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# URBAN INDIGENOUS HOUSING ISSUES IN REDFERN

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by Jacqui Wilkinson

The majority of Indigenous Australians live in capital cities and regional centres and, as a result of a history of poverty and neglect, this group have experienced some of the worst housing and associated living conditions in the country. The right to housing is embodied in the International Covenant on Economic, Social and Cultural Rights (the 'ICESCR') to which Australia is a signatory.<sup>1</sup> As a result, Australia must ensure the full realisation of the right to adequate housing. The limited response of State and Federal Governments to the question of housing for Indigenous peoples is in violation of Australia's obligations.

At the culmination of the International Decade of Indigenous Peoples,<sup>2</sup> and in times of such economic prosperity and growth for the majority of Australians, the insufficient standard of Indigenous housing and human rights should be an offence to the national consciousness. The socio-economic disadvantage already experienced by Indigenous Australians is being further entrenched by the unwillingness of Australian Governments to recognise and comply with basic human rights standards. While implementation of the right to housing will be an ongoing process, and will require an investment of time and resources, steps must be taken to ensure the right to housing for Indigenous peoples is undertaken in the most effective way.

Redfern, in inner-city Sydney, has a long history as a centre of empowerment, culture and grass-roots organisation. It has also been subject to decades of Government neglect and ill-conceived policies that have maintained both poverty and crime in the area. At present the area is the subject of a major development proposal which will have a considerable impact upon the residents. These processes will be an important opportunity for the examination and development of housing rights of Indigenous peoples.

This article examines issues of homelessness, overcrowding and rates of home ownership amongst Indigenous communities in Australia as indicators of the protection (or otherwise) of the right to housing of Indigenous peoples by the Federal and State Governments. It sets out

the international law relevant to this issue and examines the extent to which this is applicable in domestic law. More specifically, the article introduces the development proposal for Redfern and 'the Block' area in particular being put forward by the New South Wales ('NSW') Government to illustrate the issues being addressed.

## INDIGENOUS HOUSING – SOCIAL AND ECONOMIC DISADVANTAGE

The effects of colonisation, dispossession, disempowerment and successive policies and practices of past Governments have had a deep and lasting impact on Indigenous communities, families and individuals in Australia. The effects of these experiences, according to a Department of Family and Community Services study,<sup>3</sup> often transcend generations and continue to impair the capacities of some Aboriginal and Torres Strait Islander people to live independent, secure and fulfilling lives. These impacts have been well documented and, on the basis of a wide range of indicators, no other group in Australia experiences the same level of social, economic, health and educational disadvantage. Inadequate housing contributes to this cycle of poverty and inequality. This is illustrated by the high incidence of Indigenous homelessness, poor living conditions, domestic violence and low rates of home ownership in urban communities.

## HOMELESSNESS

According to Chamberlain and Mackenzie,<sup>4</sup> the over-representation of Indigenous Australians within the homeless population demonstrates a group most apparently lacking in 'adequate housing'. They indicate that while two per cent of the population identify themselves as Indigenous, they represent nine per cent of the homeless population. The Federal Government released a report outlining a national plan of action to address the issue. The report observed that homelessness is a chronic problem in Indigenous communities and identified causes as including poverty, discrimination and the absence or inaccessibility of appropriate housing.<sup>5</sup>

## OVERCROWDING

Households with Indigenous persons tend to have more

residents than other households. At the 2001 Census, there was an average of 3.5 persons in households with Indigenous people, compared with 2.6 persons in other households.<sup>6</sup> As a result, 15 per cent of Indigenous households live in what can be considered overcrowded dwellings compared to 4 per cent of non-Indigenous households. Overcrowding tends to accelerate the deterioration of dwellings and increases the risk of transmission of diseases and the promulgation of domestic violence and other abuses.<sup>7</sup>

#### HOME OWNERSHIP

Home ownership is an important indicator of wealth and is likely to be positively related to employment and income. The Australian Bureau of Statistics ('ABS') reports that the rate of home ownership by Indigenous Australians lags significantly behind that of non-Indigenous Australians. The 2001 ABS Population Characteristic Report found that 12.6 per cent of Indigenous households own their home outright compared to 41.4 per cent of non-Indigenous households.<sup>8</sup> Further, Indigenous households were more than twice as likely as other households to be living in rental accommodation, with 63 per cent renting accommodation compared to 27 per cent of non-Indigenous households.<sup>9</sup> Indigenous people living in rental accommodation are more likely than non-Indigenous people to be living in Government-subsidised housing.

These factors, homelessness, overcrowding and home ownership, are indicators of the fact that the standard of housing for Indigenous peoples in Australia remains well below that of the remainder of the country. Another factor is that of inappropriate housing. The Commonwealth Advisory Committee on Homelessness reported that Indigenous communities tend to have a different understanding of what constitutes issues of housing and homelessness and that these issues have spiritual dimensions as well as physical ones.<sup>10</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner, Dr William Jonas, argued that the approach of policy makers should ensure the full participation and contribution of Indigenous peoples in decision-making.<sup>11</sup>

#### AUSTRALIA'S OBLIGATIONS IN INTERNATIONAL LAW REGARDING HOUSING RIGHTS

Through becoming a party to the ICESCR, the Commonwealth bound itself in international law to respect this human right and to 'take steps to the maximum of its available resources with a view to progressively achieving the right's full realisation.'<sup>12</sup> Further, Australia undertook to guarantee that this right would be exercised without discrimination of any kind.<sup>13</sup> However, concern has been

expressed by the Committee on Economic, Social and Cultural Rights ('the Committee') that Australia has not satisfactorily fulfilled its obligations under the ICESCR with respect to its treatment of Indigenous Australians.<sup>14</sup>

The Committee stated that 'the Indigenous populations of Australia continue to be at a comparative disadvantage in the enjoyment of the economic, social and cultural rights, particularly in the fields of employment, housing, health and education' and recommended that the ICESCR be incorporated into domestic legislation.<sup>15</sup> The most obvious means by which the Federal Government may have chosen to fulfil these international obligations would have been either to incorporate such a right into our legal system or to provide individuals with an avenue of complaint and redress. The Government has chosen neither of these courses, however, and existing anti-discrimination laws fall a long way short of fully implementing Australia's international human rights obligations.

The High Court has repeatedly recognised that legislation should be interpreted, according to Sackville J, 'in conformity with established principles of international law including treaty obligations.'<sup>16</sup> This is reiterated by Kirby J in *Al-Kateb v Godwin*, 'opinions that seek to cut off contemporary Australian law (including constitutional law) from the persuasive force of international law are doomed to fail. They will be seen in the future...with a mixture of curiosity and embarrassment.'<sup>17</sup> However, there is also the argument that Constitutional litigation is not an option in Australia because the Constitution does not include a bill of rights and only protect individual rights in a limited, piecemeal way.<sup>18</sup>

Of course, adopting the language of human rights to assert a claim to adequate housing is only the first, and perhaps easiest, step. The translation of this claim into laws and policies that will ensure its enforcement through methods that will hold Governments accountable must follow.

#### URBAN INDIGENOUS POPULATION - REDFERN

Consideration of Indigenous housing rights from an urban point of view is important as the process of urbanisation has had a devastating impact upon Australia's Indigenous population's 'escalating social disadvantage'.<sup>19</sup> Such disadvantage can be seen in Redfern, in inner-city Sydney, and is exemplified in a housing scheme known as 'the Block'.

The Block, according to Anderson, is located at the 'heart of metropolitan, capitalist Australia' and demonstrates 'the struggles of Aboriginals to (re) claim the Block from

middle class redevelopment.<sup>20</sup> The traditional owners of Redfern were the *Gadigal*<sup>21</sup> people. They lived in Redfern and surrounding areas for more than 40,000 years before European invasion, however, the current Indigenous residents originate from many lands and communities.<sup>22</sup>

In the early 1970s, a crisis of overcrowding and homelessness developed in the area with large numbers of Aboriginal people without permanent or adequate housing following evictions and racial discrimination in the housing market.<sup>23</sup> The lack of affordable housing led to a group squatting in empty terraces on Louis Street, Redfern. This area developed into the first housing collective in Australia, the Aboriginal Housing Company (the 'AHC'), incorporated in 1973 under the *New South Wales Companies Act* 1961 (now the Corporations Act). This acquisition, facilitated by the Whitlam Government, was the first movement towards urban land-rights in Australia.<sup>24</sup> Over time additional houses were purchased by the AHC and about 15 per cent of Indigenous people living in Redfern and Waterloo now reside in AHC dwellings.<sup>25</sup> However, like other urban Indigenous communities, Redfern experiences considerable socio-economic disadvantage including high levels of unemployment, poor health levels, low educational attainment and lack of access to mainstream services.

The AHC, in conjunction with Sydney University and NSW Government architects, has devised a *Community Social Plan*<sup>26</sup> (known as the '*Pemulhuy* Project') to attempt to address the social disadvantage of the Block area. The *Pemulhuy* Project seeks to implement the AHC's commitment to building sustainable and culturally appropriate housing with the participation of and in consultation with the community.

#### **POTENTIAL IMPEDIMENTS TO DEVELOPMENT** THE REDFERN WATERLOO AUTHORITY ACT (2004) NSW

The *Pemulhuy* Project is part of the broader NSW Government strategy to redevelop the Redfern-Waterloo area. The *Redfern Waterloo Authority Act* (2004) was rushed through Parliament to create the Redfern Waterloo Authority ('RWA') which has responsibility for the development. The RWA has been criticised as failing to provide 'checks and balances' and as 'secretive and self-validating' with 'unprecedented powers'.<sup>27</sup> The RWA has the power to override local councils and heritage laws, to grant concessions to private developers and acquire land compulsorily. Planning control resides with Minister for Utilities, Frank Sartor.

There are also complaints of a lack of consultation by the RWA. Minister Sartor had agreed to consult widely with the community when developing the *Pemulhuy* Project.<sup>28</sup> However, many in the community feel that they have been left in the dark – and there is little evidence of any constructive consultation.<sup>29</sup>

Indeed, traditionally a plan the scale proposed for the Redfern-Waterloo area would have been open to discussion and debate. Minister Sartor has not supported the *Pemulhuy* project and has indicated his preference for development other than housing on the Block.<sup>30</sup> A compromise offer made by Minister Sartor to provide only 19 homes on the Block has been rejected by the AHC.

#### **CONCLUSION**

The majority of Indigenous Australians live in capital cities and regional centres. Consideration of Indigenous housing rights from an urban perspective is important, as the process of urbanisation has had a devastating impact upon Australia's Indigenous population. This can be seen in the inner city community of Redfern and the Block in particular. Like other Indigenous communities, there are many social problems in the area that need to be addressed urgently, including those relating to housing.

Domestically, mainstream housing strategies and policies have done little to protect the unique housing needs of Indigenous Australians. On an international level, Australia is a party to a number of human rights instruments, including the ICESCR, which imposes an obligation to recognise, respect and protect the right to adequate housing. However, Australia has failed to adequately fulfil its obligations, particularly in relation to Indigenous Australians.

It is recommended that Australia incorporate the ICESCR into legislation as soon as practicable. However this seems unlikely with the current Federal Government which has not been afraid to respond dismissively to mounting criticism from the international community. Nevertheless, it is possible to take active steps in relation to establishing a right to adequate housing. This can be seen with the Aboriginal Housing Company's proposed development for the Block. There are a number of potential impediments to the development in particular from the NSW Government. Even so, this does not discredit the fact that these are rights which should be recognised and protected, and are an important step toward self-determination.

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- 1 *The International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, entered into force 3 January 1976. Australia signed the ICESCR on 18 December 1972 and ratified it on 10 December 1975. It entered into force for Australia on 10 March 1976.
- 2 International Decade of Indigenous Peoples (1995-2004).
- 3 Keys Young, Department of Family and Community Services, *Homelessness in the Aboriginal and Torres Strait Islander Context and Its Possible Implications for the Supported Accommodation Assistance Program* (1998) iii.
- 4 Rowan McRae and Dan Nicholson, 'No Place Like Home: Homeless in Australia and the Right to Adequate Housing' (2004) 10 *Australian Journal of Human Rights* 2, 27-58.
- 5 Miloon Kithari, Special Rapporteur on Housing, United Nations Housing Rights Program, 'Indigenous Peoples Rights to Adequate Housing' United Nations Housing Rights Programme Report No. 7 (2005) <<http://www.unhabitat.org/programmes/housingrights/documents/HS-734.pdf>> at 29 September 2005.
- 6 Human Rights and Equal Opportunity Commission, *Social Justice Report 2003* (2003) <[www.humanrights.gov.au/social\\_justice/sjreport03/data/append1.html](http://www.humanrights.gov.au/social_justice/sjreport03/data/append1.html)> at 29 September 2005.
- 7 Susan Etherington and Laura Smith, 'The Design and Construction of Indigenous Housing: The Challenge Ahead' (2004) *Year Book Australia* 2004.
- 8 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2005 Report* (2005) 30.
- 9 *Ibid.*
- 10 Above n 5.
- 11 Human Rights and Equal Opportunities Commission, above n 6, 57.
- 12 Annemarie Devorcaux, 'Australia and the Right to Adequate Housing' 20 *Federal Law Review* (1991) 223.
- 13 *Ibid.*
- 14 Discussion of Indigenous Australian's housing to follow.
- 15 Janet Cechanski and Leon Ioannou, Australian Human Rights Centre, UNSW, *Taking Steps... Australia's Draft National Action Plan for Human Rights – The Enjoyment 'Without Discrimination' of Rights Under the International Covenant on Economic, Social and Cultural Rights: Working Paper 2003/4.8.*
- 16 Council to Homeless Persons, *Homelessness, Human Rights and the Law* Edition, 11.
- 17 *Al-Kateb v Godwin* [2004] HCA 37, Per Kirby J at paragraph 190.
- 18 Dianne Otto and Philip Lynch, 'Housing, Homelessness and Human Rights' (2004) 10 *Australian Journal of Human Rights* 2, 4.
- 19 Aboriginal Housing Company, *Aboriginal Housing Company Community Social Plan 2001* <[www.ahc.org.au](http://www.ahc.org.au)> at 29 September 2005.
- 20 *Ibid.*
- 21 (also spelled as *Kadigal* or *Cadigal*).
- 22 Aboriginal Housing Company <[www.ahc.org.au](http://www.ahc.org.au)> at 29 September 2005.
- 23 K. Anderson, 'Savagery and Urbanity: Struggles over Aboriginal Housing Redfern 1970-73' ch. 10 in P Read (ed.) *Settlement: A History of Australian Indigenous Housing* (2000) 141.
- 24 Above n 22.
- 25 *Submission to the Inquiry into Redfern and Waterloo*, (2004) 217.
- 26 Above n 19, 67.
- 27 Elizabeth Farrelly, 'Secret Business Puts a Community at Risk' *Sydney Morning Herald*, 29 November 2004.
- 28 Debra Jopson, Gerard Ryle and Darren Goodsir, 'Revealed: How Redfern will be Reborn', *Sydney Morning Herald*, 29 November 2004.
- 29 Sylvia Hale, *Redfern Waterloo Authority Bill*, Second Reading Speech, NSW Legislative Council, 7 December 2004.
- 30 REDwatch, <[www.redwatch.org.au](http://www.redwatch.org.au)> at 29 September 2005.

#### Danger Snake, 2005

Karen Watson

*Hi my name is Karen Watson. I am 13-years-old. I live at Docker River in Central Australia. It is very hot here. We have lots of mountains in Docker River and water holes. I go to Nyangatjatjara College in Central Australia with my sister Maureen. I have a baby brother named Stephen and I love Docker River. In Yulara we have fun and I like going to College. I go digging for Marku and honey ants and taste sweet flowers.*

