



*The NSW Aboriginal Land Council's submission on the right to adequate housing for
Indigenous Peoples*

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Introduction

The NSW Aboriginal Land Council (NSWALC) welcomes the opportunity to provide feedback to the work of the Special Rapporteur on the right to Adequate Housing. NSWALC provides these comments in our capacity as the peak body representing Indigenous peoples in south eastern Australia, across what is now known as the state of New South Wales (NSW). This submission focusses on the experience of the Aboriginal community housing sector; a sector designed to provide affordable rental housing for Indigenous people on very low, low and moderate incomes. The housing circumstances of Indigenous peoples who seek home ownership or experience homelessness are not detailed in this paper.

It has long been understood that stable and secure housing is a significant determinant of Indigenous peoples' health and wellbeing. The relationship between housing outcomes and health and well-being outcomes is bi-directional (AIHW (2019), AIHW (2013), Lowitja Institute (2019)). NSWALC understands that having access to stable housing has far ranging benefits to both individuals, communities and by default Indigenous Nations. Available evidence is clear that stable housing can improve educational attainment, employment and assist with proper health and nutrition (Bridge et al. 2007). Equally, overcrowded and unhealthy housing is a major factor in the spread of diseases and a strong contributing factor to poor health, especially in young children. NSWALC understands overcrowded housing conditions and early-childhood poor health have been found to impact school attendance and educational outcomes of Indigenous children (Silburn et al. 2018). As such, NSWALC commends the work of the Special Rapporteur on the Rights to Adequate Housing in highlight the importance of housing to Indigenous Peoples.

The NSW Aboriginal Land Council also acknowledges the significance of the Declaration on the Rights of Indigenous Peoples based on over 20 years of negotiation, as the normative framework outlining the inherent and collective rights of Indigenous peoples to their lands, territories and resources, providing an effective mechanism for states to recognise and promote the rights of Indigenous peoples. NSWALC also recognises that access to stable and secure housing is fundamental for the health and wellbeing of individuals, families and communities. It provides the foundation for privacy and autonomy and for participation in the social, educational, economic and community realms.

An overview of Indigenous Land Rights

In Australia, Indigenous peoples have suffered immensely under Government policies of dispossession, marginalisation and assimilation through forcible removal from our lands and territories, without any proper access to reparation mechanisms. At the same time, non-Indigenous peoples have been given immense opportunities to lease, purchase, inherit, and exploit our lands and resources, to the detriment of Indigenous peoples. Despite International Conventions guaranteeing Indigenous peoples collective rights to retain our identity, autonomy, cultural values and livelihoods, there are few examples where these principles have been effectively implemented.

The Australian State of New South Wales has the highest Indigenous population of any Australian State or Territory. This population is served by a two-tiered network of membership-based, democratically operated and non-governmental Aboriginal Land Councils, established by the Aboriginal Land Rights Act 1983 (NSW). NSW is one of the eight States and Territories comprising the federated Commonwealth of Australia.

Under this two-tiered Indigenous-controlled system, 120 autonomous Local Aboriginal Land Councils (LALCs) serve their local communities and have a legislated responsibility to protect and foster the best interests of Aboriginal peoples in their boundary area, while NSWALC, as the State's peak representative body, has a legislated responsibility to protect and foster the interests and aspirations of all LALC members and those of the various Indigenous communities within the state of NSW. With over 23,000 members, NSWALC is the largest Indigenous member-based organisation in Australia.

Indigenous Housing as a Human Right

With regards to Housing, NSWALC draws attention to and is guided by Articles 21 and 23 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) which respectively state:

“1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.”.

And;

“Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions”

It is an unfortunate reality that Australia has not fully implemented the Declaration into domestic law, nor has Australia adopted a number of universal instruments that enshrine these rights, including - ILO Convention (No. 169). However, despite this setback, much of this submission outlines proposed ‘effective measures’ that are intended to meet the housing needs of Indigenous peoples and fulfil the right to adequate housing.

An overview of Indigenous Housing

In order to provide an analysis of Indigenous rights to adequate housing, it is first necessary to provide an overview of Indigenous housing provision in Australia. Accordingly, NSWALC provides the following extract:

“Different levels of government play a role in determining the size and composition of the housing stock. This may be through land releases and zoning laws, the decision of where and how to provide infrastructure and services, as well as the direct provision of public housing. Governments can also impact on housing circumstances for individuals and families through

the provision of rent or mortgage assistance, as well as the way in which housing is treated through the tax system.

While all of these factors are generally true, the Commonwealth, State and Territory governments play a particularly large role in the housing circumstances of the Indigenous population. As ...a much higher proportion of the Indigenous population live in public housing than their non-Indigenous counterparts. While this public housing is often provided by State and Territory governments, such houses sit alongside a relatively large community housing sector, administered by different Indigenous or Aboriginal Housing Organisations..."¹

Whilst the success of NSWALC and the Land Rights Network testifies to the significant advances that have been won over the last four decades regarding the advancement of the rights and interests of Indigenous peoples, developments in relation to adequate housing for Indigenous Peoples have lagged significantly behind that of non-Indigenous peoples.

The most recent data provided by the State notes that the total undersupply of housing for Indigenous peoples was estimated to be 36,025 dwellings in 2017 and is forecast to increase to 90,901 in 2031 under current conditions in NSW². The bulk of this undersupply impacts those Indigenous persons who receive 'very low' and 'low' incomes³. As of May 2019, there is currently a shortfall of over 24,000 social and affordable dwellings for Aboriginal people in NSW and this will rise to 65,000 dwellings by 2031⁴. In addition, in 2016, 42% of Aboriginal households in NSW owned or were purchasing their home, compared with 65% of non-Aboriginal households⁵. Indigenous people make up 3% of Australia's population but 20% of

1 Source: https://openresearch-repository.anu.edu.au/bitstream/1885/119279/1/2011CensusPaper03_Housing.pdf

2 NSW Aboriginal Housing Office (2017) Presentation to Aboriginal Tenants Advice and Advocacy Services

3 Very low, low and moderate income households defined as:

A very low income household earns less than 50% of the relevant median household income for Sydney or rest of NSW, as applicable.

A low income household earns between 50% and 80% of the relevant median household income for Sydney or rest of NSW, as applicable.

A moderate income household earns between 80% and 120% of the relevant median household income for Sydney or rest of NSW, as applicable.

4 How can Aboriginal housing in NSW and the Aboriginal Housing Office provide the best opportunity for Aboriginal people? Dr Nicola Brackertz, Jim Davison, Alex Wilkinson (AHURI Ltd for Aboriginal Housing Office, NSW) October 2017, p. 1

5 Aboriginal and Torres Strait Islander Peoples Profile (catalogue number 2002.0) NSW Accessed from:

http://www.censusdata.abs.gov.au/census_services/getproduct/census/2016/communityprofile/LGA12750?opendocument

the nation's homeless⁶. Put simply, levels of housing need for Indigenous people remaining unacceptably high.

Current Governance Arrangements

Over the last 20 years, the State has made provisions regarding social and affordable housing, however, outcomes have been mixed. Within New South Wales (NSW), a small, diverse but highly fragmented Aboriginal housing sector has been established. The Aboriginal housing sector comprises Aboriginal Community Housing Providers (ACHPs) that manage affordable rental housing for people in housing need who are generally on very low to moderate incomes. The ACHP sector is also comprised of specialist Aboriginal housing organisations, other Aboriginal service delivery organisations that provide housing assistance alongside a range of other social service-type supports, and Local Aboriginal Land Councils that provide housing assistance to their members.

The sector is currently overseen by a State agency, known as the "Aboriginal Housing Office (AHO)". The AHO provides funding support to Aboriginal Community Housing Providers (ACHPs) for the purpose of carrying out operational and management services, including acquisition and construction of properties. Despite such oversight, both historical and current funding and subsidy levels to the ACHP sector are inadequate. As a result, many Indigenous community housing providers, both large and small, struggle for viability and are placed at a disadvantage when compared to the non-Indigenous sector, where consolidation and growth has been encouraged by the State and achieved rapidly over little more than a decade. Fragmentation and lack of scale in the Indigenous housing sector:

- Gives rise to unnecessarily high administrative and other overhead costs
- Draws time and resources (including those of the Land Council Network) away from other activities that can bring additional benefits to communities
- Inhibits the development of growth capacity and expertise in housing service delivery, and

⁶ Aboriginal Homelessness in Australia, Homelessness NSW, p. 1
<https://www.homelessnessnsw.org.au/sites/homelessnessnsw/files/2018-08/Aboriginal%20Homelessness%20in%20Australia%20.pdf>,
retrieved 31/05/2019

- Carries a risk that non-Indigenous providers will increase the proportion of Indigenous households that they manage because a capable Indigenous provider is not available.

Indigenous Governance

NSWALC has determined to address these issues and is currently developing a housing strategy to:

- increase access to the range of housing options (across all forms of tenure) for Indigenous people in NSW – and to the opportunities for social and economic participation that emerge when housing security is achieved,
- expand the opportunities for Indigenous people to participate in the service delivery, management and governance of social and affordable housing in NSW,
- establishing partnerships across the Land Council Network to leverage existing land assets and other strengths.

Central to NSWALC's Housing Strategy is the recent establishment of its own housing company, NSWALC Housing Ltd. As well as leading efforts to increase the housing available to Indigenous people in NSW, NSWALC Housing Ltd will operate to:

- drive quality improvements in delivery of culturally sensitive services and culturally appropriate dwellings
- drive the employment of Indigenous staff and the creation of valuable career paths
- increase opportunities for Indigenous-owned businesses to participate in delivery of housing and asset services
- support the establishment and operation of state and national level peaks for Indigenous community housing.

It is clear that the States continuing retention of land that is solely for use in the provision of Aboriginal Housing sits starkly at odds with this broader policy position. Retaining ownership of this land is grounded in the assumption that Aboriginal organisations are not capable of managing lands and/or housing effectively. This position does not stand up to scrutiny and is at odds with the practical realisation of self-determination. And, in any event, it is at odds with the position taken in relation to the non-Indigenous housing sector, where transfer of

management and/or ownership of assets was used to drive growth and further development of capability.

Closing note

In closing, there is a need to reset the relationship between Indigenous peoples and the State. A shift is needed from a State discourse and approach of 'standardisation' to one which recognises the unique needs of Indigenous peoples with regards to housing. Central to this is the requirement for Indigenous peoples to manage their own affairs through 'our own institutions'. It is only once this shift has occurred can the right to adequate housing be fulfilled.

References

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