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**IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251
OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”**

**Written statement* submitted by the National Association of Community Legal
Centres, Inc. (NACLC), a non-governmental organization in special consultative
status**

The Secretary-General has received the following written statement which is
circulated in accordance with Economic and Social Council resolution 1996/31.

[28 February 2007]

* This written statement is issued, unedited, in the language(s) received from the
submitting non-governmental organization(s).

Australia and the Right to Adequate Housing

1. Introduction

In August 2006, the UN Special Rapporteur on the Right to Adequate Housing conducted an official country visit to Australia to investigate the situation on the ground in relation to the implementation of the right to adequate housing pursuant to article 11 of the International Covenant on Economic, Social and Cultural Rights ('ICESCR'). In his draft report the Special Rapporteur expressed grave concerns about ongoing human rights violations experienced by people who are homeless or insecurely housed in Australia. He concluded that there is 'serious, hidden national housing crisis in Australia' and describes the state of housing for some indigenous Australians as a 'humanitarian tragedy.'

In echoing the Special Rapporteur's concerns, the following statement draws attention to particular instances of Australia's failure to protect and promote the right to adequate housing and makes several recommendations for urgent reform.¹

2. The National Association of Community Legal Centres

The National Association of Community Legal Centres is the peak body for the 207 community legal centres in Australia. Community Legal Centres provide free legal advice and advocacy for marginalized and disadvantaged people within a human rights framework and engage in law reform and policy advocacy where laws and policies disproportionately impact upon vulnerable groups and individuals.

3. Homelessness and Housing Stress in Australia

According to the Australian Bureau of Statistics (ABS), over 100,000 people experience homelessness across Australia on any given night. This includes over 14,000 people sleeping rough or in squats, more than 14,000 in crisis accommodation or refuges, almost 23,000 in boarding houses, and nearly 49,000 people staying with friends or relatives.² A further 23,000 people across Australia live temporarily in caravan parks.³

The primary government response to homelessness in Australia is through the national Supported Accommodation Assistance Program ('SAAP'). This program is jointly funded by Australian federal and state governments.⁴ SAAP provides financial assistance to non-government organisations and local government authorities that provide a range of supported accommodation and related support services to people who are temporarily or permanently homeless.

Recent data demonstrates that the demand for homelessness assistance services continues to significantly exceed supply. On average 193 adults and 111 children are

¹ This statement is by no means comprehensive and does not, for example, deal with the strong associations between homelessness and violence against women and the inadequacy of policy and legislative responses to address the needs of these women and children who are left homeless as result of family violence.

² Australian Bureau of Statistics, *Counting the Homeless 2001* (2003) 2.

³ Australian Bureau of Statistics, *Counting the Homeless 2001* (2003) 6.

⁴ Second Reading Speech, Supported Accommodation Assistance Bill 1985, House of Representative, 27 March 1985, Hansard 1020.

turned away from emergency accommodation each day.⁵ Despite this clear shortfall the federal government has not only refused to increase SAAP funding, but in 2005 threatened to cut funding by \$30 million.

Pursuant to article 11 of the *ICESCR*, all people have the right to adequate housing, which includes the right to live somewhere in peace, security and dignity.⁶ Under article 2(1) of the *ICESCR*, realization of the right to housing requires that federal, state and territory governments devote the maximum of available resources to progressively ensure that this right is realized and protected. The international human rights framework makes it clear that retrogressive measures such as cuts in expenditure on public housing or homelessness services are permissible only in 'exceptional circumstances.' In the 2006 Federal Budget, the Federal Government announced a surplus for the ninth time in ten years and has forecast a surplus of \$10.8 billion for 2006-2007. It would be a bold argument indeed to say that 'exceptional circumstances' exist in Australia.

In addition to those experiencing homelessness, it is estimated that up to 35% of low income Australians experience 'housing stress' meaning that their housing costs are so great relative to their income so as to jeopardise their ability to meet other basic needs. Another 10% of low income people experience 'extreme housing stress' meaning that they are required to spend more than 50% of their income on rent to avoid homelessness.⁷ Despite this, Australia does not have a Minister dedicated to the issue of housing. Neither does it have in place a national housing strategy or a national homelessness action plan that addresses both the provision of homelessness services and the issue of housing affordability. In the absence of government leadership in the area of housing and homelessness, the not-for-profit and community sector has been forced to fill the gap.

Recommendation 1

In accordance with the human right to adequate housing, enshrined in article 11 of the *ICESCR*, federal and state governments should develop and implement a National Housing Affordability Plan and National Homelessness Action Plan that increases resources to public and community housing and that includes strategies to align the supply of affordable housing with demand.

4. Homelessness and the Right to be Free from Extreme Poverty

In Australia, the absence of a guaranteed minimum income, together with the fact that social security payments are generally pegged and paid below the Henderson Poverty Line⁸, is a significant contributor to people either living in or being at risk of poverty and homelessness.

⁵ Australian Institute of Health and Welfare, *Demand for SAAP Accommodation by Homeless People 2003–04* (2006).

⁶ CECSR, General Comment 4: The Right to Adequate Housing, UN Doc HRI/GEN/1/Rev.5 (2001) 22.

⁷ Senate Community Affairs References Committee, *A Hand Up Not a Hand Out: Renewing the Fight Against Poverty* (2004) 123–4.

⁸ The Henderson Poverty Line was developed in 1975 is a well-known and oft used measure for poverty in Australia.

Despite this already inadequate situation, in July 2006 the Australian government introduced new social security legislation, cutting payments for vulnerable groups and introducing more onerous obligations on social security recipients. It is estimated that as a result of these changes more than 60,000 people will miss out on the Disability Support Pension and more than 170,000 sole parents and 290,000 children will be worse off.⁹

Perhaps most draconian are the amendments to the social security compliance regime. A person who fails to meet a participation requirement (for example, failing to attend a training course) has their payment suspended until they comply. Where a person has failed to meet a participation requirement three times, their payments will be cut off for a period of eight weeks. Emerging case studies show that these breaches have led directly into homelessness and have exacerbated or caused significant mental health issues.

Recommendation 2

In accordance with the human right to social security and an adequate standard of living enshrined in articles 9 and 11 of the *ICESCR*, the federal government should reform social security legislation to ensure that social security payments are available to all people who experience a loss of income beyond their control or who require income support for a dignified human life. Payments should be sufficient to ensure that recipients can afford adequate housing and an adequate standard of living.

5. Homelessness and the Rights of Indigenous People in Australia

Indigenous people are significantly more likely than non-Indigenous people to experience homelessness in Australia. According to the ABS, approximately 2% of the total population are Indigenous while about 9% of the homeless population are Indigenous. This does not include approximately 7,000 Indigenous people who live in improvised dwellings that are accepted to fall below the 'minimum community standard' for housing but nevertheless are considered by the ABS to be 'culturally appropriate'.¹⁰

Indigenous people are also significantly overrepresented in the 'primary homelessness' category; that is, people without access to any form of conventional accommodation, such as rough sleepers and squatters. Indigenous people are also 8 times more likely to require assistance from a homelessness service than non-indigenous people although are also less likely to receive adequate assistance.¹¹

Indigenous Australians are similarly overrepresented in the public housing system and exposed to housing that is often unsafe, insecure and culturally inappropriate. Disturbingly, at the time of writing, the Federal Minister for Indigenous Affairs has just proposed the introduction of a new policy which seeks to cut funding for all Indigenous specific urban housing. Under the proposal, more than 600 Indigenous community

⁹ David Plowman and Alison Preston "The New Industrial Relations: Portents for the Lowly Paid" in Special Issue of the *Journal of Australian Political Economy* (JAPE) No 56 accessed at <http://www.jape.org/>, p17

¹⁰ Australian Bureau of Statistics, *Counting the Homeless 2001* (2003) 5, 21-2.

¹¹ Australian Institute of Health and Welfare, *Demand for SAAP Accommodation by Homeless People 2003-04* (2006).

housing organisations in Australian cities would no longer receive public money to buy more houses or maintain their existing stock.

6. Homelessness and Discrimination

Research shows that discrimination is a major causal factor of homelessness and can systematically exclude people from access to goods, services, the justice system, health care, housing and employment. In addition to contributing to homelessness, discrimination can also diminish a person's well-being, cause ill health and exacerbate or maintain homelessness.

Discrimination against people who are experiencing homelessness, or are at risk of homelessness is widespread and remarkably, currently lawful, in Australian society. There is currently no commonwealth or state legislation that provides any protection from or redress in relation to, discriminatory treatment on the ground of social status including homelessness.¹²

Discrimination can exclude people from access to goods and services, health care, adequate housing, education and employment — all of which are powerful influences on and determinants of societal participation and social inclusion.¹³

Recommendation 4

In accordance with the human right to freedom from discrimination enshrined in articles 2(1) and 26 of the *ICCPR* and article 2(2) of the *ICESCR*, federal and state anti-discrimination laws should be amended to include 'social status' as an attribute on the basis of which discrimination is prohibited. 'Social status' should include a person's status as homeless, unemployed or a recipient of social security or welfare benefits.

7. Conclusion

Australians experiencing homelessness are vulnerable to a number of human rights violations including the right to adequate housing, the right to the highest attainable standard of health, the right to be free from extreme poverty, the right to be free from discrimination and the right to be treated with dignity and respect. It is clear that Australia is not discharging either its progressive or core obligations in relation to each of these rights. By its own measure, Australia is a wealthy, developed and prosperous nation. However, the development and measure of the nation must also be judged by how it protects the rights of its most vulnerable. We submit that the nation is failing in this regard.

In the absence of government leadership in the area of housing and homelessness, the not-for-profit and community sector has been forced to fill the gap, to the extent possible, with the limited funds available to it. Notwithstanding the significant work undertaken by these organisations to provide services in the area of homelessness, we

¹² Phillip Lynch and Bella Stagoll, 'Promoting Equality: Homelessness and Discrimination' (2002) 15 Deakin Law Review

¹³ Paula Braveman and Sofia Gruskin, 'Poverty, Equity, Human Rights and Health (2003) 81(7) *Bulletin of the World Health Organization* 539, 539.

are firmly of the view that it is a primary responsibility of government to ensure the realisation of all rights under the treaties and covenants to which it is signatory.

Australia is currently the only western nation not to have adopted or enacted a comprehensive Bill of Rights or a Human Rights Charter. Nor has the right to adequate housing been incorporated into specific domestic legislation. Much needed economic social reform must be supported by a enduring commitment of government resources and must also be backed by effective human rights legislation.

We call upon the international human rights community to actively encourage the Australian government to adopt the recommendations contained in this statement and those enumerated in the country report by the UN Special Rapporteur on the Right to Adequate Housing. In doing so, the government will contribute to the development of a society where fundamental rights – such as the right to adequate housing are treated as non-derogable and in a practical way underpin the experience of all individuals.
