC (n=34) | Total (n=98) |
|--|--------------|---------------|---------------|---------------|-----------------|
| Rent arrears | 0 | 8 (24%) | 12 (50%) | 6 (18%) | 26 (27%) |
| Interference with peace, enjoyment of neighbours or neighbourhood dispute | 0 | 9 (26%) | 2 (8%) | 8 (24%) | 19 (19%) |
| Anti-social behaviour that led to criminal charges | 7 (100%) | 3 (9%) | 0 | 3 (9%) | 13 (13%) |
| Drugs: possession, supply, trafficking | 0 | 9 (26%) | 0 | 3 (9%) | 12 (12%) |
| Non-tenant is seeking to have the tenant evicted, or to establish new tenancy | 0 | 0 | 3 (13%) | 9 (26%) | 12 (12%) |
| Tenant abandoned property; including due to incarceration | 0 | 1 (3%) | 3 (13%) | 4 (12%) | 8 (8%) |
| Mess; hoarding; creating a fire hazard | 0 | 2 (6%) | 2 (8%) | 3 (9%) | 7 (7%) |
| Dispute with housing authority, including verbal abuse/refusing entry | 0 | 5 (15%) | 0 | 1 (3%) | 6 (6%) |
| Landlord proposes to renovate or redevelop | 0 | 2 (6%) | 0 | 1 (3%) | 3 (3%) |
| No reason/no fault eviction | 0 | 0 | 0 | 1 (3%) | 1 (1%) |

Social housing tenants

- **Have very high levels of need:**
 - 62% tenants are female
 - 38% households include at least one person with a disability
 - 10% households include at least one Indigenous member
 - 17% households have dependent children
 - 31% main tenants are 65 years or older
 - Most common source of income is disability pension (n=87,000)

(AIHW 2019)

Case analysis: outcomes

- A total of 98 reported decisions concerning 94 individuals were included.
- Most of these (n=94) were heard in tribunals (merits review) rather than courts (error of law only).
- There was no relationship between tenants' prospects of success and whether or not human rights arguments were available to them.

| State/Territory | Total decisions | Outcome favourable to the tenant | Outcome favourable to the landlord | Outcome favourable to a third party |
|------------------------------|-----------------|----------------------------------|------------------------------------|-------------------------------------|
| Queensland | 7 | 2 (29%) | 5 (71%) | 0 (0%) |
| New South Wales | 34 | 12 (35%) | 22 (65%) | 0 (0%) |
| Australian Capital Territory | 24 | 16 (67%) | 7 (29%) | 1 (4%) |
| Victoria | 34 | 7 (21%) | 22 (65%) | 5 (15%) |

Methodology

1. Case analysis (n=98)

All reported social housing decisions in four Australian States/Territories:

Human rights jurisdictions: Victoria and Australian Capital Territory

Non-human rights jurisdictions: New South Wales and Queensland

Information collected: legal arguments raised; outcome; client circumstances

2. Focus groups with tenants advocates in each jurisdiction

10 groups (1 in ACT; 3 in Vic, NSW and Qld)

n=43 (38 lawyers; 5 non-legal advocates/policy officers)

Focus groups: human rights legislation

- Human rights legislation helps – but mostly in **negotiations**:

‘A lot of the time, these housing workers aren’t legally trained and don’t necessarily have a good understanding of how the Charter works... so when something doesn’t fit neatly within the policy, we have a lot of success in actually asserting that they’ve maybe acted unlawfully under the Charter... There’s always that sort of lingering potential threat.’ (Vic)

‘We have a huge amount of success in using the Charter to encourage the landlord to again consider less restrictive means like entering into other enforceable agreements.’ (Vic)

‘We had a family who had no legal right to be living at a certain property... and we used the Human Rights Act to say, well, the children have rights under the Human Rights Act. And Housing, again, were receptive to that.’ (ACT)

Focus groups: importance of advocates

- Most felt that it was impossible to navigate the system without an advocate.

‘There are a lot of people, out of their frustration, who abandon their tenancies... if they had good advice early on, then it could’ve been resolved.’ (Vic)

‘They’re up against a lawyer from the government... without an advocate in the room with them, they almost don’t stand a chance.’ (NSW)

‘The tenant has absolutely no idea what they’re agreeing to.’ (NSW)

‘There’s ways to appeal... people don’t realise that’s an option.’ (NSW)

‘We need a system where people have their housing more proactively managed, so that they’re proactively offered assistance, and the system is not dependent on them getting to the tribunal and seeing a lawyer in order to exercise their rights.’ (Vic)

Focus groups: early intervention

- They emphasised the importance of **early intervention and appropriate support**:
 - ‘Generally, the reasons why they are eligible for [social] housing is the exact reason why they are evicted from that housing.’ (Qld)
 - ‘Dumping a whole lot of people together with really complex needs with no support is obviously going to produce problems.’ (NSW)
 - ‘I think there should be a formal onus on the housing providers to attempt to engage support services for their tenants before taking these formal steps towards eviction.’ (Qld)
 - ‘That’s ultimately what’s needed – sort of a recognition, I guess, of the role of public housing, which is that it is a safety net.’ (NSW)

Focus groups: right to housing

- They noted that the **right to housing is a ‘gateway’ right** – without it, other rights cannot be realised:

‘Saying you’ve got a right for the home not to be arbitrarily interfered with – which is the language that we have – is very different to saying you have a right to a home.’
(Vic)

‘It’s not just having somewhere to lay their head at night. It also makes life difficult for getting licenses or Medicare cards. Most of the time you cannot get anything done if you don’t have an address.’ (Qld)

‘The lack of security and the ever-present threat of eviction really impacts ... she said that she just dreads checking her mailbox every time she gets home... I think that lack of security undermines the ability of a person to use that housing for what it’s intended for, which is as a base to start addressing physical and mental health issues.’ (Qld)



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