10 YEARS OF THE PENINSULA PRINCIPLES

WHEN THE LUCK RUNS OUT: AUSTRALIA’S FAILURE TO PREPARE FOR CLIMATE DISPLACEMENT

April 2024
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April 2024
Above Image: A home lies in ruin after the devastating Black Saturday bushfires, VIC.
Cover Image: Trees uprooted by cyclonic winds.
Photo credit: Shutterstock
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Executive Summary

Australia is a country disproportionately responsible for CO$_2$ emissions on a per capita basis. While the pace and scale of emissions reductions and the development of renewable energy sources have dominated the climate policy agenda in the country for the past decade, when contrasted with other nations Australia has been slower than all other OECD countries to take effective action to reduce its emissions.

At the same time, the effects of climate change in Australia have been dramatically visible with increasing and intense climatic aberrations – floods, bushfires, droughts, extreme heating, and coastal and riverine erosion. The human impact has been immense, with Australia now generating its own climate displaced populations. Climate displacement is one of the most severe and dramatic consequences of climate change around the world, with estimates of the number of people expected to be displaced globally by 2050 ranging from 200 million to 1.2 billion. By the end of this century the numbers may be considerably higher than this.

Traditionally, Australians have viewed the forced displacement of populations as a problem primarily experienced by countries affected by war, extreme poverty, or persecutory regimes rather than a phenomenon occurring within its own borders. Major attitude, mindset and policy shifts will be required to recognise the reality that climate displacement is already taking place within the country and that there is a pressing need to commence serious efforts to prepare for the increasing numbers who will be displaced by future climate events. Current measures of national resilience, adaptation, policy and legal frameworks have failed to recognise this expanding crisis in a manner consistent with the scale of the problem and the rights of those affected. Australia needs to transform its response to climate displacement from reactive to proactive.

This report argues that the growing domestic climate displacement crisis in Australia – which affects all parts of the country in a variety of ways – must be tackled in a pre-emptive manner, by relying on the norms found within the international human rights laws already legally binding on the State of Australia. Combined with national legislation, state and territory laws and other international normative frameworks, these instruments can assist Australia in developing a coherent strategy to deal with current and future climate displacement and ensure that everyone affected is afforded due rights protection under law.

On 10 December 2023, the world commemorated the 75th anniversary of the Universal Declaration on Human Rights (UDHR), a monumental achievement in 1948 which provides the framework and foundations of the entire body of international human rights laws already legally binding on the State of Australia. Combined with national legislation, state and territory laws and other international normative frameworks, these instruments can assist Australia in developing a coherent strategy to deal with current and future climate displacement and ensure that everyone affected is afforded due rights protection under law.
This report urges Australia to recalibrate its domestic climate change policies and laws in such a way that they actively protect and ensure – in particular - the housing, land and property (HLP) rights of climate displaced persons throughout the country. Basing the responses to the climate displacement challenge in Australia on the norms found within the UDHR and subsequent human rights laws and standards, such as the Peninsula Principles on Climate Displacement Within States, will make a markedly positively impact on the thousands, and soon to be millions, of Australians whose rights will suffer as the impacts of climate change become increasingly evident.

Rather than shying away from the severe threats generated by climate change – as has been all too often the case in recent decades – the Australian government should seek to use the climate crisis as an impetus for fundamentally changing the way by which the rights of climate displaced persons are protected, both preventively and after the fact.

Among many recommendations offered in this report, we urge the Federal Government to establish a consolidated Federal Climate Displacement Ministry to act as the focal point for action in addressing a prospective crisis that has few parallels in the country today. A Federal Ministry, with counterparts in each state and territory, can form the institutional basis for a far more robust and proactive response designed to protect the millions of Australians who will be compelled by circumstances beyond their control to move from where they are living today.

The government, and all political parties in the country, face a stark choice. They need to choose between a path that is premised on a reactionary band-aid approach which will inevitably leave huge numbers of people in far worse off conditions than they are living in today, or the approach we favour, wherein government maintains a highly cost-effective, well-organised, energetic and compassionate institutional response to protecting the rights of climate displaced persons, with an emphasis on the housing, land and property rights of everyone affected.

This latter approach can help future-proof Australia against climate displacement in a way that embraces the promise of international human rights rather than the approach so often taken in the past where these rights, institutions and procedures are simply ignored as something other states across the world take seriously, but which are simply peripheral concerns of the Lucky Country. A newfound embrace of international human rights law by the Australian government will assist in building an even better country in the decades to come, a future in which the luck that Australians have taken for granted is rapidly running out.

This report was prepared by Shaun Butta with editorial inputs from Kirsten Young, Viraaj Akuthota and myself. Special thanks to Craig Brown and Alex Hegyesi from Arteria for their graphic design work.

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Scott Leckie, Executive Director
25 March 2024
Australia and Climate Change

1. Australia remains a massive contributor to carbon emissions and has been extremely slow to change its approach to climate change since the Kyoto Protocol in 1992. This poor performance has been perpetuated through the provision of massive subsidies by successive governments to highly polluting industries which prioritise the enormous wealth, tax revenue, jobs and votes created by the fossil fuel industrial complex, even as the evidence of climate damage has become irrefutable.¹

2. While both major parties have poor climate records, the Liberal Party in particular, have been publicly pro-fossil fuels, and have perpetuated Australia’s deep reliance on non-renewable energy sources. In 2013, the Abbott government was responsible for closing the publicly funded Climate Commission, and Liberal treasurer, later to be Prime Minister, Scott Morrison brandished a piece of coal in Federal Parliament in 2017 advising the electorate not to be scared, while mocking the opposition’s advocacy on clean energy.²

3. The recent change of government has been less of a cause for optimism than expected however, with the current Labor government appearing to maintain the reliance on these polluting energy sources, while masking the continuation of similar policies in greener language.³ In 2022, Labor announced a 43% reduction in emissions against 2005 levels and net zero by 2050, a target derided as weak and unattainable in equal measure.⁴ Research shows that if all countries followed Australia’s trajectory, the world would emit 2000 gigatons of carbon before reaching net zero and would be heading for 2.5 degrees of warming; a place of potential no return for many ecosystems.⁵

4. Australia has, for a long time, been one of the world’s highest per capita carbon emitters. This fact is attributable to several factors: A significant portion of Australia’s electricity has

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³ The Labor government’s Resources Minister Madeliene King announced in 2022 that 50,000sqkm of Northern territory, Western Australia and Victoria would be opened for exploration and extraction; Adam Morton, The Guardian, Labor is sending mixed messages on energy – and some of it sounds like climate denial, 28 August 2023, https://www.theguardian.com/environment/commentisfree/2022/aug/29/labor-is-sending-mixed-messages-on-energy-and-some-of-it-sounds-like-climate-denial.


⁵ Mathew Ryan, Australia Institute, New research shows our 2030 emission targets are woefully out of date, 2 November 2023, https://australiainstitute.org.au/post/new-research-shows-our-2030-emission-targets-are-woefully-out-of-date/.
historically been generated using coal, one of the most carbon-intensive energy sources. With vast coal reserves, Australia has not only used coal domestically but has become one of the world's largest exporters of coal.\(^6\)

5. While Australia's total emissions may seem small when compared to major emitters like China, the US, and India, on a per capita basis, Australia consistently ranks among the top in the world for carbon emissions. For instance, Australia uses twice the electricity of China on a per capita basis (48% of which is generated by coal plants). In 2022, Australia's per capita coal emissions were four times the global average.\(^7\) Australia also has a dismal international record on vehicle usage, ranking second worst for transport energy efficiency out of the 23 largest energy using countries. Australia's per capita transport emissions are 345% higher than the OECD average.\(^8\)

6. Australia's response to international calls for stronger action on climate change has been characterised by a confounding mix of progress and reluctance. Australia was one of the 195 countries to adopt the Paris Agreement in 2015, committing to limiting global warming to well below 2 degrees Celsius, with efforts to limit it to 1.5 degrees. However, the targets set by the Australian government have been criticised as inadequate. While the country pledged to reduce emissions by 26-28% below 2005 levels by 2030, many argue this falls well short of what's needed from a developed nation with such a high per capita emissions rate.

7. While the speed at which the Australian government weans itself and the public off fossil fuel reliance can, and should be criticised, there have been some recent improvements in responding to climate change, which should also be acknowledged.

8. Australia has recently conceded that sea level rises are having serious repercussions for Pacific Island States, through the Australia-Tuvalu Falepili Union Treaty, which recognises the threat of climate change to Tuvalu\(^9\) and creates a pathway for Tuvaluans to live, study and work in Australia and access social services.\(^10\)

9. The government has begun to reengage with Pacific neighbours more broadly, acknowledging

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\(^6\) Australia is the second largest exporter of thermal coal in the world behind Indonesia, Clyde Russell, Reuters, Australia's exports of energy transition metals to top thermal coal, 3 July 2023, https://www.reuters.com/business/energy/australias-exports-energy-transition-metals-top-thermal-coal-russell-2023-07-03/#:~:text=Australia%20is%20the%20world's%20second,mainly%20used%20to%20make%20steel.


\(^8\) This is due in large part to: i) high emitting cars, and the lack of greenhouse gas emissions standards in place for cars or heavy vehicles; ii) the relatively high distances travelled by car per person, compared to similar countries; iii) low use of public transport (12% of trips); iv) a low ratio of spending on public transport compared to roads; Climate Council, Transport Emissions: Driving Down Car Pollution in Cities, https://www.climatecouncil.org.au/resources/transport-emissions-and-climate-solutions/.

\(^9\) Australia-Tuvalu Falepili Union Treaty, Article 2: Climate cooperation, 2.1.

that there is scope and budget for Australia to contribute to the green energy transformation within the region via the Pacific Climate Infrastructure Financing Partnership (PCIFP), which will contribute AUD$350m to climate infrastructure and renewable energy programs.\textsuperscript{11}

10. While contributing directly inside the region, Australia under the Labor government has decided to rejoin the Global Climate Fund, reversing the Liberal government’s decision of 2018. Questions surrounding motives behind the Tuvalu treaty and the rejoining of the global fund as a response to Chinese influence in the region notwithstanding, these remain positive developments in Australia’s responses to regional responsibilities on climate change.

11. Nevertheless, these efforts have been plagued by familiar criticisms of being too little, too late. For example, Australia has refused to put a number on its future contributions to the Global Climate Fund, saying only that it will be modest, similar to its weak commitments prior to withdrawal in 2018, which amounted to a meagre USD $127.4m over 4 years of participation. In contrast, the UK, Germany and France have each made contributions in 2023 alone in the billions of Euros.\textsuperscript{12}

12. In summary, Australia is making progress on adaptation and mitigation at home and abroad, but there remains an enormous gap in Australia’s policy on climate change and that is the complete failure to acknowledge domestic climate displacement and its impact on the housing, land and property (HLP) rights of Australians. While the government is busy patting itself on the back for its slow and paltry responses to climate mitigation at home and abroad, hundreds of thousands of Australians have been displaced in recent decades by severe climate events, and are left struggling with housing issues and inadequate local responses to these disasters.\textsuperscript{13}

13. The impact on the HLP rights of the climate displaced communities in Australia is a direct result of a lack of acknowledgement and planning by the Australian government to deal with the issue of climate displacement in manner consistent with domestic and international law and best practice on HLP rights. It cannot be argued that these displacements are a new phenomenon either; the Black Saturday bushfires of 2009 displaced roughly 7,500 people from 78 townships, for example.\textsuperscript{14} The National Emergency Management Agency itself acknowledges that some 92% of Local Government Areas (LGAs) across Australia have been impacted by disasters since 2013, and that approximately 17.6 million people lived in a disaster declared LGA in the 2021-2022 period. The threat of displacement is therefore completely foreseeable and should form a central pillar of disaster management planning.


\textsuperscript{13} International Displacement Monitor Centre estimates around 243,000 people have been internally displaced in Australia since 2008 due to disaster events, see IDMC, Displacement Data, https://www.internal-displacement.org/countries/australia.

14. It is obvious that displacement linked to natural disasters can only become more frequent and severe in line with the science on climate events across Australia, and that those 17.6 million people in disaster affected areas noted above could all be facing the threat of climate displacement at some point in the coming decades. The government should have predicted climate displacement and started preparing to protect the HLP rights of Australian citizens displaced by climate events in all phases of displacement two decades ago.

15. This report outlines the failure of the government of Australia to adequately respect, protect and fulfil the HLP rights of climate displaced persons in the country, how this trend is set to continue and worsen in line with increasingly frequent and severe climate events, and how the government should be looking to international frameworks on HLP rights and climate displacement to mitigate and respond to these rights violations.

### Climate Change Impacts in Australia

#### Flooding

16. Flooding now costs the New South Wales (NSW) economy an estimated $250 million annually. The 2022 flooding in Lismore, NSW had a profound impact on the local community, displacing around 31,000 people from their homes and causing substantial financial damage to the area’s infrastructure. Around 2,000 homes and businesses were subsequently declared uninhabitable by the state’s Premier.

17. The flooding forced thousands of residents to evacuate their homes, seeking shelter in temporary accommodation or with friends and family. Around 66% of the homes flooded were in need of rebuilding or of being demolished as result of the damage. Nine months after

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15 The Australian Government’s National Disaster Risk Reduction Framework states on page 5 that natural hazards are becoming more frequent and more intense.


19 id.

20 id.
the events, a Southern Cross University survey estimated the impacts of the displacement on local residents, finding that almost 52% of flood victims were living in the damaged remains of homes that had flooded, 26% were living in temporary accommodation such as caravans, sheds or pods, or with friends or family, 18% were living in insecure accommodation such as tents or temporary rentals; and 4% remained in displacement outside the region.²¹

18. These results indicate that nearly a full year after the event, almost half of those families displaced by flooding remained in displacement, unable or unwilling to return to their place of origin and remained in situations of insecure tenure and questionable housing adequacy. These numbers reflect multiple failures on the part of Local, Regional, State and Federal government to both prepare for, mitigate and respond to a displacement scenario that was entirely predictable, with the result that the HLP rights of as many as 15,000 people are still being infringed.

19. The financial ramifications of the flooding were also substantial. Critical infrastructure such as roads, bridges, schools, and healthcare facilities suffered damage or destruction, straining local resources and public services. The cost of repairing and rebuilding this infrastructure ran to around $350 million worth of damage to council assets, and the cost of rebuilding the community at close to $1 billion, putting a significant burden on the local government and economy.²² These floods in conjunction with those in southern Queensland also created insurance costs of $4.3 billion.²³

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**Sea Level Rise, Coastal Erosion, Inundation**

20. With 85% of Australia’s population living near a 66,000km coastline, coastal erosion and inundation are already having a huge impact on coastal communities and the economy.²⁴ Climate induced sea-level rise, more frequent and severe storms, and storm surges have begun combining to create a multiplier effect, accelerating coastal erosion and inundation. The government already admits that this will lead to further damage and loss of infrastructure onshore, as well as loss of habitat, including salinisation and threats to flora and fauna.²⁵

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²¹ Supra, Chenery.


²⁵ id.
21. Victoria, with its 2,500km of coastline, is already facing erosion in places like Phillip Island, Gippsland, Surf Coast and Apollo Bay. These threats are being exacerbated by the combined effects of climate change and increasing populations. The issue of erosion along the Victorian coast highlights the political nature of climate responses. With adaptation and planning delegated to the State governments, Victorian authorities have delayed releasing a range of recent reports by academics and civil society, which the government itself commissioned, highlighting that the government is using out of date modelling on sea level rise, thereby massively underestimating the threats to coastal properties and infrastructure. Government sources and experts suggest that delays on releasing reports were directly related to the government not wanting to upset voters during the 2022 state election, by looking at the difficult truths that would come along with a revised sea-level rise projection of 1.1m instead of 0.8m, as overnight, many coastal properties would have faced significant devaluation.


29 Id.

30 John Rainbird, 2016: Adapting to sea-level rise in the Torres Strait. Case Study for CoastAdapt, National Climate Change Adaptation Research Facility, Gold Coast, 1.

31 Id.
coming decades, potentially to mainland Australia, in order to survive, thus cutting traditional ties to land and sea, as well as the trauma of leaving ancestors behind. Mitigation approaches are of limited use in the islands, as the majority of the islands are low-lying and offer no higher ground to move to. Culturally, different islands have their traditional owners, meaning there is reluctance among communities to become displaced onto the islands of other communities.

Threats to the human rights of island residents and customary land management systems include:

- Lack of access to clean water due to saltwater intrusion and increased storm surges affecting freshwater springs
- Health risks from offshore discharge of salinated sewerage
- Health risks from flooding spreading community waste
- Decreasing arable land
- Increase in coastal erosion
- Reduction in fishing due to increased ocean acidity and temperature
- Ancestral graves washed out by flooding and erosion

Together, the threats from imminent and slow onset climate events threaten a range of human rights which the Australian government is obligated to uphold for the Torres Strait Island communities. These obligations, including primarily the protection from forced displacement, and other related rights to an adequate standard of living, stem from the commitments that the government has made under a range of human rights treaties (which are outlined below). Further obligations arise from the government’s duty of care at common law to take reasonable steps to prevent a loss of livelihoods and protect populations from displacement and loss of adequate shelter due to completely foreseeable threats. These threats arise in part from the government’s unreasonable continuation of emissions policies which have made significant contributions to climate change including sea-level rises. These obligations form the basis of complaints for the Torres Strait Islanders in both international and domestic litigation, which are summarised below.

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32 Peter Best, Minority Rights Group, Australia: Water crisis, rising sea levels and coastal inundations affecting Zenadth Kes Islanders, [https://trends.minorityrights.org/australia/](https://trends.minorityrights.org/australia/).

33 John Rainbird, 2016: Adapting to sea-level rise in the Torres Strait. Case Study for CoastAdapt, National Climate Change Adaptation Research Facility, Gold Coast, 3.
22. The trade-off of not upsetting voters by continuing to ignore the science is likely to be an enormous economic mistake by state government in Victoria. Recent reports suggest that approximately 16,000 properties in Melbourne's Southbank alone are at high risk of damage from sea-level rise and storm surge in the next two decades, with Victoria overall likely to face a property damage bill to residential, commercial and industrial properties of AUD$337 billion by 2100. This is apart from the fact that if each property were home to an average Melbourne family (according to 2021 census estimates), the resulting displacement would affect around 41,280 people.

23. Experts involved in the report from academia and civil society suggest that there is no way around the difficult choices which must be made. These may involve moving parts of the Great Ocean Road and other measures which are likely to be extremely unpopular politically. However, not doing so will only lead to even greater economic costs later on, as some 150,000 properties become designated as high risk by 2100, with 330,000 properties likely to suffer some damage. Using the estimated household size above, this could lead to the displacement of some 850,000 people, in the worst case scenario.

**Bushfires**

24. The 2019-2020 “Black Summer” bushfires burned 24 million hectares of land and most importantly in the context of this report, destroyed around 3,100 homes, leading to the displacement of around 65,000 people between July 2019 and February 2020. The damage to infrastructure and property was extensive, with estimates into the AUD $4-5 billion range. Thousands of homes, rural properties, and vital infrastructures like roads, bridges, and power lines were decimated by the blazes.

25. It should alarm Australians, that the Internal Displacement Monitoring Centre (IDMC) in Geneva, has published a report on the displacement ramifications of the fires. Whereas Australians may have only thought about displacement as the fallout from far-off wars and natural disasters in

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the developing world, the displacement levels in Australia now draw the attention of the world’s experts on displacement, due to the size of displacements and the severity of the climate events causing them.

Fires and Displacement in Mallacoota, Victoria

Two years after fire destroyed much of Mallacoota, Victoria in 2019, only 15 out of the 120 houses burned had been rebuilt. Three years later and the number was only 27, leading to a housing crisis in the town.\(^\text{39}\) Although insured homeowners used insurance payouts to buy rental properties, tenants were ineligible for the same emergency relief and compensation, forcing many of them to leave town.\(^\text{40}\)

Many residents who chose to wait for 13-month council planning approval to rebuild new homes found that in the face of the rise in building costs amounting to 30%, they could no longer afford to rebuild homes.

Temporary housing also proved an issue because of local council rules on caravans and demountable units, meaning those were restricted to private property owners awaiting rebuilds. In the meantime, the restrictions forced some into sleeping in tents outside, in boats and sheds, at times without running water or sanitation, 2 years after the fires.\(^\text{41}\)

According to residents, the only emergency housing that was previously available was burned in the fires. Ironically, there is plenty of empty housing in the town, as wealthy home buyers from bigger cities snapped up property during the pandemic, but that only served to push up local house prices, forcing locals out of the market and reducing the numbers of rental properties available in Mallacoota.

The crisis for the displaced populations eventually reached the State Parliament of Victoria where the situation was brought to the attention of government by the member for Gippsland East. The government, albeit belatedly, responded with the provision of modular homes for the community to ease the housing burden on displaced communities.\(^\text{42}\)


The fact that displaced communities have yet to enjoy the full spectrum of their housing, land and property rights after the disaster shows that local, regional and state governments are not giving priority to the threats posed by climate events and how these impact on the HLP rights of ordinary Australians. Citizens of a country as wealthy as Australia sleeping in tin sheds for extended periods is shameful and should prompt the government to reevaluate its responses to climate events and prioritise its obligations to HLP rights under domestic and international law.

26. Housing, land and property losses from the fires amounted to billions of dollars, with insurance claims skyrocketing. Critical industries, notably tourism and agriculture, were severely impacted, with losses to agriculture alone surpassing AUD$5 billion. In addition, there were enormous costs in providing 100 evacuation and relief shelters to attend to the HLP needs of displaced populations. Two years after the fires, many homeowners were still in the process of rebuilding, due to the fact that homes in burned areas required a new certification of fire risk levels. Houses recertified in higher risks areas, also led to higher costs required by building to new standards. Some who received insurance payouts had not built homes to the previous standards and were insured for lesser values, leading to payouts insufficient to cover rebuilding to new code standards, forcing displaced communities into difficult choices about moving away from areas of origin.

27. A further burden placed on the displaced populations was the enormous cost of rental housing in Australia, which as the IDMC points out, at an average of AUD $14,100 per displaced family per year, comes to a cost of between AUD$61 – 72 million dollars. The failure of existing mitigation strategies which lead to these levels of displacement, meant that the Australian Red Cross had to distribute AUD$119 million in emergency assistance to 4,380 displaced persons.


44 Stephanie Chalmers, Australian bushfire rebuild could take five years, builders warn, citing Tathra example, 3 February 2020, https://www.abc.net.au/news/2020-02-04/bushfire-rebuild-could-take-five-years-tathra-two-years-on/11922002.

28. Cyclones have long been an intrinsic part of Australia’s climate, particularly in the tropical north. However, in recent years, although research indicates a decreasing frequency of tropical cyclones, there are “likely to be a greater proportion of severe or intense tropical cyclones in the future due to the increasing energy available to power cyclones. Rainfall produced by tropical cyclones is also expected to increase, particularly the intensity of extreme rainfall events which could increase by about 10% or more per degree of global warming (noting that about one degree of warming has already occurred). This is because a warmer atmosphere can hold more moisture, as well as increase the energy available for cyclones.” These developments, influenced by global climatic shifts, strongly suggest that cyclones are likely to be yet another climate event which could cause widespread displacement across the tropical north of Australia in coming decades.

29. Cyclone Debbie in 2017 tore through Queensland (QLD) and New South Wales, leaving behind a trail of destruction and widespread displacement as it destroyed a total of 3,350 homes and business properties, leading to 310 applications for emergency housing assistance across QLD alone. The widespread flooding and damage to homes, power lines, roads, and water facilities, required billions in repair and reconstruction expenses. A full eight months after the cyclone, QLD government reports indicated that 8% of properties were still being repaired and a further 15% were still awaiting repair.

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**Climate Disaster Statistics in Australia**

Disasters cost the Australian economy $38 billion per year on average

The estimated cost of disasters is forecast to reach at least $73 billion per year by 2060

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49 Queensland Government, Severe Tropical Cyclone Debbie 8 month progress report, December 2017, 9


10% increase and intensity in short duration extreme rainfall events in recent decades. By 2030 this is forecasted to increase by a further 7% and up to 15% more by 2050 10% increase\textsuperscript{52}

The Commonwealth Government has provided $16 billion+ through the Disaster Recovery Funding Arrangements through the National Emergency Management Agency since 2010-11\textsuperscript{53}

70% of Australians live in a Local Government Area (LGA) that was subject to a disaster activation in 2022\textsuperscript{54}

198 floods impacting 466 LGAs, 129 bushfires impacting 217 LGAs, and 38 cyclones impacting 390 LGAs have been declared as disasters under the Disaster Recovery Funding Arrangements January 2013\textsuperscript{55}

Approximately 17.6 million people lived in disaster declared LGAs in 2021-22. There were just over 1.6 million disaster assistance payments to Australians in this period. The average annual household cost of extreme weather in 2021-22 was $1,532, which is forecast to increase to $2,509 by 2050\textsuperscript{56}

496 LGAs impacted by disasters. This is 92% of all LGAs in Australia impacted since 2013.

56% increase in the number of extreme fire weather days in Australia over the last 4 decades. This was an annual increase in fire season length across Australia by an additional 27 days over the last 41 years (1979-2019). This is forecast to increase by a further 20% by 2030 and up to 40% by 2050\textsuperscript{57}

116 lives lost from declared disaster events since 2013 Australian Institute of Disaster Resilience 2023, Insurance Council of Australia 2023\textsuperscript{58}

\textsuperscript{52} State of the Climate Report 2022, CSIRO and the Bureau of Meteorology.


\textsuperscript{54} Id.

\textsuperscript{55} Id.

\textsuperscript{56} Insurance Council of Australia, 2022.


\textsuperscript{58} Australian Institute of Disaster Resilience 2023, Insurance Council of Australia 2023.
Climate Displacement in Australia

30. According to figures compiled by the IDMC, there have been 243,000 internally displaced persons across Australia due to climate events from 2008 to present, the leading nation in the Pacific. The three main causes of these displacements were bushfires (93,000 people), flooding (86,000), and cyclones/storms (62,000 people). The case studies discussed in the previous section show the geographical breadth and variety of the displacement threats leading to these numbers of displaced Australians.

31. The magnitude of displacement in the last 15 years alone is a clear warning for the Australian government that much worse is likely to come without a major increase in appropriate planning and prevention. The World Bank and the International Panel on Climate Change (IPCC) have argued that the science of increasing frequency and severity of extreme weather events is clear. The IPCC suggests further that “As the climate moves away from its past and current states, we will experience extreme events that are unprecedented, either in magnitude, frequency, timing or location. The frequency of these unprecedented extreme events will rise with increasing global warming. Additionally, the combined occurrence of multiple unprecedented extremes may result in large and unprecedented impacts.” The pattern indicates a completely foreseeable increase in the numbers of internally displaced persons (IDPs) in Australia who will suffer HLP rights violations across the coming decades.

32. The assertion that these displaced populations will suffer from HLP rights violations and difficulties in acquiring adequate shelter are based on the fact that the numbers which will be displaced in future will only go up, and the fact that the government is already unable to prevent and respond to these unmet obligations under the current scenarios, as witnessed in the Lismore post-flood situation, and the post-bushfire situations witnessed in 2020. Government’s inability to prevent these violations will be exacerbated by the current failure to prepare adequately for even greater numbers of displacement through recognition of climate displacement in disaster management frameworks and a failure to link hazard mapping and zoning regulations.

33. The government has a duty of care to physically protect Australian citizens, but also to protect their HLP rights in the face of worsening climate displacement, not only through mitigation and adaptation, but through restitution and compensation where appropriate, according to international restitution principles. However, this is only half the story of HLP rights failures in Australia. The underlying issue is not only that the government has all too often failed to protect

60 IPCC, Will Unprecedented Extremes Occur As a Result Of Human-Induced Climate Change?, https://www.ipcc.ch/report/ar6/wg1/chapter/chapter-11/.
61 See Peninsula Principles, Principle 16.
the HLP rights of displaced persons, it is that the government continues to allow massive parts of its population to live in areas prone to extreme and slow onset weather events, even after they have suffered warning events creating displacement, and devolves the responsibility for urban planning to local and state governments which are not up to the task of responding to the HLP needs of populations post-disaster. Nor are these governments thus far capable of appropriate regulation and zoning which preclude return to areas which are clearly high risk, thus allowing repeat scenarios in future.

34. Ironically, in a country where accusations of “nanny state behaviour” (over-protective and over-regulated governmental intrusion into people’s lives) are common, the government has not gone nearly far enough to regulate where citizens can live in the age of climate change. The government needs to immediately start looking at heavy restrictions on development of urban areas, as well as the way in which crown land is managed.

35. The threat of widespread displacement and HLP rights violations in the coming decades in Australia should not be underestimated by the Australian government. Regarding the threat of sea-level rise alone, it is estimated that up to AUD $63 billion in existing residential buildings would be at risk of inundation from a 1.1 m sea level rise in Australia, representing between 157,000 and 247,600 individual buildings. At current census figures of 2.5 persons on average per household this equates to roughly 390,000 – 620,000 individuals at risk of some form of displacement in the coming decades in coastal areas alone.

36. The Royal Commission into National Natural Disaster Arrangements (RCNNDA) convened in 2020 to investigate the response to the 2019-20 bushfire season, estimated that as many as a million homes in high bushfire risk areas had inadequate or no fire protection, meaning that as many as 2.5 million individuals could be at risk of displacement in the event of extreme bushfires such as those seen in 2020.

37. The risks posed by bushfires and sea-level rise in the coming decades mean that between just these two types of events, some 3 million Australians are at some risk of displacement due to climate linked events in the coming decades, yet displacement still fails to rate a mention in either the legal or policy debates around climate change or disaster mitigation in Australia. This is despite the fact that the government has carried out comprehensive diagnostic work to identify threatened communities across the various states and territories of Australia. Governments in each state have various departments, like CoastAdapt in NSW for example, working on the

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63 Australian Associated Press and the Guardian, Royal Commission on Bushfires estimates that as many as a million homes in bushfire-prone areas have little or no fire protection, 8 July 2020, https://www.theguardian.com/australia-news/2020/jul/08/up-to-a-million-australian-homes-in-bushfire-prone-areas-have-little-or-no-fire-protection#:~:text=Up%20to%20one%20million%20homes,royal%20commission%20has%20been%20told.
threats posed by sea-level rise in particular, given the obvious danger of 80% of the population living in coastal areas prone to inundation events. These government departments churn out statistics on the threats of displacement posed by climate events, and yet, when events like fires and flooding occur, local governments are left to deal with massive displacements and a lack of emergency shelter, as the case studies in this report highlight, due to the fact that displacement and housing rights still fail to rate a mention in the Federal or State Frameworks and Action Plans for the coming decades.

38. The following section explores the HLP rights obligations of the Australian government in relation to displacement and climate change. These various obligations are the result of a complex interplay of a wide range of sources of law and authority, as represented in the diagram below.
International Human Rights Obligations of Australia Relating to Climate Displacement

39. Under the vast body of international treaty commitments freely undertaken by the Australian state, successive Australian governments are legally obliged to prevent displacement, but when it occurs, it also has HLP-specific rights obligations arising under a range of ratified international treaties and frameworks, to respect, protect and fulfil the HLP rights of Australian citizens in the displacement and post-displacement phases of climate-related events. The Australian government legislates its international treaty obligations into domestic law following ratification. Those obligations then become binding on the government and allows citizens to seek redress for breach of the obligations through federal, administrative and other civil courts. If redress is not obtained through the domestic legal system, options exist for claimants under the UN treaty bodies, such as commissions overseeing state compliance with treaty obligations, for rulings which the government will be forced to consider (though these rulings are not binding).

See for example, the Committee on Economic, Social and Cultural Rights (CESCR), which is the United Nations treaty body entrusted with overseeing the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR), https://www.ohchr.org/en/treaty-bodies/cescr.

Image: A child’s charred trike sits among the debris of a home destroyed by bushfire in Dunalley, TAS. Photo credit: Shutterstock
40. To date, the government has ratified a wide range of treaties which deal with human rights obligations and some with specific HLP components. These include:

- Universal Declaration of Human Rights
- International Covenant on Economic, Social, and Cultural Rights (ICESCR)
- International Covenant on Civil and Political Rights (ICCPR)
- Convention on Elimination of All Forms of Discrimination Against Women (CEDAW)
- International Convention on the Rights of the Child (CRC)
- The International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- Indigenous and Tribal Peoples Convention, 1989 (No. 169)

41. Obligations under these treaties require the government to protect the housing, land, and property rights of displaced populations, as well as provide restitution and or compensation as necessary under the circumstances. These obligations are to be met in a non-discriminatory manner and in some cases, the obligations are non-derogable, meaning the government must protect certain rights in all circumstances. Other rights are derogable, but only under certain circumstances, such as threats to the nation. These obligations are laid out in the table on the next page.

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<table>
<thead>
<tr>
<th>Treaty</th>
<th>Article</th>
<th>Government Obligation</th>
</tr>
</thead>
<tbody>
<tr>
<td>UDHR(^{73})</td>
<td>3.</td>
<td>Everyone has the right to life, liberty and security of person. Protect Australian citizens from loss of life due to extreme climate events through proactive mitigation</td>
</tr>
<tr>
<td></td>
<td>13.1</td>
<td>Everyone has the right to freedom of movement and residence within the borders of each state. Protect Australian citizens from forced displacement and arbitrary evictions</td>
</tr>
<tr>
<td></td>
<td>17.1</td>
<td>Everyone has the right to own property alone as well as in association with others. Protect Australian citizens from forced displacement and arbitrary evictions</td>
</tr>
<tr>
<td></td>
<td>17.2</td>
<td>No one shall be arbitrarily deprived of his property.</td>
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<tr>
<td></td>
<td>25.1</td>
<td>Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services. Ensure Australian citizens have access to an adequate standard of living, specifically the right to adequate housing. (^{74})</td>
</tr>
<tr>
<td>ICESCR(^{75})</td>
<td>1.</td>
<td>All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. Take action to prevent the loss of culture and livelihood in areas threatened, for example by sea-level rise (particularly relevant for coastal communities)</td>
</tr>
<tr>
<td></td>
<td>11.</td>
<td>The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. Government should ensure an adequate standard of housing, which the UN categorises by; security of tenure, availability of service, affordability, habitability, accessibility, location and cultural adequacy. (^{76})</td>
</tr>
</tbody>
</table>


\(^{74}\) Elements of the right to adequate housing have been recognised by the UN as: 1) security of tenure; 2) availability of services, materials, and infrastructure; 3) affordability; 4) accessibility; 5) habitability; 6) location; and 7) cultural adequacy. See U.N. Committee on Economic, Social, and Cultural Rights, General Comment No. 4 (1991) on the right to adequate housing, [https://www.ohchr.org/en/special-procedures/sr-housing/human-right-adequate-housing](https://www.ohchr.org/en/special-procedures/sr-housing/human-right-adequate-housing).


\(^{76}\) CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant).
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<tr>
<th>Treaty</th>
<th>Article</th>
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</thead>
<tbody>
<tr>
<td>ICCPR(^{77})</td>
<td><strong>1.2</strong> All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.</td>
<td>Government should exercise its duty of care not to deprive citizens of means of subsistence, particularly where means of subsistence is linked to cultural identity, as is the case for First Nations communities.</td>
</tr>
<tr>
<td></td>
<td><strong>2.1</strong> Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</td>
<td>Binds to government to enacting legislation to give effect to the rights in the covenant without discrimination.</td>
</tr>
<tr>
<td></td>
<td><strong>2.2</strong> Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, ... to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.</td>
<td></td>
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</table>

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

6.1 Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

12.1 Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

Government will ensure access to remedies for rights violated in the Covenant, meaning in part that they are not forced to seek redress in international fora.

Although this article is primarily addressed toward prevention of arbitrary deprivation of life, it could also be interpreted to mean an obligation on the government to prevent deprivation or interference with livelihoods, culture and way of life.

Government shall protect the right to freedom of movement and provide against arbitrary eviction (as outlined in other international guidelines).

The Basic Principles and Guidelines On Development-based Evictions And Displacement (https://www.ohchr.org/en/special-procedures/sr-housing/forced-evictions) outline the international position on this. A further point to note is that the ICCPR allows for derogation from many Articles, except the absolute or non-derogable rights, which cannot be derogated from under any circumstances. The derogation from the freedom of movement clause, which is a derogable right, would only be allowable on the basis of a public emergency which threatens the life of the nation and the existence of which is officially proclaimed. Whether climate change threatens the life of the nation and therefore precipitates forced evictions from high risk locations is up for debate. However, this is only an issue post-facto; generally speaking, there is little argument that it is within government powers to legislate on the issue of housing and land development in prospective manner which precludes further development. For example, in the manner in which government sets aside areas of Crown land which are not available for urban development etc. Further, Article 12.3 allows for derogation when there is a conflict with public health, which could well be one of the concerns in areas subject to high risk climate events such as bushfires, for example.
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<thead>
<tr>
<th>Treaty</th>
<th>Article</th>
<th>Government Obligation</th>
</tr>
</thead>
<tbody>
<tr>
<td>ICCPR (cont’d)</td>
<td>17.1 No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.</td>
<td>Government will treat the HLP rights of all peoples as equally valid and protect those rights in the pre, displacement and post-displacement context equally.</td>
</tr>
<tr>
<td></td>
<td>17.2 Everyone has the right to the protection of the law against such interference or attacks.</td>
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<td></td>
<td>26. All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.</td>
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<td>27. In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.</td>
<td>In the case of many ethnic minorities, customary practices and culture are tied directly to the natural environment, meaning that the obligation on government extends to the protection of the environment from threats which would impact on the right to enjoy culture.9</td>
</tr>
</tbody>
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9 See for example, Our Customary Lands: Community-Based Sustainable Natural Resource Management in Burma, Transnational Institute, July 2016.
<table>
<thead>
<tr>
<th>Treaty</th>
<th>Article</th>
<th>Government Obligation</th>
</tr>
</thead>
</table>
| **CEDAW**<sup>80</sup> | 1. States Parties shall accord to women equality with men before the law.  
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.  
3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.  
4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile. | Government will ensure the legal capacity of women to choose their place of residence and administer property without limitation in situations of displacement and return. |
| **CERD**<sup>81</sup> | 2(1)a Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation | Government should apply its responses and remedies to HLP rights violations caused by climate events without discrimination among beneficiaries |

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<sup>80</sup> UN, [https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm](https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm).

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<thead>
<tr>
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<th>Article</th>
<th>Government Obligation</th>
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<tbody>
<tr>
<td>CERD (cont’d)</td>
<td>5(i) The right to freedom of movement and residence within the border of the State</td>
<td>Residents can freely choose place of residence and be free from forced evictions.</td>
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<tr>
<td></td>
<td>5(v) The right to own property alone as well as in association with others</td>
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<tr>
<td></td>
<td>5(iii) The right to housing</td>
<td>Government ensures the right to housing AND ensures that such housing meets the standards of adequacy, particularly for those displaced by climate events</td>
</tr>
<tr>
<td>ITPC No.169²³</td>
<td>2.2(b) promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions;</td>
<td>Government must take into account that social economic and cultural rights are intricately tied to HLP rights in customary land management systems seen throughout First Nations areas of Australia</td>
</tr>
<tr>
<td></td>
<td>4.1 Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.</td>
<td>This article is particularly relevant to the government’s obligations, given the findings in the Pabai case discussed on pages 10-11.</td>
</tr>
<tr>
<td></td>
<td>4.2 Such special measures shall not be contrary to the freely expressed wishes of the peoples concerned.</td>
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</tbody>
</table>

42. The Peninsula Principles on Climate Displacement Within States offer comprehensive and persuasive guidance for governments when considering the HLP rights of populations displaced by climate change specifically.²⁴ The creation of the Peninsula Principles in 2013 in Australia by a leading group of displacement experts, is the culmination of 75 years of human rights development and advocacy which began with UDHR. The fundamental rights outlined in the UDHR run through the International Bill of Rights (UDHR, ICCPR, ICESCR), into the Pinheiro Principles and finally culminates in the Peninsula Principles, which harnesses the fundamental HLP rights found in those documents and places them within the context of climate displacement, in a manner which guides responsible governance, policy and programming. Using the Peninsula Principles as a guide leads to policy and programming responses which protects the HLP rights.

²² However, this right should be balanced against the need to prevent development in areas prone to climate events (see discussion above related to ICCPR Article 12.1).


of those displaced by climate change across the chronology of displacement and return. The box below summarises the Peninsula Principles across the displacement timescale and the governmental responses which the Principles require for compliance.

<table>
<thead>
<tr>
<th>Displacement Phase</th>
<th>Principle</th>
<th>Government Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>10. Participation and consent</td>
<td>Government notes the concerns of at-risk populations in any response and ensures access to information, livelihoods, basic services in any relocation plans.</td>
</tr>
<tr>
<td></td>
<td>11. Land identification, habitability and use</td>
<td>Identification of land for relocations, equitable appropriation process developed, provide information on any relocation programs to communities, guarantee habitability.</td>
</tr>
<tr>
<td></td>
<td>12. Loss and damage</td>
<td>Develop appropriate laws and policies for loss suffered and damage incurred in the context of climate displacement</td>
</tr>
<tr>
<td></td>
<td>13. Institutional frameworks to support and facilitate the provision of assistance and protection</td>
<td>Establish well-funded and resourced institutional infrastructure to enhance national capacity to identify and respond to climate displacement through ministries, departments and national adaptation plans.</td>
</tr>
<tr>
<td>During Displacement</td>
<td>14. State assistance to those climate displaced persons experiencing displacement but who have not been relocated</td>
<td>Full range of humanitarian assistance provided to protect HLP rights in non-discriminatory manner.</td>
</tr>
<tr>
<td></td>
<td>15. Housing and livelihood</td>
<td>Guarantee the right to adequate housing, access to livelihoods and prevent further displacement.</td>
</tr>
<tr>
<td></td>
<td>16. Remedies and compensation</td>
<td>Displaced persons receive due compensation for any HLP rights violated</td>
</tr>
<tr>
<td>Post-Displacement/Returns</td>
<td>17. Framework for return</td>
<td>Returns are facilitated where possible (no threat to life/livelihood) through a framework that provides information which allows informed consent of the affected population as well as transitional assistance where required.</td>
</tr>
</tbody>
</table>
FLOODWATERS IN THE CITY CENTRE

Location: Lismore, NSW
Photo credit: Shutterstock
Australia’s obligations under ratified treaties may form the basis of complaints to the monitoring committees of the ratified treaties where complainants are unable to seek redress in the domestic jurisdiction. Displacement Solutions recently discussed these avenues of protecting the rights of climate displaced communities at length in a report released in January 2024.  

Recent case law on displacement related to climate change includes the Daniel Billy et al v Australia case, in which complainants from the Torres Strait Islands, sought a decision from the UN Human Rights Committee, which is the monitoring body for the ICCPR, on Australia’s compliance with its obligations, under Articles 2, 6, 17, 24(1) and 27 of the ICCPR.

It is a sad indictment of Australia’s failure to take note of the impact that climate change has on the HLP rights of communities, particularly security of tenure (as an element of adequate housing), that there is a lack of domestic legal options for redress in Australia, whereby Australian citizens are forced to appeal to the United Nations. The claimants in Billy asserted that redress was not possible in Australia due to High Court rulings such as those in Graham Barclay Oysters Pty Ltd v. Ryan 2002, where the High Court of Australia ruled that State organs do not owe a duty of care for failing to regulate environmental harm. More recently in Australian jurisprudence, the Federal Court ruled in 2021 that the government does have a duty of care to prevent environmental harm in Sharma v Minister for the Environment, but this decision was then overturned by the High Court of Australia (discussed in more detail below on Australia domestic legal obligations). Consequently, the lack of avenues to seek legal redress in Australia was accepted by the Human Rights Committee within the discussion on admissibility.

The claimants in Billy asserted that by contributing to climate change through emissions and failing to provide mitigation and sufficient adaptation options, the Australian government had endangered the communities in the Torres Strait Islands which amounts to a violation of Articles 2, 6, 17, 24(1) and 27 of the ICCPR. The committee found that Australia as a State Party to the Covenant was in violation of Articles 17 (the right to freedom from arbitrary interference

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For further information on the availability of judicial avenues for protection of human rights in climate cases, see Displacement Solutions latest report entitled Unchartered Waters: Exploring Judicial Avenues for Climate displaced Communities.

The UN Human Rights Committee monitors States parties’ adherence to the International Covenant on Civil and Political Rights, which to date has been ratified by 173 States parties. The Committee is made up of 18 members who are independent human rights experts drawn from around the world, who serve in their personal capacity and not as representatives of States parties. The Optional Protocol to the International Covenant on Civil and Political Rights allows individuals to file complaints against the 117 States parties to the Optional Protocol for violations of their rights enshrined in the Covenant. The Optional Protocol imposes on States parties the international legal obligation to comply in good faith with the Committee’s views, for more information see, UNOHCHR, Complaints about human rights violations, Treaty Bodies, https://www.ohchr.org/en/treaty-bodies/complaints-about-human-rights-violations.


At paragraph 7.3.
with one’s home) and 27 (the right to practice one’s culture). However, the dissenting opinions went even further, suggesting that, in their opinions, the right to life had been interpreted too narrowly and that the committee had reason to find a violation of Article 6 as well. Australia was ordered to make reparations for the violations of Article 17 and 27.

47. Arguably this ruling, which was far more progressive than is usually seen in the Australian domestic jurisdiction, and the ruling of the Federal court in *Sharma* (prior to the later reversal in the High Court) are indicators of the future direction in interpreting the government’s responsibilities under international law. Indeed, the advocacy around amending legislation to incorporate a statutory duty of care into Australian environmental law is gathering support, and at some point in future will likely occur, given the public’s growing concern around the effects of climate change in Australia. It would be forward thinking of the government to incorporate these changes into legislation sooner rather than later, so that a legal avenue for accountability is available for Australian citizens, rather than having to complain to UN monitoring mechanisms.

48. In addition to the international laws and principles outlined above which should guide the Australian government’s approach to preventing and responding to HLP rights violations in displacement scenarios, the government also has domestic legal responsibilities which are outlined in the section below.

**Domestic Policy Frameworks, Statute, Regulation**

49. Australia responds to its international legal obligations, inter alia, by legislating its human rights commitments into domestic legislation, which then become binding, with accountability provided by various courts, including the administrative courts, which make decisions on compliance within the implementation of government policy and law. The Commonwealth Parliament has also enacted the Human Rights and Equal Opportunity Commission Act 1986 (Cth) (HREOC Act), which specifically empowers the Human Rights Commission to examine Commonwealth legislation and the acts and practices of the government to determine consistency with human rights.

50. There are many examples of international human rights law implemented through domestic law in Australia; the prohibition on discrimination found in the UDHR, ICESCR and the ICCPR for example, can be found in the Racial Discrimination Act (1975). Even where there is no direct incorporation in domestic legislation, the courts have chosen to take note of international human rights obligations, through decisions such as *Minister for Immigration and Ethnic Affairs v Ah Hin Teoh*, where the High Court noted that the ratification of treaties is an adequate foundation for an expectation that the government will act in accordance with the treaty/Convention.

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51. Apart from the government’s obligation to uphold its human rights commitments, there is also the question of how these human rights commitments overlap with the government’s protection of the environment, with building and zoning regulations, and insurance provision. This creates a Ven diagram with the final element being HLP rights protection, which in the climate change displacement scenario, is a function of the interplay between governmental responses to protecting the environment, human rights generally, and HLP rights specifically.

52. Environmental protection specifically is regulated in Australia by both the Federal and State government. An example of the incorporation of international obligations in the environmental realm is the domestic legislation and mechanisms which apply the Sendai Framework in Australia to manage disaster risk and response, which is examined below.

**National Disaster Management and the Sendai Framework Implementation**

<table>
<thead>
<tr>
<th>International Level</th>
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</thead>
<tbody>
<tr>
<td>Sendai Framework</td>
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<table>
<thead>
<tr>
<th>National Level</th>
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<tbody>
<tr>
<td>National Disaster Risk Reduction Framework</td>
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<tr>
<td>National Strategy for Disaster Resilience</td>
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<td>Second National Action Plan</td>
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<th>State Level Frameworks</th>
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<td>Eg., Queensland Disaster Resilience Strategy 2022-2027</td>
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53. Australia implements the Sendai Framework for Disaster Risk Reduction through the National Disaster Risk Reduction Framework (NDDRF) and Australia’s National Strategy for Disaster Resilience, which is managed by the National Emergency Management Agency under the Department of the Attorney General. The goals of the frameworks are to “set out the foundational work required nationally, across all sectors, to reduce existing disaster risk, minimise new disaster risk, and deliver better climate and disaster risk information.”

54. The NDDRF does not speak about housing or displacement specifically but touches tangentially on the issues in Strategies E and F, outlined in the table below.

| STRATEGY E - Maintain planning and development practices that adapt to rapid social, economic, environmental and cultural change | Infrastructure, land use and development planning and practices must be integrated, strategic and adaptive to avoid creating new disaster risk. |
| STRATEGY F - Promote compliance with, and embed resilience requirements into, relevant standards, codes and specifications | Leverage existing mechanisms for reviewing standards, codes and specifications to minimise disaster risk being built into the urban environment and regional landscape, recognising that preservation of life must remain a priority. |

55. It is interesting to note that the strategy highlights that the preservation of life remains a priority, which is in line with Australia’s human rights commitments under the UDHR, ICCPR, ICESCR and other treaties, but that this has not translated into more strict zoning in high-risk areas, only stricter building codes.

56. As outlined in the diagram above, the NDDRF outlines the national approach to implementing the Sendai Framework, after which it is the responsibility of State Government’s to devise State-based strategies and Action Plans on implementation. As noted however, there is no mention of climate displacement or of HLP rights of displaced communities anywhere within the NDDRF, nor subsequently within the various documents which flow from that overarching framework, such as the National Strategy for Disaster Resilience or the various action plans for State government implementation. This oversight will be discussed at length below.

57. As mentioned above, the field of climate displacement encompasses several thematic areas of governance including: HLP rights, the environment, urban and rural development, land use planning and management, coastal and disaster management. In Australia the Constitution provides the power for both the Federal and State government to legislate on the same area, and in particular in the context of this report, that includes the environment, under the concurrent powers doctrine.93

58. Federal Parliament is responsible for obligations under human rights treaties, and as explained above, legislates those obligations into domestic law. The State and Territory parliaments have the responsibility for the protection of the natural environment, approvals for new developments, waste disposal etc, which encompasses both the development and land use planning across the states, as well as the responses to disasters.  

59. The Australian government, under both the Liberal and Labor parties, has put in place a range of measures which respond to climate change and disaster management, by establishing legislative and funding mechanisms, as well as implementation plans. However, the glaring hole in the response has been the absence of a distinct recognition of climate displacement as a human rights concern which the government has obligations to address as a stand-alone issue. The paragraphs below outline existing responses to climate change and disaster response generally.

60. Legislatively, the Federal government introduced a Climate Change Act in 2022 which sets out Australia’s emissions reductions targets and establishes a reporting process delivered by the Minister to Parliament annually.

61. Institutionally, the Department of Climate Change, Energy, the Environment and Water (DCCEEW) was created in 2022 to spearhead Australia’s climate change commitments, climate mitigation and adaptation strategies, policies, and activities. Two years into its mandate however, the Australian National Audit Office has assessed the work of the DCCEEW and found that its efforts have only been partly effective in supporting the implementation of the government’s climate change commitments, that key components of including national plans, strategies and frameworks are yet to be delivered for use, and that the DCCEEW is thus far unable to demonstrate the extent to which specific policies and programs have contributed to reducing emissions. For the purposes of this report, the Audit Office’s assessment calls into question whether the government is failing even on reducing emissions, which is a prerequisite of mitigating the climate impacts which force people into displacement in the first place.

62. The Department of Prime Minister and Cabinet assists the development of climate policy and works closely with the DCCEEW as well as the Departments of Industry, Science and Resources, Agriculture, Fisheries and Forestry, Department of Foreign Affairs and Trade. These departments then develop departmental-specific policy to implement commitments. For example, the department of Agriculture has its own National Climate Resilience and Adaptation Strategy.

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Zoning, Development Planning and Housing

63. Australia has a strict set of regulations around the zoning of land use and development planning whose regulation is the responsibility of local and regional governments in line with legislation at the federal level. The decentralised nature of zoning and land development allows the federal government to abdicate the responsibility for providing national level guidance, based on the evolving science and research around the effects of climate change, leading to considerable confusion at the lower levels of government on what science should be followed in planning approvals, as the case studies in this report show.

64. While the strict environmental standards around development serve to protect environmental interests and preservation, the zoning practices do not adequately take into account the fact that the environment is changing faster than regulation can adapt, and this is specifically an issue related to climate displacement and the issue of rebuilding in post-disaster and displacement scenarios. The case studies in the section below on the Kinglake and Mallacoota fires are emblematic of the difficulties posed by laxity in zoning and the manner in which this leads to the infringement of HLP rights in the displacement context.

Image: A home destroyed by bushfire in the Adelaide Hills, SA.
Photo credit: Shutterstock
Climate Displacement and the Housing Crisis in Australia

As the effects of climate change intensify, more people are forced to relocate, either temporarily or permanently. These displacements exacerbate existing pressures on Australia’s already strained housing market, where affordability remains a critical issue.

In areas where climate impacts are most severe, such as coastal regions facing rising sea levels or rural areas prone to bushfires, the displacement of residents is increasingly common, as the Internal Displacement Monitoring Centre (IDMC) figures listed elsewhere in this paper clearly show. Climate-displaced individuals often seek refuge in urban areas, where housing availability is limited and prices are high. This surge in demand puts further pressure on temporary housing costs, making it increasingly difficult for not only the displaced persons but also low- and middle-income residents to secure affordable housing.

In some cases, the lack of affordable rental properties has forced displaced people into situations of homelessness for periods up to months, with some being forced to leave their areas of origin completely and seek shelter with family and friends in other regions.97 The cost-of-living crisis in Australia is feeding directly into the housing affordability crisis. The prices of rental accommodation have forced more and more Australians into sharing accommodation, while the number of rental accommodation is at an all-time low, and the rates of homelessness in Australia is on the rise.98

The housing crisis also affects low-income families who rely on social housing. Housing advocacy groups suggest that the private market is incapable of providing the low-cost housing that would ease the pressure on the housing market and that government should be filling this gap, along with increasing rent subsidies.99 This call has been backed by the Australian Housing and Urban Research Institute, whose research has shown that there is simply not enough housing available to match

population and household growth in Australia. In 2021, the population of Australia was 41% larger than it was in 1996, while social housing had only expanded by 3% over the same period. Although the Labor government pledged to expand national social housing stock by 40,000 units, advocacy groups suggest that these numbers are too low to truly relieve the stress on low income groups in need of affordable housing.

The intersection of these issues – the housing affordability crisis and the displacement caused by climate change – poses a significant threat to the realisation of HLP rights in the context of disaster displacement. The right to adequate housing, as outlined in international human rights law, extends beyond mere shelter. It encompasses security of tenure, availability of services, affordability, habitability, and cultural adequacy, all of which are jeopardised by this dual crisis, particularly where the inefficiency of government responses such as housing buybacks drag into multiyear timeframes. The mishandled responses to the Lismore flooding mean that displaced individuals could be forced into expensive rental accommodation for long time frames which many cannot afford.

In addressing this intersection, it is imperative for Australia to adopt a rights-based approach, ensuring that climate change adaptation and housing policies are closely coordinated. Solutions must aim to increase the supply of affordable, sustainable housing, while also considering the specific needs and rights of climate-displaced individuals. Only through such an integrated approach can the twin challenges of housing affordability and climate-induced displacement be effectively managed, safeguarding the HLP rights of all Australians.


102 Id.
Insurance

65. The destruction wrought by the various extreme climate events in Australia is rapidly making properties uninsurable, particularly those in flood and bushfire prone areas. In addition, owners of these properties will not be able to take out mortgages against the uninsured properties, as banks baulk at the possibility of climate events wiping out the collateral used for loans. This is likely to have massive impacts on the property market according to analysts. Recent estimates are that roughly one in 25 homes will be uninsurable across all electorates by 2030 due to the risks posed by extreme weather events and climate change.

1 in 25 homes will be uninsurable by 2030 at current emissions levels.

66. Following the NSW floods, a marked reluctance was observed among insurance companies to cover homes in flood-prone areas. The rationale is straightforward: repeated claims from these regions make it economically unattractive for insurers. As coverage shrinks and premiums skyrocket, homeowners face a double jeopardy – the threat of recurrent floods and the inability to secure their properties financially. This led the Insurance Council of Australia to state in 2022 that some disaster-prone areas of the country are likely to become uninsurable.

67. The Reserve Bank of Australia points out a dual issue with rising premiums in its assessment of the interplay between insurance and climate change events, suggesting that; "As insurance costs rise and availability declines or becomes less certain, some households and businesses may choose to reduce their coverage, resulting in higher rates of non-insurance and under-insurance. These parties will bear more of the costs in the case of a severe climate event and these costs may be passed on to lenders in the case of loan defaults where affected assets are used as collateral."

68. The withdrawal of insurance and financial services brings into question the role of the government in contributing to what is normally seen as the private sector’s domain. Government provided insurance has been implemented in the USA’s response to flood risks, as well as in the climate reinsurance pool in northern Queensland, which was created to mitigate soaring


104 id.


insurance premiums. Crippling increases in premiums are now a nationwide issue. Residents of low-lying tidal waterways and marinas in Patterson Lakes areas in Melbourne claim that their insurance premiums have increased 6-fold in just the past two years. This is likely to be a common complaint in the coming years, as hazard assessments identify ever-increasing numbers of high-risk areas.

69. The idea of government-funded insurance to ease short-term financial burdens on property owners, should be seen as a band-aid, not a cure. As the CEO of the Climate Council pointed out in 2022, the real goal needs to be reductions in emissions, “The decisions of the next Federal Government will influence the future impacts of climate change for generations to come. Pollution from coal, oil and gas must begin to plummet and we must scale up our renewable power so it meets the needs of all sectors of our economy.” No amount of insurance relief will make up for continued pollution.

70. An additional argument against the government filling the private insurance gap is that the private market has assessed that the probability of extreme weather events and their severity is increasing in a manner that cannot be mitigated by increased premiums. On the basis of this logic, which is another manner of stating the foreseeability of harm to HLP rights of the population, government should not facilitate people rebuilding their homes in known high-risk areas through the provision of taxpayer funded insurance schemes. An example of this is the case study elsewhere in this paper which outlines what has happened in Mallacoota where housing density is now greater than it was prior to the 2019 bushfires, despite the Royal Commission on the topic calling into question the intelligence of allowing rebuilding in such high-risk areas.

71. In HLP rights terms, government-funded insurance would fall into government responsibilities in the post-displacement phase under the compensation, rather than the restitution category. However, compensation is a responsibility as part of restitution processes only where displacement has already happened. Before compensation becomes a priority, government should have already prioritised its responsibilities to prevent displacement through mitigation measures which protect the right to life and HLP assets. Where private insurance companies, which are well placed to assess risk, assess that certain areas are so unsafe as not to be able to offset those policies with massive premiums, government should take note and place the protection of the right to life and the prevention of forced displacement, ahead of the right to freedom of movement, and deal with those areas through zoning policies and buy-backs, rather than allowing communities to continue live and rebuild in high risk zones post-displacement.111


Common Law

72. Apart from the specific legislation aimed at dealing with climate disasters, the government’s responsibility to provide accountability for its citizens is assisted by the common law. The primary mechanism for accountability related to climate displacement that has been explored recently is the tort law of negligence. The tort of negligence in Australia revolves around the civil law concept that a duty of care exists between two parties in a relationship, and that this duty is breached by an action that could foreseeably result in harm to the other party. The duty of care could also be breached by a failure to take an action to prevent a foreseeable harm, that a reasonable party in the position of the defendant would have taken in the circumstances. The injury must then be remedied with some form of damages.

73. The common law duty of care, however, is separate from the responsibilities on government officials when making decisions. The unsettled nature of the law in this area is evidenced through the Federal Court decision in Sharma v Minister for the Environment, where it was held that a novel duty of care bound the Minister for the Environment when considering the risk to future generations of children which would arise from any decision to expand the Vickery coalmine.  

74. The Federal Court decision, however, was subsequently overturned by the High Court, which found that no duty of care exists on the Minister when making such decisions. Despite that High Court decision, there are growing calls for a statutory duty of care to be enshrined in law in Australia, as shown by recent advocacy efforts of Senator David Pocock, which would establish a statutory duty of care on government decision makers under the Climate Change Act, to consider whether approvals for projects would have a future impact on the climate, which would result in harm to young people.

75. In the context of climate change, a leading domestic case has been Pabai, pursued in the Federal Court, where Torres Strait Islanders (largely the same communities discussed above in the Billy case) alleged that the government breached its duty of care and acted negligently in contributing to sea-level rise which threatens the claimants’ way of life.

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112 The common law tort of negligence is also enshrined in statute in the Civil Liabilities Act 2002 in state law across Australia. See also, James C Plunkett, The Historical Foundations of The Duty Of Care, Monash University Law Review 2015, (Vol 41, No 3) 1.


115 Pabai v Commonwealth of Australia [2022] FCA 836; This way of life is also protected in this situation by the Torres Strait Treaty signed between Australia and Papua New Guinea, see Australian Government, Department of Foreign Affairs and Trade, https://www.dfat.gov.au/geo/torres-strait/the-torres-strait-treaty.
When Displacement Occurs How do Mechanisms and Laws Work to Prevent and Respond to Displacement and HLP Rights Violations?

The Lismore Floods: Buybacks and Land Swaps

76. In 2022, Northern Rivers Region of NSW, Australia was hit by a second catastrophic flood, damaging 10,000 homes and rendering 4,000 uninhabitable. To address the impact, the NSW State Government introduced an AUD$800-million-dollar relief package, managed by the Northern Rivers Reconstruction Corporation (NRRC). The funds aimed to raise houses, retrofit homes, acquire land, and relocate houses, with a provision for buybacks at pre-flood valuations. However, by February 2023, concerns arose. The NRRC reached out to only 190 of the estimated 2,000 homeowners for buyback, leading to confusion, delayed decisions, and anxiety among residents, many of whom remained displaced in less than adequate, temporary housing. Renters also faced higher rental costs due to reduced housing availability post-flood. Critics of the scheme complained that communication with affected communities was inadequate and indeed traumatising for many and that;

“The stark reality of the Government’s buybacks is we are actually generating a further level of displacement, because many who are being offered a buyback, those who were most impacted, have nowhere affordable to go. Many will have no choice but to stay. Land swaps may involve market based and environment and planning complexity, but in comparison the current scheme is becoming more and more complex in terms of the costs of failing to deliver real recovery - one that is community led and builds us back better and together”. 116

77. One year after the floods, only one percent of homeowners who lost their homes in 2022 had finalised settlements under the buyback scheme, prompting intense criticism that the process was far too slow. 117 The lack of progress in implementation translated to only 12 completed settlements out of the 1,011 under consideration. In addition, the number of eligible recipients was eventually halved from the initial 2000, without any communication with affected communities, leading to anxiety and stress for affected families facing an uncertain future. 118 Further confusion was caused by the government using historical flooding data to assess eligibility for buybacks, retrofitting or relocations, leaving many in historically lower risk areas ineligible for assistance, even though 2022 flood levels were much higher than historical averages. 119 Once again, communication with communities was extremely poor, leaving many without answers to either eligibility or an idea of when they would receive assessments. 120

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120 Id.
Case Study Kinglake Fires: Rebuilding in High-Risk Areas

78. In 2009, the Black Saturday bushfires destroyed much of the rural town of Kinglake, northeast of Melbourne, killing 173, burning 2,000 homes and displacing hundreds of families. Despite a Royal Commission into the fires which recommended against rebuilding in the high-risk areas of the town, the population density in Kinglake by 2019 was higher than it was before the fires. This is also despite the National Strategy for Disaster Resilience, which notes that: Following a disaster, the appropriateness of rebuilding in the same location, or rebuilding to a more resilient standard to reduce future risks, should be adequately considered by authorities and individuals.\(^{21}\)

79. In addition, the number of houses in Kinglake has increased by 20% over the 2009 numbers, indicating clearly that local housing development approvals have not followed the recommendations of the Royal Commission. By the time those recommendations were released by the Royal Commission however, rebuilding in many parts of the town had already begun. The findings of the Royal Commission also suggested a land buyback in the highest risk areas of the town, and this also did not happen. The lands identified as highest risk and best suited to buybacks as a mitigation measure were by 2019 covered by 22 housing units.

80. The takeaway from the Kinglake experience, is that more questions need to be asked by government about where people should be allowed to live, which is to say exercising their right to freedom of movement, when those decisions are in fact impacting the government’s ability to protect the right to life. Immediately following the fires that destroyed Kinglake the Victorian Premier went on television promising to rebuild the entire town. Instead of trying to win cheap political points, the government in these situations should be looking at whether or not it is inherently dangerous for populations to keep living in these high-risk areas which are prone to displacement and therefore HLP rights violations because of the government’s tardy responses in the first place. Clearly, the government should not abdicate its responsibility to protect the right to life (a goal stressed in multiple royal commission findings), in order to appease the electorate, by allowing people to simply rebuild in high-risk areas.

What is the Problem with Australia’s Handling of Climate Displacement?

81. Australia does not recognise climate displacement as a discreet phenomenon within its disaster management and response infrastructure. Without clear recognition that climate displacement is a separate issue worthy of attention there are no clear pathways to address the HLP rights consequences which occur as a result of climate displacement. The result of these oversights is that Australia is not doing enough to fulfill the HLP rights obligations which it has committed to under international law.

82. The climate change response in Australia has focussed disproportionately on belated emissions reductions efforts, as well as mitigation and adaptation in a manner which allows the population...
to continue living in the manner it always has, in high-risk zones but with higher construction standards. In short, it is business as usual, even though climate change has radically altered the threats to the HLP rights of massive parts of the Australian population. This is not mere hyperbole, given the government’s own figures cited earlier in this report that 92% of all LGAs in Australia have been impacted by climate disasters since 2013. The belated mitigation efforts are trumpeted by government as responsible governance while at the same time the government continues to find ways to subsidise the fossil fuel industry which merely makes the climate crisis even worse. Research by the Australia Institute shows that the government spends more on fossil fuel subsidies, some AUD$57.1 billion, than it does on climate mitigation.122

83. The science on frequency and severity of climate events is clear. The luck which Australians and the Australian government have taken for granted is running out. Australia can no longer let luck determine policy, when the risk and indeed the foreseeability of widespread displacement and infringement of HLP rights and the right to life, is clear to government. The foreseeability of the risk is visible due to the government’s own research, which has been indicating threats of displacement since the turn of the century. And yet there is no comprehensive, federal response within the appropriate frameworks to prepare for the specific issues of climate displacement and the subsequent devastating impact on HLP rights of displaced communities. Currently, there is no domestic law, federal framework, national disaster management policy or any other guiding legal instrument which is specifically aimed at the protection of the HLP rights of climate displaced communities in line with Australia’s international human rights legal obligations.

84. The question then becomes whether this failure to respond to the threats posed to the HLP rights of communities displaced by climate events constitute a breach of Australia’s international human rights obligations? It is this very question that the Billy case posed to the HRC, although the claimants there were requesting guidance on a broader range of rights. At the very least, the opinion of the committee was that Australia had violated the rights of the Torres Strait Islanders in terms of its failure to protect rights under Article 17 and 27 of the ICCPR, and in the dissenting opinions in the case, that Article 6 was also infringed.

What are the Gaps between the Mitigation and Response, and What the International and Domestic Law Asks?

85. The section below looks at the gaps in Australia’s’ response to climate displacement, firstly from the perspective of lack of a federal, coordinated response, and subsequently from the perspective of the HLP rights of climate displaced populations across Australia, in line with obligations under ratified international human rights law.

1. Failure to Adopt a Federal Mechanism in Response to Climate Displacement

86. If we look at other countries in the region, Australia, which leads the Pacific in IDP numbers by a considerable margin, has fallen behind regional neighbours such as Sri Lanka, Indonesia, Vanuatu and Afghanistan in developing comprehensive disaster displacement policies aligned with the Sendai Framework. In IDMC’s worldwide ratings of country compliance on developing such policies, Australia is ranked alongside Myanmar, which should alarm all Australians. Australia does not pay the same amount of attention to the issue of climate displacement and the impact on HLP rights that other nations have. For example, at the most basic level, there are no climate displacement indicators in Australia’s implementation of the Sendai Framework.

87. Regional neighbours experiencing climate displacement, Bangladesh for example, have implemented various centralised policies and strategies, ranging from mitigation and risk management to establishing government bodies for sustainable displacement solutions. One prominent example is the National Strategy on The Management of Disaster and Climate Induced Internal Displacement (NSMDCIID), which adopts a rights-based approach to climate displacement and involves community-based consultations, and are based extensively on the Peninsula Principles.

88. Recognising the inevitability of internal climate migration, Bangladesh has focused on preparing receiving cities which will become climate havens which will benefit from internal migration. The Asian Development Bank is supporting the government’s efforts in Mongla, aiming to transform it into a climate haven through expanded social services and income generation projects. This model will be replicated in other coastal towns, with the goal of resettling approximately 10 million climate migrants in the next ten years. Moreover, the government has proactively set up the National Climate Finance Mechanism to fund its own initiatives, and it has already implemented more than 800 climate-related projects, reflecting a commitment to climate change mitigation and adaptation.

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123 IDMC, Disaster Displacement in the Asia Pacific, A Business Case for Investment in Prevention and Solutions, 100.
125 Global Centre on Adaptation, GCA and Asian Development Bank to Scale Up Nature-Based Solutions for Climate Change Adaptation in Bangladesh, 30 November 2022, https://gca.org/news/gca-and-adb-to-scale-up-nbs-for-climate-adaptation-in-bangladesh/?gl=1*1chouhb*_ga*MjAwNzA0NTA3NS4xNgjyMTIyMju2*_up*MQ.
127 Julhus Alam, The Diplomat, For Climate Migrants, Bangladesh Offers Promising Alternatives, 30 March 2022, https://thediplomat.com/2022/03/for-climate-migrants-bangladesh-offers-promising-alternatives/ The efforts in Bangladesh align with the National Strategy on the Management of Disaster and Climate-Induced Internal Displacement (2015), which seeks to prevent and respond to displacement and support the achievement of durable solutions through housing assistance, livelihood opportunities, and improved community infrastructure. It emphasizes the importance of addressing the impact of displacement and relocation on host communities, providing them with social security assistance, and engaging them in local integration interventions.
89. Article 2.2 of the ICCPR requires the government to “take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.” As this report clearly indicates, the government has not gone far enough to enact this commitment. Currently the federal response, particularly where climate displacement is concerned remains inadequate and has led to the frequent breaches of the right to adequate housing, particularly in the displacement context. As mentioned earlier, there are no explicit mentions of climate displacement, let alone mechanisms for addressing the phenomena in any government framework, legal policy or plans currently.

2. Breaching the Right to Adequate Housing (specifically Habitability)

90. The government faces two distinct issues in the context of zoning and its effects on its HLP obligations. The first is the lack of federal guidance on how zoning should operate to protect the HLP rights of communities at risk, and the second is that zoning is treated as a separate development issue from disaster management. The result of these issues is that zoning currently facilitates housing development in dangerous areas in a continuation of traditional ideas of development in Australia. Allowing this to continue is arguably a breach of the right to adequate housing, and specifically the element of habitability, due to the threat posed to physical safety, in contravention of the UDHR (Art 3) and ICCPR (Art 6).

91. Zoning and land development are central to the future of the housing market, which is already in a critical state, because the availability of habitable land and insurable housing is declining as coastal areas and bushfire prone areas continue to shrink at an ever-increasing pace. Restrictions on habitable areas also mean that the private insurance market has increased the premiums for housing in high-risk regions beyond the budgets of many homeowners, leaving them underinsured and in some cases unable to afford the cost of rebuilding in the wake of natural disasters.128

92. The lack of federal and even state guidance on zoning and hazards has left many local councils to devise their own development approval guidelines on the risk levels to communities, for instance on the threat of sea level rises, by relying on the latest modelling, rather than the outdated modelling used by state governments, in an attempt to provide greater certainty for homeowners.129

93. The government is already facing this dilemma in Victoria, where planning permits are being restricted in South Gippsland Shire, because flood modelling allows the Shire Council to predict

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that many parts of the Shire will be subject to inundation over the coming decades. The fact that they have done this using the State’s conservative 0.8m sea level rise estimates, rather than the IPCC’s 1.1m estimate, has prompted a variety of groups to lobby for an update of State planning regulations. Continuing to rely on out-of-date estimates and weak planning regulations mean that councils open themselves to potential litigation if they allow development on land that will eventually flood. In tort terms, as discussed earlier, this would have the potential for a breach of duty of care and hence actions in negligence against the government. 130

94. Part of the concern for these councils is not only the safety of residents in future extreme weather events, but also the fact that they may hold liability for granting building and development permits in areas that are subsequently unsafe, if the permits granted are based on outdated science. This has been a concern since at least the 1970s in Australia, when a circular was released by the Planning and Environment Commission to all councils, NSW government bodies and financial institutions, which addressed the liability of local councils, noting specifically that if a council approves development within a flood prone area which is subsequently damaged by flood, it may be liable to legal action for damages on the basis it was negligent in giving the approval. 131

95. Despite the disjointed nature of zoning across the various states and territories which has led to confusion in implementation and lack of national standards on climate change responses in zoning and urban development, there remains consensus on the part of government and emergency management services, as well as state and local government, echoed in the recent Royal Commission Report (RCR), that both the preparation for climate events and the response to natural disasters, including the issues of displacement and shelter, should remain the responsibility of the State and local governments, with support and funding from the Federal government, in an effort to benefit as much as possible from local knowledge in times of displacement. The RCR notes specifically at paragraph 12 that:

"State and territory governments are primarily responsible for disaster response, including for police, ambulance, and fire and emergency services. State and territory governments manage roads and most public land, including state forests and most national parks; provide or regulate essential services; regulate land-use, development, and building construction; and manage native vegetation and wildlife. State and territory governments also lead emergency relief and recovery efforts." 132

96. Australia will continue with its successful decentralised governance model; therefore, a bridge has to be constructed between the international commitments made by the Federal government to uphold HLP rights for all Australians, and the responses of lower levels of government in times of pre and post-displacement, which have frequently failed to uphold those rights.

130 Id.
132 Royal Commission into National Natural Disaster Arrangements, 32, para 11.
Given how quickly the climate is changing, in coming decades it will simply no longer be safe to live in many coastal regions, flood plains and rural areas prone to bushfires. It is not feasible that entire communities be asked to move all at once at some point in the future, after extreme climate events have created massive displacements. But that is exactly what is going to happen unless the government begins thinking about much stricter zoning, particularly in post-disaster phases. Allowing populations to continue placing themselves in harms way is an abdication of the government’s responsibility to protect the right to life. The right to life is threatened by allowing rebuilding in high-risk areas that have already been subject to natural disasters which have claimed the lives of individuals, as the example of Mallacoota discussed elsewhere in this paper clearly indicates.

There appears to be no real effort on behalf of the federal government to link comprehensive mapping of climate risk areas with the government zoning and land use approvals at the local level, even though this is something that the government could do, given that it has been mapping most of the country for many years. It is also an idea that is well known given that it has been highlighted in the Royal Commission on bushfires.

3. Breaching the Right to Adequate Housing

The Australian government’s compliance with international human rights obligations once displacement occurs is deficient, leading to HLP rights violations of those affected. When displacement occurs, the local government is usually in charge of the response with state or federal funding which often covers emergency grants and emergency shelter. These efforts cost the taxpayer a fortune to assist with temporary accommodation, emergency cash payouts, the cost of rebuilding and excuriatingly slow buy-back programs.

An example of these responses was the federally-funded and locally administered buy-back scheme for flooded areas in northern NSW, administered by the Northern Rivers Reconstruction Corporation. As explained in other sections of this report, the NSW state and local government’s efforts in this regard were utterly inadequate, discriminatory, slow, and led to further housing problems for flooding victims. As the case studies show, the response to flooding, bushfires and other disasters often leave communities with no other option than living in substandard housing sometime for years, or force them from their areas of origin altogether. Some temporary shelter arrangements have described by displaced communities as not meeting the standards of adequacy outlined in international guidance, and at times have been described as dangerous environments for children and the elderly.


NSW Independent Flood Inquiry, Volume Two: Full report, 29 July 2022, Recommendation 15,149.
101. The *ex post facto* response to displacement events, however, is only part of the issue; the larger concern to which this report draws attention, is the prevention of displacement before it happens. In this regard, Australia is failing to meet its obligations to prevent forced displacement by failing to prepare for mass displacement, whilst continuing to pollute on a significant scale, which perpetuates the climate changes driving extreme events. This is arguably a breach of international obligations including freedom of movement and the right to provide for an adequate standard of housing (as an element of an adequate standard of living), as outlined in the ICESCR. It is also a clear breach of the government’s duty of care to prevent the risk of foreseeable harm (in this instance forced displacement – a clear HLP rights violation).

4. **Failure to Provide Legal Pathways to Hold Government Accountable for Climate Changes Which Lead to Displacement and HLP Rights Violations.**

102. As the claimants in *Billy* correctly pointed out, there are no legal mechanisms for citizens seeking redress for perceived breaches of the duty of care for damage to the environment, which is the single biggest factor in the displacement cases outlined in this report. The fact that Australian citizens are compelled to approach UN committees to force the Australian government to take remedial action for their conduct is disgraceful to a country that prides itself on its rule of law record. The High Court itself has proven incapable of finding such a duty to exist, thereby closing off any avenues within the Australian legal system.

103. There are two important points to note on this topic. The first is that the electorate adapts more quickly than the law, as the current movement to incorporate the duty of care into statute makes clear. The public is well aware that, given the changing nature of the climate, it is in the public’s best interest that the government consider the impact of future action into its decision-making process.

104. Secondly, by precluding any legal challenge to the government’s decision-making process which negates the idea that a duty of care exists, and forcing claimants to seek redress in international fora, the government is breaching its obligations under Articles 3 a), b) and c) of the ICCPR. Although the articles are aimed at governments of states parties, the judiciary must be considered part of the government. Where the judicial branch of government is not willing to find a duty of care exists, there is scope within the legislative branch to remedy this oversight.

5. **Failure to Implement Relevant Findings of Royal and Other Commissions into National Natural Disaster Arrangements**

105. There have been various royal and other commissions into the extreme climate events that have led to the displacement of hundreds of thousands of Australians in the past two decades. Despite the time, effort and expertise that have gone into these comprehensive fact-finding missions, the government continues to drag its feet on implementing the recommendations which come out of them. Many of the recommendations would help government meet its HLP commitments.

106. The RCNNDA makes clear in Recommendation 19.2., for example, that there is little in the way of a risk rating scale available to home buyers at the moment.\(^{136}\) Hazard ratings would inform the

\(^{136}\) Royal Commission into National Natural Disaster Arrangements, 32, para 105.
conveyance process but would also inform insurers about the risk inherent in the purchase of such properties and would then become a standard element of property conveyance in Australia. There is no reason why every single house in Australia should not have a hazard rating.

6. No Federal Standards to Guide Buy-Back and Land Swaps Post-Displacement Leading to Violations of HLP Rights

107. The experiences of displaced communities make it clear that buy-backs and land swaps administered by local government and special bodies result in long periods spent in displacement, sometimes amounting to years. The failures of these programs to deliver interim housing which meets Australia’s HLP obligations on protecting the right to adequate housing should be of significant concern to the Australian government. Greater guidance from the Federal government is necessary for decentralised levels of government to implement these measures effectively and in a rights-compliant manner, when the need arises in future.

108. In addition to the speed of the roll out of these programs to lessen the time spent in displacement, greater federal regulation would assist in eliminating what appears to be discrimination in the implementation of buybacks. Discriminatory practices are contrary to UDHR, ICCPR and ICESCR guidance, as well as domestic law. In addition, these programs need much higher levels of transparency and accountability, along with greater communication with affected communities, many of whom have been left in the dark with regards to their rights and responsibilities, timelines on implementation and eligibility for assistance. Communication with communities affected by displacement is a central pillar of international best practice, as the Peninsula Principles outline, and government should take note of this guidance, which provides some low-hanging fruit in terms of better responses to climate displacement and HLP remedies in the post-displacement phase.137

7. Failure to Acknowledge the Threat of Climate Displacement and HLP Rights Abuses Linked to Disasters

109. This report has established that there is a gaping hole in the Australian government’s policy and practice in response to climate disaster events which are displacing people in ever greater numbers. Despite the large amounts of data on the threat of increasing events and the hundreds of thousands of Australians who have been displaced previously, there is no explicit recognition of the phenomenon as a distinct threat. There is consequently no recognition that a coordinated response to climate displacement is needed. The Federal government must acknowledge that it has clear HLP rights obligations under a range of ratified international treaties as a minimum first step. Otherwise, extreme climate events in the coming decades are set to expose Australia’s lack of readiness to protect HLP rights in displacement contexts and at an ever-increasing scale. The climate crisis in tandem with the housing crisis outlined in this paper are set to collide in a spectacular fashion if the government does not act immediately to recognise the threat posed, as well as begin taking immediate action through enacting specific policy or expanding existing frameworks and legislation to deal with the matter urgently.

137 Peninsula Principle 10 outlines the best practice on participation and consent of affected communities.
Recommendations for the Australian Government to Align Climate Displacement Responses with Existing Human Rights Obligations.

Recommendation 1: Create a Climate Displacement Ministry

110. Displacement Solutions has already discussed the multitude of benefits of a Federal Climate Ministry in its previous report entitled, The Urgent Need for National Institutional Responses to Climate Displacement, released in 2023. The recommendations of that report outline how Ministries could be shaped, funded, and staffed to maximum effect. In addition to those considerations, which are more relevant than ever, this report has highlighted several areas of concern which would fall under the purview of a newly created climate displacement ministry, and which would contribute to Australia meeting its international HLP obligations with more certainty. These tasks could include, but are not limited to;

- Incorporating recognition of climate displacement as a key concern in all federal climate and disaster frameworks to ensure that the issue is recognised from the federal, broad strokes policy level, down to the state and local government implementation level through the state action plans and local development planning.

- Establishing a strategic land acquisition program for nationwide flood/fire/inundation adaptation

- Designating land bought back from homeowners displaced by climate events as crown land which is then set aside for rehabilitation where appropriate.

- Creating climate displacement indicators within the implementation of the Sendai Framework in Australia to monitor compliance with HLP rights in displacement.

- Coordinating the activities of any existing State level bodies like the Queensland Reconstruction Authority, or those newly created, such as a NSW Reconstruction Authority, as recommended in the 2022 Flood Inquiry. ¹³⁸

Recommendation 2: National Standards Linking Hazard Mapping, Planning and Zoning

111. Hazard mapping and zoning need to be linked in all areas where risk of climate displacement is high. As pointed out in the RCNNDI Recommendation 19.66, the idea of linking hazard mapping and zoning has existed since 2002. It has also been mentioned in the 2004 National Inquiry on Bushfire Mitigation and Management, and the 2020 NSW Independent Bushfire Inquiry. The fact that this is still not implemented countrywide means that the government has ignored a clearly foreseeable risk of climate event displacement for two decades, which is not only negligent and dangerous, but also a negation of HLP obligations under international law. HLP rights obligations under the various human rights instruments already referenced, as well as best practice outlined in the Peninsula Principles, obligate the government to implement all measures which would prevent threats to right to life, as well as protection from forced displacement, through identification of risk and implementation of mitigation strategies and mechanisms.

112. Comprehensive hazard mapping and subsequent rezoning (including coastal areas particularly at risk) would likely mean that some existing settlements would require relocation and compensation, in line with existing state land acquisition policy in Australia as well as Peninsula Principle 16.

113. The linking of hazard mapping and zoning is of particular importance in areas destroyed by disasters leading to displacement, as this would support the National Strategy for Disaster Resilience, which calls for assessment of the viability of rebuilding in areas destroyed by disasters in section 3.6 on reducing risks in the built environment. Further, any crown land under consideration for use as replacement land should only be opened to urban housing expansion in areas that have low risk of climate event induced displacement.

114. This recommendation also aligns with the Second National Action Plan Priority 1: Understanding Disaster Risk, which calls for clear, consistent information on risk across all natural hazards and creating common approaches to risk assessments.

Recommendation 3: Prioritise Social and Emergency Housing

115. The government should prioritise the construction of more social and emergency housing in response to the likelihood of further and larger displacements in future. The current housing crisis in Australia has already led to adverse consequences across the board, including increases in homelessness and lack of housing affordability for the general population. Housing rights advocates are already calling for greater attention on social housing and considering the science behind more frequent and severe weather events, the current lack of affordable housing is likely to be exacerbated by climate event displacements in future. Areas closest to highest risk zones currently inhabited should be prioritised as candidates for social housing under the National

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139 The Second National Action Plan To implement the National Disaster Risk Reduction Framework, 25 August 2023, 12.
Housing Policy, as a means of ensuring that temporary housing is available in the aftermath of displacement events. Access to social housing could also prevent the threats to security of tenure currently experienced by displaced populations who have sometimes spent years in substandard housing as a result of displacement.

**Recommendation 4: Formalise a Statutory Duty of Care into Legislation**

116. The current government is failing in its responses to climate change on many fronts, by following the example set by the previous Liberal government in perpetuating the continuation of reliance on fossil fuels. This needs to change rapidly and could be assisted by establishing a statutory duty of care within the Climate Change Act and the Environmental Protection Act, to consider the impact on the climate of any proposed programs and actions.

117. Currently there is legal uncertainty about the duty of care, as the conflict between the Federal Court and High Court decisions makes clear. The role of the judicial branch is not to make policy. Nor should it be a shield for government inaction by relying on overly legalistic and strict interpretations of the law in matters of public policy, which are often advancing faster than a socially and legally conservative judiciary can appreciate. There is a clear appetite among the public for the government to do more on climate change policy more quickly and this could be achieved by recognising the public sentiment and formalising the duty of care. Such a step would place the government on the right side of history with respect to the law and its acknowledgement that environmental protection will be a leading priority of government for the next century.

**Recommendation 5: Implement All Findings of the Royal Commission Related to HLP Rights**

118. RCNNDA recommendations are based on extensive research and inputs from a wide range of stakeholders involved in disaster response management and provide a vital resource in formulating responsive policy and programming on disaster management and climate displacement. Despite the time and effort spent in undertaking the research and formulating reports, the government has still not implemented recommendations which would bring the governments responses to displacement into line with its human rights responsibilities. Specific recommendations of the RCNNDA which have relevance to upholding the government’s responsibility to protect general human rights and HLP rights in particular are the following:

- Mandatory consideration by state, territory and local governments of natural disaster risk in land-use planning decisions for new developments (Recommendation 19.3)
- National Building Code amendment to make protection of property and protection of life specific objectives (at para 19.86), in line with UDHR (Article 3 – right to life, Article 17 – right to property) and ICESCR (Article 11 - right to adequate housing), ICCPR (Article 6 - right to life)
Hazard ratings as part of HLP conveyancing. Develop a national disaster risk rating scale for every household in Australia and make it compulsory to disclose the risk rating in the buying and selling of real estate (as identified in the Second National Action Plan as a possible idea, but not made mandatory).

Regular assessment of emergency shelter arrangements to assess capacity and suitability for diverse groups (Recommendation 12.6).

Although many of the recommendations of the RCNNDA have been noted in the Second National Action Plan, the lessons learned have been translated into general concepts and now need to be applied more specifically through State government action plans.

**Recommendation 6: Create Federal Guidelines on Post-Displacement Buyback and Land Swaps**

119. The performance of the locally administered recovery programs has not been adequate to prevent HLP rights abuses suffered by displaced populations over the previous decades of climate displacement. Although the decentralised nature of government means that the responsibility for these programs must remain in local hands, the federal government should do more to guide the processes by creating federal guidelines on post-displacement HLP support for communities to prevent HLP rights violations, which are outlined in this paper. These federal guidelines should clearly state the government’s commitment to uphold HLP rights commitments following from the UDHR, ICESCR, ICCPR et al and the Peninsula Principles including:

- Uphold the right to adequate housing (including 1) security of tenure; 2) availability of services, materials, and infrastructure; 3) affordability; 4) accessibility; 5) habitability; 6) location; and 7) cultural adequacy)
- Improve the speed of emergency assistance delivery
- Link emergency service provision with social housing provision
- Prevent reoccupation of high-risk land and housing
- Transparency through better communication and participation of displaced communities in housing/land buyback and land swap programs
- Non-discrimination in housing/land buyback and land swap programs
Recommendation 7: Australian Human Rights Commission Should Report on The Nexus Between Australia’s Human Rights Obligations Related to HLP and Climate Displacement

120. The AHRC has an esteemed history of safeguarding the human rights of Australians in the absence of a bill of rights in Australia. The Commission has the capacity of investigate specific issues of national importance and make recommendations to government on all aspects of human rights. The AHRC could provide valuable guidance to government by expanding the scope of the research presented in this paper in terms of the ratification of human rights treaties by the federal government and how the rights commitments of the government, particularly where they concern HLP rights in the climate displacement context have been protected, or not, during the types of climate displacement events outlined in this paper.

121. Research by the AHRC would be highly influential in shaping government policy and would help bring Australia into line with its commitments in a concerted fashion, rather than the ad hoc fashion which typifies current responses to climate displacement.
Conclusions

122. There is much to be commended concerning Australia’s recent improvements in climate responses, but its continuing lack of recognition of the impact of climate displacement as a phenomenon requiring particular attention remains a considerable concern. The government has spent millions of dollars in recent decades on mapping the climate hazards that confront the population, across the interior prone to flooding and fire, and the coastal areas facing sea level rise. Despite the huge amounts of information gathered, and the clear displacement threats that are present and growing by the year, it seems that it is business as usual in the way in which government deals with the threat and fallout of climate displacement.

123. The Kinglake case study presented in this paper, offers a snapshot of the issues with Australia’s response to climate displacement. After the town burned down, politicians were promptly promising that the town would be rebuilt in its entirety, which it was, and to a greater level of density, thereby putting more people in danger in future. Meanwhile, Australians, citizens of one of the richest developed nations in the world, struggle to find adequate housing, are reduced to living in tents and sheds, or forced to leave their areas of origin altogether.

124. It defies belief that although this has already been experienced to some degree or another by almost a quarter of a million Australians since 2000, there is no urgency at the federal government level to address the HLP rights of those displaced by climate events as a clear threat to human rights within any of the climate disaster architectures at the federal level. Without that recognition, there is no trickle down to the state level action plans. Without that recognition, there is no bridge between the enormous amounts of available data on hazard mapping and the future zoning restrictions which would be required to keep people from putting themselves in harm’s way in future. This is despite the fact that commission after commission has pointed out what needs to be done.

125. Naturally, in a federal system of government, decentralised state and local authority is an essential part of localised governance, but this should be balanced by federal leadership on issues which affect the nation at large, as climate impacts surely do, but also in areas where the federal government has committed itself to respect, protect and fulfil the HLP rights of the entire population. Australia is lacking this leadership currently.

126. The luck in Australia is running out thanks to climate change and its displacement impacts. It is the government’s duty of care to look at the clear evidence that huge numbers of Australians are likely to be displaced in the near future and begin to prepare for that by mitigating the risk of displacement in the meantime and by preparing better responses once displacement inevitably occurs, throughout all levels of government. By centring the HLP rights of Australians at the heart of climate displacement planning, Australia has the chance to once again become a leader on human rights protection and not the country which has become known for evading its international commitments.
This report forms part of the Peninsula Principles@10 Project, commemorating ten years since the adoption of this groundbreaking international normative framework outlining the housing, land and property rights of people facing climate displacement.

For more information, see:
www.displacementsolutions.org
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Image: Floodwaters inundate farms near Windsor, NSW.
Photo credit: Shutterstock
Extreme climate change events like fires and flooding continue to displace tens of thousands of Australians across the country, heavily impacting their housing land and property (HLP) rights.

The science tells us that these trends are set to continue and worsen. The government has failed to acknowledge that climate change displacement is a specific threat which requires urgent governmental action. Over a quarter of a million Australians have faced disaster displacement since 2000, and while the climate continues to change, the government’s approach to the threat of climate displacement remains reactive, rather than proactive. Each displacement leads to long term impacts on the HLP rights of displaced communities, even leading to homelessness and years long displacements. In addition, the government fails to prevent communities from living in high-risk areas, even though government research, royal commissions, insurance assessments and recent disasters present evidence of a clearly foreseeable risk.

The government’s approach to this pressing issue remains essentially nothing more than business as usual, but this is no longer a sufficient response. The government can and must do more to recognise the critical risk of climate displacement by creating the institutional and regulatory frameworks required to deal with the risk, and, by looking at international human rights law, comply with its commitments to international rights obligations under treaty law. Australia’s luck is running out and urgent action is required to develop a proactive approach to climate displacement in a rights-compliant manner; millions of Australians living in disaster prone areas are depending on it.