

**Homelessness is a violation of human rights:**  
**The Government's Green Paper provides an opportunity to address this**

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The Federal Government must acknowledge that there is a strong positive correlation between the Government's respect for human rights and its success in addressing homelessness and poverty, with the realisation of people's human rights ensuring the underlying enabling conditions of their social inclusion.<sup>1</sup> In order for the Federal Government to achieve its 'social inclusion' agenda it must also achieve the fulfilment of human rights, in accordance with its existing responsibilities and obligations under international human rights law. The Federal Government's White Paper must therefore seek to resolve homelessness within a human rights framework.

It is clear that homelessness is not just an issue of housing; it is a matter of ensuring that the human rights of *all* individuals are adequately protected and promoted. People experiencing homelessness are subject to multiple and intersectional human rights violations including, violations of the right to dignity and respect, the right to participation, the right to liberty and security, the right to freedom from cruel, inhuman or degrading treatment, the right to freedom from discrimination, the right to privacy, the right to social security, the right to the highest attainable standard of health and, of course, the right to adequate housing. All of these rights are enshrined in the *International Covenant on Civil and Political Rights (ICCPR)* and the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, both of which were ratified by Australia over 25 years ago.

For the Federal Government to fulfil its stated commitment to social inclusion and human rights,<sup>2</sup> it must take immediate action to redress these violations. While the Government's Green Paper on Homelessness, *Which Way Home*, has taken a first step by recognising that all people should be treated with dignity and respect,<sup>3</sup> it has not gone so far as to acknowledge that it is a person's

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<sup>1</sup> See ICCPR, article 2. See also CESCR, *General Comment 15: The Right to Water*, [17]–[29], UN Doc E/C.12/2002/11 (2002); CESCR, *General Comment 12: The Right to Adequate Food*, 69, [15], UN Doc HRI/GEN/1/Rev.5 (2001); and CESCR, *General Comment 13: The Right to Education*, 84, [47], UN Doc HRI/GEN/1/Rev.5 (2001). See generally, Amartya Sen, *Development as Freedom* (1999) 49, 87, 90 and 144. See also Dianne Otto, 'Linking Health and Human Rights: What are the Possibilities?' (Paper presented at the International Symposium on Human Rights in Public Health: Research, Policy and Practice, The University of Melbourne, 3-5 November 2004) 11.

<sup>2</sup> Australian Labor Party, *National Platform and Constitution, Chapter 13 – Respecting Human Rights and a Fair Go for All*, (2007) 206-226.

<sup>3</sup> Australian Government, *Which Way Home? A New Approach to Homelessness* (May 2008) 57 – 58.

*right* to be treated with dignity and respect and that the Government has a *responsibility* to ensure the realisation of that right. It is therefore imperative that, in our submissions to the Green Paper, we call upon the Federal Government to fulfil its commitment to human rights and be accountable for its actions. This approach will ensure that the rights and entitlements of some of the most disadvantaged and marginalised members of our society are respected, protected and fulfilled.

It is not unrealistic to end homelessness; this should be the Government's ultimate goal.<sup>4</sup> Legislation that enshrines the right to adequate housing would be a great step forward to achieving such a goal. Such legislation would reflect the right to adequate housing as it appears in international law; this would include the need for housing to provide security of tenure, have available services, facilities and infrastructure and be affordable, accessible, habitable, appropriately located and culturally appropriate. It would further provide for an *enforceable* right to housing, including a right to shelter and crisis accommodation as well as longer-term housing options. Importantly, it would impose obligations on Government to provide for the practical and effective realisation of the right to adequate housing and would thereby require Government to formulate a long-term and sustainable response to homelessness. Finally, it is essential that any national legislative response to homelessness has a clear focus on the *goal* of realising human rights and eliminating homelessness. The Government must make provision for such goals through legislative protection that commits to the fulfilment of human rights by setting benchmarks and performance measures.

While the *Supported Accommodation Assistance Act 1994 (SAA Act)* recognises international human rights protection standards in its preamble, it does not provide for any clear mechanisms by which those human rights standards must be achieved (i.e. there is no clear correlation between the funding mechanisms in the *SAA Act* and the need to ensure that services have the effect of realising human rights). We note that this legislation, which was developed in the 1980s, has provided an important first step in legislative protection for people experiencing homelessness; however, it is now time for the reach of this legislative protection to be greatly extended. Accordingly, while the *SAA Act* remains important today, it must be transformed into a Federal *Homelessness Act* that takes a broad and holistic approach to solving homelessness through a human rights framework and creates an enforceable mechanism to ensure the promotion and protection of human rights for people experiencing homelessness.

There are current suggestions that the *SAA Act* will be scaled back from its already limited application, or repealed, and as a result there will be no legislative framework in relation to homelessness. In our view, these suggestions are misguided. Without a legislative framework in

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<sup>4</sup> Australian Government, *Which Way Home? A New Approach to Homelessness* (May 2008) 56.

place, homelessness service provision would be reliant on political leadership and goodwill and the Government could not be held accountable for its actions. People experiencing homelessness will continue to be the subject of human rights violations unless the Government enacts a Federal *Homelessness Act* in the way suggested above, which builds on the existing legislative framework in the *SAA Act*.

Homelessness and social exclusion amount to violations of human rights. The Green Paper process provides the community with an opportunity to call the Government to account for these violations and for its failure to act in the past. Any future national homelessness strategy must adopt a human rights approach to homelessness. The most effective way to do this is to build on the important groundwork that is the *SAA Act* by introducing a Federal *Homelessness Act* that enshrines the right to adequate housing. A Federal *Homelessness Act* would not only send a strong message about the Federal Government's commitment to eliminating homelessness, but more importantly it would also provide important protection for individuals experiencing homelessness who's rights are violated on a daily basis.