Introduction

Human rights are what the legal theorist Ronald Dworkin has called ‘the majority’s promise to the minorities that their dignity and equality will be respected’. (Dworkin 1977, p. 205) In a developed liberal democracy like Australia where basic freedoms and the rule of law are respected and usually observed, Dworkin’s statement seems particularly pertinent for economic and social rights (ESR)¹ as these affect the marginalised and the vulnerable more immediately and directly than the rest of the population. While Australia was at the forefront of the promotion of human rights prior to the formation of the United Nations in the late 1940s and was, in fact, a founding member of the UNHCR, as a liberal democracy it found itself firmly within the Western camp during the Cold War period. As such, ESR were never given the same level of importance as civil and political rights (CPR). Australia signed the International Covenant on Economic, Social and Cultural Rights (ICESCR) just as it had the International Covenant on Civil and Political Rights (ICCPR) but it took longer to do so and has still not signed the Optional Protocol in respect of the ICESCR.

Given that ICESCR was given equal status to the ICCPR under the postwar international legal human rights regime, Australia has, almost as a ritual, declared its support for the universality and indivisibility of these different sets of rights. Yet, the history of the recognition of these rights, not to mention their enforcement, has revealed a different story. Australia's human rights protective regime is very much a patchwork of measures (Galligan1994) and it could be classified as a country which assumes that ‘endorsing economic and social rights is a matter for foreign, rather than domestic, consumption’ (Alston 1997, p. 189). Australia, as with all states, has been subject to the UN Human Rights Committee’s Universal Periodic Review (UPR) and the two most recent such peer reviews, in 2011 and 2015, reveal patchy adherence by Australia and regression in some areas of rights implementation. In its response to the most recent review, the current federal Coalition government left the Committee in no doubt that its focus was on civil and political rights and made only brief reference to certain areas of ESR (Human Rights Committee 2015, p. 2, parts D and E).

Australia’s domestic translation of its international legal human rights obligations helps to explain the limited nature of its democracy and how it acts to minimise the impact of these economic and social rights obligations upon national policy-making. This paper will argue that how Australia’s major political parties manage and fashion
their respective policy approaches, in this area as well as more generally, can be understood by reference to the country’s dominant political discourse as well as structural constraints. This paper examines the nature of this constrained political contest through a consideration of recent policy responses in regard to the two important rights of health and housing by these parties when in government at the national level.

International human rights norms, as expressed in legal instruments, are seen as implicitly setting the standards against which to assess both Australian law and practice but are essentially decontextualized. This means that each country can be expected to translate these rights into domestic law which can then be applied meaningfully through policy and practice. While the Australian government can accept international law obligations by signing and ratifying international treaties, this has no substantial impact upon domestic law until such a treaty is reflected in domestic law (Charlesworth 1995, pp.131-2). Australia operates under what is called a ‘dualist’ system by which the courts give a higher importance to domestic law over international law and the High Court, the country’s highest court, has made it clear that international treaty obligations require domestic legislation to have legal effect.

In terms of policy and practice, the process of giving local context or meaning or vernacularisation (Merry 2006, p.39), understood through a political discourse, is the process of translation by which a country’s social and political forces shape, assist or hinder the domestic implementation of the international human rights norms, as expressed in the United Nations’ legal instruments. This can be controversial enough but given that ESR are largely about the redistribution of power and resources by government, their implementation attracts added political controversy.

These domestic social and political forces which shape the nature of this translation or contextualisation are, in turn, influenced by both ideas and a state’s domestic institutional structure. In terms of the translation of international human rights norms and to give them meaning within the domestic political environment, we need to look at how the ongoing contest of ideas is played out and how, through the mediating influence of the domestic institutional structure, certain ideas come to influence the nature of the laws and their resultant policies. This paper adopts a social constructivist approach and argues that the liberalist foundations of the legal and political institutions together with the dominant neoliberal economic paradigm have produced a particular social reality in Australia. Understanding how a particular social reality is constructed is necessary to fully appreciate the true nature of that social reality (Berger and Luckmann 1967, p.30) and while it may change over time, society as constructed determines the nature of the rights that are recognised, what effect will be given to them, and ‘provides the necessary conditions for intentional human activity as well as circumscribing it’ (Bhasker 1989, p. 77). For Australia, as elsewhere, a change to a more effective translation of international economic and social rights in the future will require a change in the socio-political context with such rights having to be ‘created, re-created, and instantiated by human actors in particular socio-historical settings and conditions’ (Stammers 1999, p. 981).
While currently in the midst of a national election campaign, the major political parties can be expected to seek to present a real contest, if not polar opposite views, of those policy positions they would implement once in office. The reality is somewhat different and, as a rule, they self-regulate themselves to ensure they remain acceptable to the great majority of the electorate within the frame of a dominant neoliberal ideology and the strictures imposed by the institutional framework that has developed over time. This paper seeks to explain how and why the major political parties of government, despite their outward signs of contestation, both choose to operate within an ideational and institutional framework which is largely alien to the promotion and protection of ESR.

**Australia’s liberal democracy and economic and social rights**

Australia as a parliamentary democracy has a mixed public/private economy and adopted the English common law system from its previous colonial masters. At the national level it has developed a ‘Washminster’ parliamentary system, taking institutional elements from both the Britain and the US. As a democracy it is expected to ensure that these rights are available to all its citizens equally and as a federation, to make efforts to ensure that all subnational states and territories can provide the services at the same level, regardless of their resources. In Australia, this is done through ‘fiscal equalisation’ by which grants are provided to the states through a formal process.

Australia has a democratic institutional design with free and fair elections between numerous parties as well as adherence to the rule of law in its judicial processes. However, if being a democracy is considered enough for a state to implement those rights it has signed up to at the UN, then we should recognise the sobering thought that for Australia, as for each state, this is as much about the stressful relationship between human rights and sovereign power as it is about whether a democracy is implementing human rights (Gearty 2000, p.381). Australian governments have, to varying extents, been highly protective of their sovereign ability to decide which international treaties are brought into law and which are not and being a signatory to an international rights instrument has little, if any, impact on the debate around either its implementation or subsequent adherence to its standards.

When it comes to rights more generally, Australia should be classified as a ‘low intensity democracy’ understood as being about ‘juridical equality and the constitutional protection of civil and political rights, representative government and a market economy based on private property rights’ (Marks 1999, p. 63). It is a liberal rather than a social democracy and while more conducive of human rights than a mere ‘electoral democracy’ (Donnelly 1999, p. 621), its focus on civil and political rights reveals a minimalist form of democracy serving to reinforce unequal power relations while not ensuring that economic and social concerns will be central (Burchill 2007, p.362). Australia continues to fit the model of the liberal democracy which emphasises the creation of formal institutions to promote democracy and where process and procedure is seen by political decision-makers as all that is necessary. Such a model does not seek to promote a rights based culture or aid
social and economic empowerment or transformation but, at best, offers limited changes to civil and political rights and even less for economic and social reform (Evans 2001, p. 630).

The privileging of civil and political rights by a liberal democracy such as Australia may, however, serve to support economic and social rights. The UN Committee charged with protecting and promoting economic and social rights has acknowledged that the realization of economic, social and cultural rights will necessarily follow from the achievement of civil and political rights (Committee on Economic, Social and Cultural Rights 1992, pp. 82-3) and in Australia court cases have been brought using the two subnational bills of rights which, while based on civil and political rights, have helped to advance economic and social rights.

There is no denying the importance of civil and political rights to the continued existence of a democracy. However, to be able to exercise these rights, individuals within a democracy need to be alive to do so and this requires ‘both physical security and access to the necessities of life: to the means of subsistence, shelter, clean water, sanitation and basic health care’ (Shue 1980). Liberal democracies, as we know them, are understood to require both institutions of private property and free exchange. However, a broader conception of a democracy would require it to be judged not just by adherence to civil and political rights but also economic and social ones and these require a level of state regulation (Beetham 1999, p.102).

**Australia’s political duopoly and the limits to difference**

A country’s political culture provides a context for political decision-making but is not beyond contestation and should be seen as ‘hybrid, porous and capable of change’ (Merry 2006, p.9). Egalitarianism and pragmatism are key elements of Australia’s political culture which have helped to define its political system. There is undoubtedly a strong sense that equality should be a guiding principle in the making of public policy and this is also present in the all-pervasive slogan of the ‘fair go’. We can see evidence of this in two senses in an area of policy of relevance to discussing ESR: the non-targeting of some benefits such as the early version of child endowment which emphasised formal equality and the more targeted family tax benefits which aimed towards substantive equality. Equality is to be distinguished from individual liberty and the extent to which the Australian state has successfully implemented equality of outcomes during the recent period of neoliberalism and economic globalisation is highly problematic.

The political culture has also been highly influenced by the institutional structure of Australia’s democracy. Australia’s system of responsible government, by which the government is accountable within the parliament, has been a large part of the ‘justificatory narrative’ to argue that Australia’s form of democracy deals satisfactorily with all rights. Responsible government has long been presented as the mechanism by which governments do not overreach themselves and people’s rights are protected as was argued by former Prime Minister Menzies. (Menzies 1967) The strength of the political party system within the parliament and the executive’s
majority in the lower house greatly weakens this argument. Any rights-surveillance role the federal parliament might have exercised has been enhanced by its committee system and, in relation to human rights, by a recently established Parliamentary Joint Human Rights Committee which seeks rights compatibility of all legislation. However, this has not served to weaken the party political system and there is limited power with which parliament can bring the executive to account with responsible government continuing to provide no ‘safeguard against arbitrary legislative action’ (Charlesworth 1993, p.198).

Majoritarianism sees the interests of individuals or groupings subsumed into that of a workable majority and this is about government seeking to satisfy the needs of the majority of its citizens. This runs counter to any focus on individual rights and liberties, despite the contrary rhetoric, and particularly ESR with their focus often being on the needs of a vulnerable or marginalised minority. Australia could be identified as having what Galbraith once called a ‘political culture of contentment’ (Galbraith 1992) with the deprived as a disempowered minority neglected within a democracy (Beetham 1999, pp.107-8). The impulse for majority rule within Australia’s system of responsible government is strong, as witnessed with the (often confected) concern about the minority national government of 2010-2013 and that of both major political parties about minor parties having any parliamentary influence.

Australia has only ever been governed by the Australian Labor Party (‘Labor’) or a coalition of the conservative Liberal and National Parties (‘the Coalition’) or their antecedents since it federated in 1901. It has been described as the classic two party system though there is a strong minor party, the Australian Greens, as well as other minor parties. While they were once characterised as the parties of either initiative (Labor) or resistance (the Coalition), this has long been seen as a simplistic description of their respective policy positions (Rawson 1968). These two party groupings continue to encourage political opinion around their supposed two opposed poles. Yet, history has shown a strong tendency for considerable policy convergence of these two groupings, particularly at election time, as they seek to secure the support of the uncommitted voter from the so-called ‘middle ground’ (Maddox 1996, p. 283). Labor has for a long time eschewed its original socialist objective though it still generally stands for greater state intervention, the reform of society and achieving social justice.

It was the Hawke and Keating Labor governments of the 1980s to the mid-1990s that saw a change in Labor’s approach to the national economy with implications for how it would address economic and social policies. Welfare measures were increased but with tight targeting to those most in need, while it struck a Prices and Incomes Accord with the unions to moderate wage demands in return for a ‘social wage’, including the revival of the national health insurance scheme, Medicare. Embracing privatisation, financial deregulation and trade liberalisation, this Labor government was the first to apply neoliberal economic policies. When Labor returned to power from 2007 to 2013, the Rudd and Gillard Labor governments were firmly established as parties which had little argument, despite Prime Minister Rudd’s occasional rhetorical flourishes to the contrary, with neoliberal ideology underpinning the approach to managing the national economy (Johnson 2011).
The Coalition is a mixture of a predominant Liberal party, based on the British Tory party and the much smaller National party which is a mixture of extreme conservatism and Labor-style collectivism and remains a country based party. When the Coalition formed government under John Howard in 1996 it did so under a leader who had long been a convert to neoliberalism and he sought to blend this with his own social conservative agenda. The Liberal party, which dominates Coalition policy-making, is largely about individualism, free enterprise and self-motivation and against state intervention and the reduction of the welfare state. It is very much a conservative party more comfortable with neoliberal policies than Labor but with its own tensions between its liberal and more reactionary wings. The Coalition has been in government 45 of the past 70 years and has very much set the context within which social and economic policy has been set and while economic and trade liberalisation has been wholly adopted by the Liberal party (with some occasional concessions to the more protectionist National party), it has tended to either neglect or be outright hostile to social reform proposals. What has been obvious in relation to both major party political groupings is that they have substantially lost the connection each had with its traditional base and this has resulted in each developing a dependence on particular groups and interests and becoming influenced by their perceptions of ‘mainstream’ opinion in the electorate. More important than this growing disconnection has been the endorsement of economic rationalism, Australia’s version of neoliberal economic policy, by both Labor and Coalition governments over the past 30 years. This has come to dominate economic thinking across the federal public service and it was Labor in government in the 1980s which became the first to embark on applying neoliberal policies across all portfolios, including social policy program departments.

Institutional character of Australia’s democracy and the protection of rights

The federal constitutional structure, with its division of powers and resultant policy responsibilities between the national and state governments, presents a mixed picture in terms of encouraging the engagement with human rights. On the one hand, the division of responsibilities can and has acted as a restraint on the power of the national government (Galligan1994) and has served to promote human rights at the local level even where there has been little or no progress nationally. The Labor government appointed a National Human Rights Consultation Committee in 2009 which recommended a national bill of rights (Human Rights Consultation Committee 2009). The government responded with a ‘human rights framework’ which included less important proposals such as increased education and improved parliamentary scrutiny. This response has generally been considered to have been a missed opportunity with one commentator referring to the government’s proposals has ‘icing without the cake’ (Lynch 2010). At the state and territory level, there has been some progress with two bills of rights, the Human Rights Act 2004 in the Australian Capital Territory (ACT) and the Victorian Charter of Human Rights and Responsibilities 2006 having been enacted in the past decade. While neither includes ESR, they have each been used indirectly to have government address ESR such as housing, social security, education and health. Apart from these bills of rights, anti-discrimination
legislation at both federal and state levels remains the most important statutory human rights law. This has been one area where international human rights provisions have been faithfully incorporated into domestic law and they remain an important, albeit indirect and limited, means of addressing possible violations of ESR. However, just as the subnational bills of rights have excluded mention of ESR, so the Australian Human Rights Commission Act (Cth) 1986 still refers in its Schedule to the ICCPR but not the ICESCR which limits the extent to which Australia’s premier human rights body can investigate complaints.

Australia’s federal system of government unfortunately allows for ‘buck passing’ between levels of government in the resource intensive social policy program areas. There have even been efforts made by (usually Coalition) national governments to shift the responsibility for such programs solely on to the states, such as the Turnbull governments recently failed efforts to shift the funding of hospitals on to the states. Arguments that the federal government can be excused for not addressing ESR as being primarily within the domain of states (and territories) are easily dismissed given the same could be said of civil and political rights and such arguments also ignore the federal government’s ongoing involvement in many ESR policy areas (such as social security and employment) while providing funding in many others (Byrnes 2010). Australia’s federal structure has often made it more difficult to secure human rights protection uniformly across the country, even when the national government has been willing to do so. While the national parliament has occasionally used its constitutional power under section 109 (the inconsistency power) to override state legislation, federal governments have been more likely to weaken human rights law in deference to the position of the states even though, under international law, they could bind the states in the promotion of rights (Charlesworth 1993).

The Australian Constitution of 1901 reveals a much stronger focus on the rights of the federating states than on those of the Australian people, and contains only a few implicit and explicit rights and no ESR apart from those related to the freedom of interstate trade. The courts have not developed general statements of principle which can be relied on to protect human rights but have only supported human rights through interpreting the common law by way of institutional principles coupled with procedural guarantees, as found in administrative law (O’Neill et al. 2004). Developed from within the western liberal tradition, the common law legal system understands well the notion of CPR but finds it difficult to recognise and enforce ESCR rights (Bailey 2009, 92). In interpreting rights, the courts have followed a traditional path and considered CPR to be freedoms while seeing ESR as claims on the state for certain benefits and tended to deal with human rights in a negative way by blocking government intervention which would have contravened individual rights rather than in a positive way by requiring government intervention to support individual rights.

The International right to health
The right to health is a core economic and social right, found in the ICESCR. While it is not absolute in terms of an individual’s right to be healthy, it is an inclusive right that extends well beyond healthcare, even though this is what it has been most directly associated. The right is found in a number of international human rights instruments but particularly Article 25 of the UDHR and, in terms of more binding obligations, Article 12 of the ICESCR.\textsuperscript{vi} A state’s ratification of those international instruments that relate to the right to health means that it has a responsibility, a positive obligation, to respect the enjoyment of the right to health within the state, prevent others from violating this right while having a discretion as to how it fulfils its responsibilities in the area of health (Committee on Economic, Social and Cultural Rights 2000).

The scope of the right to health is extremely broad and has been recognised by the Australian government as covering a range of policy areas including the reduction of infant mortality and child development issues, environmental and industrial hygiene, access to basic shelter, housing and sanitation, and the prevention, treatment and control of diseases, and the creation of condition to assure all medical service and attention for the sick. (Attorney-General’s Department, \textit{Right to Health}, pp.3-4). This vagueness and breadth negatively impacts on the realisation of a global right to health and in terms of domestic translation, allows plenty of room to avoid fulfilling their obligations. That said, Australia’s ratification of those international instruments which relate to the right to health means that it has a responsibility to respect the enjoyment of the right to health within Australia, prevent others from violating this right but it has a discretion as to how it fulfils its responsibilities in the area of health.

The authoritative guide to the international right to health is to be found in the Economic and Social Committee’s (CESCR) \textit{General Comment No. 14} of August 2000 health (Committee on Economic, Social and Cultural Rights 2000). The CESC recognises that the notion of ‘the highest attainable standard of health’, which is linked to the idea of progressive implementation, together with some provisions for immediate implementation, is dependent upon the conditions of the individual and a country’s available resources. Importantly this General Comment gave the right its normative character through guiding principles in regard to accessibility, availability, acceptability and quality in terms of states parties meeting the international standards and refers to a number of underlying determinants of health such as safe drinking water and safe food. While the ‘progressive realisation’ approach for implementation of ESR applies, there are some obligations with respect to the right to health which immediately apply (Committee on Economic, Social and Cultural Rights 2000, para 30).

All states parties are expected to take steps towards implementation of the obligations and to attempt to meet the standards set out in \textit{General Comment No. 14} and in translating the right into practice, states are expected to interpret this right in terms of a ‘specific and continuing obligation to move as expeditiously and effectively as possible’ (Committee on Economic, Social and Cultural Rights 2000, para 31). These obligations relate at core to a number of basic health services (Toobes 1999, p. 676) as a minimum while also having been interpreted at its maximum to include healthy conditions, such as environmental issues (Yamin 1996, p. 410). The international right to health is also governed by the principle of non-discrimination and the Special Rapporteur has interpreted this to mean that redress to inequality
will be sought through a state taking deliberate targeted steps towards the full realisation of the right to health, thus promoting a rights-based approach to policy making (Human Rights Commission 2005).

Australia’s institutional arrangements for health policy implementation

Australia does not have a constitutional guarantee of the right to health and while there is also no federal bill of rights, there are extensive federal and state laws providing for health services and, in doing so, they indirectly deal with aspects of the right to health\(^{viii}\). This extensive list is focused on the services that are provided to certain categories of citizens, if not the population as a whole and do not, by design, provide for freedoms from state interference or control or the granting of a right to health beyond certain specified entitlements. These laws relating to the provision of health care are not framed as rights highlighting the primacy of equality and dignity of patients but as services and can be removed at the will of the relevant parliament.

The bills of rights in the Australian Capital Territory and the state of Victoria, while not including the right to health, do offer the potential to address this right indirectly through a claim in respect of a breached civil or political right (such as the right to privacy or to the protection of family and children), such as that against inhuman or degrading treatment, and can direct a ‘public authority’ address the alleged breach at the level of policy or practice. There is yet to be litigation that directly relates to the violation of health rights but these bills of rights continue to offer encouragement to advocates to link the right of health across to a civil and political right.

In Australia, the state governments have the constitutional responsibility for the provision of health though it has long been a shared jurisdiction, especially since the federal government gained control over income taxation powers in the 1940s which gave it a greater capacity to fund the growing costs of health care and to meet what were increasingly nationwide demands for health care. The Commonwealth Grants Commission ‘equalises’ funding provided by the federal government to the states to balance the differences in revenue raising capacity but the shared jurisdiction is managed through a number of agreements, the most important of which is the National Healthcare Agreement. As well as agreements, there are three ministerial councils\(^{viii}\) which have tended to be highly political and to involve much posturing between the federal and state governments (Duckett and Willcox 2011, p. 113).

Despite these efforts over the years, no government has been able to facilitate what has been identified by health experts as most in need: a blending of federal and state services and funding (Smith 2012, E205). Without such a blending, the ‘blame game’ between the two levels of government can be expected given the high level of public expenditure on health, especially in relation to hospitals.

Counting the cost? Political contestation over health expenditure

As a developed country, Australia does provide the resources and facilities to ensure that the majority of the population are able to access adequate health care while generally the other socio-economic determinants of health and wellbeing are also being met in terms of the basics of nutrition, clean drinking water, sanitation and a relatively pollution free environment.
Other than at election time when the major parties are making various health spending promises to certain parts of the Australian electorate, usually with respect to hospitals or other facilities, the principal focus of their political contestation is around the cost of health care. Both sides blame the other when in government for inefficiencies and waste and in recent times the governing conservative Coalition has argued that health expenditure is out of control and has called for more market based solutions to help rein in the budget. Health expenditure in Australia amounted to AUD$154.6 billion in 2013-14, the most recent figures available, and constituted 9.8 per cent of gross domestic product (GDP) with 70 per cent of this expenditure borne by government with the federal government contributing 42 per cent of this total (Australian Institute of Health and Welfare 2014). While representing relatively slow expenditure growth, the debate remains one focused more on economic indicators than improvement in health outcomes.

**Accessibility and availability and primary health care**

To understand why Australia’s major political parties continue to enact policy at variance with the international human rights standards, these departures and the nature and extent of their political contestation will be interpreted through the UN Economic and Social Committee’s critical guiding principles of accessibility and availability.

Medicare is the universal health insurance scheme funded by the national government through an income tax levy, which entitles all citizens and permanent residents to at least heavily subsided doctors’ visits as well as a range of other healthcare benefits. This is not, however, a fully universal system and apart from the bulk-billed services provided inside the public wards of public hospitals, Medicare relies heavily on user charges and only covers a very narrow range of services (Gray 2005, pp. 91-2). While introduced by Labor over 30 years ago, medical insurance scheme it is a creature of legislation and its claim to universality can easily be compromised. It continues to be a policy which Coalition governments rail against from time to time and in 2014 the government tried and failed to impose a patient co-payment when visiting a fully subsidised General Practitioner (GP). The philosophy behind this attempted impost was never questioned by government despite the fact that it would have led to assigning public health, at its most primary level, a residual rather than universal character. It may also have breached Australia’s international obligations in this area by violating what a Special Rapporteur has previously referred to as the non-retrogression principle in that a state would have failed to maintain the then existing level of enjoyment to a right (Human Rights Council 2008, p.14).

Labor introduced in 2012 a temporary freeze on the indexation of the Medicare rebate provided to all GPs and the Coalition government has extended this out to 2020. In the current federal election campaign, the Australian Medical Association (AMA), the GPs’ union has fiercely opposed this and threatened to pass the cost on to patients. Seeking to make a point of difference, Labor has been campaigning against the extension of the freeze and identifying it, correctly, as an attack on the integrity of Medicare (Hutchens 2016). Another attack on Medicare was, however,
recently successful with cuts to bulk-billing incentives for pathology and diagnostic imaging traded off by the industry (Taylor 2016).

The most important and obvious way in which neoliberal ideas have been imported into health law and policy and thereby affected outcomes has been through the increasing privatisation of aspects of the public health system in Australia which have, in the main, been supported by both major parties when in government. The Australian health system is a mixed public/private one which means that while the state has the responsibility to meet its international right to health obligations, delivering on those obligations and applying the necessary resources is dependant not only government but on a large and growing private system. In the absence of federal human rights legislation or other specific legislation, there is nothing to stop these private health insurance companies from acting at odds with the public health sector and these human rights obligations given that international law places obligations on states but not on these private actors. Privatisation can also have other implications and privacy concerns have recently been raised by the recent Coalition government decision to place cancer screening records in the hands of a major telecommunications company. In such a mixed system, while the state’s role as the ultimate guarantor of international rights obligations is unchanged by this arrangement, it does make implementation that much more difficult (Chapman 2014).

While about 56 per cent of the population has private health insurance, this is heavily subsidised by the federal government, particularly through a 30 per cent health insurance rebate. Introduced by the Coalition some 15 years ago, it has been supported by Labor. When in government Labor made a relatively minor downward adjustment to the rebate but it remains an important form of subsidisation of the private sector and undermines the argument that a strong private health sector acts to reduce pressure on government health budgets. Another example of a cross-subsidisation from the public to the private health system is where the private health insurance allows patients to jump the queue and access ‘private’ surgeons practising in public hospitals. The influence of neoliberalism has been more obvious in terms of challenges to the economic accessibility of health care. The debate between the major parties, fixated on the cost of public health, suggests that all economic decisions should prioritise productivity and efficiency of practices over social justice, effectively privileging the privatisation of health services and facilities, wherever possible. This challenges the international principle of accessibility and seeks to ‘commodify’ health services as something that is purchased rather than provided as a public good (O’Connell 2010, p.198).

Having a private system sitting alongside the public system, while producing greater choice for some, has also not meant increased availability of healthcare more generally in Australia (Brennan 2011, p.121). The increase in the private sector in the provision of health services does have implications for access to healthcare as it conflicts with the idea of access being provided on a non-discriminatory basis and challenges the public health system as medical services are transferred to private or semi-private processes (Gross 2007, p. 331). In Australia, the law ensures that, in accepting members or charging premiums, the private insurers cannot discriminate against groups of people (such as the elderly or infirm). More generally, however, the provision of private health insurance, directed as it is by market signals, effectively undermines the non-discrimination principle by creating a two tier health care system
(Brennan 2011, p.135) even if those policies are benign (O’Connell 2010, p.193). Another recent extension of this commodification of health was a Coalition government proposal to pilot a project by the largest private health fund to gain preferential treatment for its members at certain General Practice (GP) clinics. The AMA criticised this as a step towards the US-style managed care system where private insurers could dictate who a GP sees (Alexander 2014).

Another example of marketization is the existence of financial barriers to some specialist services in terms of out of pocket expenses as well as the reduction in the level of subsidisation for some pharmaceuticals. Increased co-payments for medicines have arguably had a significant impact on the affordability of medicines for pensioners and other low-income groups (Sawer et.al. 2009, p. 87) and serves to diminish accessibility to the right to health. Australia’s Pharmaceutical Benefits Scheme (PBS), which provides subsidised medicines, has also been challenged in by the influence of the trade liberalisation tenet of neoliberalism. Australia has signed up to the World Trade Organisation’s Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS) in 2001, an agreement which has seen intellectual property rights over patented medicines privileged over access to essential medicines (O’Connell 2010, p 204) as well as particular bilateral free trade deals, such as with the US which placed pressure on the ability of the PBS to deliver low cost medicines (Harvey et.al. 2004). More recently and again largely with bipartisan support, Australia has signed up to the Trans-Pacific Partnership Agreement (TPPA) which is likely to prolong monopolies over new medicines and delay the availability of cheaper generics, resulting in cost blowouts for state subsidised medicine arrangements like the PBS (Tho 2015, p. 164; Wang 2015).

Australia’s large geographical size can mean that rural and remote areas suffer, compared to the majority in the cities, in terms of accessibility to quality health care. In the government’s own 2014 health report card on Australia’s health it was pointed out that there are marked inequities between these people as those in the rural and remote areas have less access to health services, travel greater distances to seek medical attention, and generally have higher rates of ill health and earlier deaths than people living in larger cities (Australian Institute of Health and Welfare 2014, p. 37). There are a range of programs to, for example, encourage doctors and nurses to establish their practices in rural areas but these rely on continued government funding and any reduction would be seen as a violation of the responsibility to progressively realise the right to health for people living in those areas. Labor’s Medicare Local scheme of 2011 to enhance access to GPs across the country with each local community in the ‘driver’s seat’ was targeted for removal in Coalition’s 2014 budget despite the rural health professionals’ body identifying this extension of medical services as having increased accessibility across a number of rural and regional areas (Vidot 2014).

Australia’s provision of health care for its indigenous peoples has fallen below the international standards in terms of almost all the right to health principles. The alarming health gap between indigenous and non-indigenous Australians is revealed through a number of chronic ailments and diminished life expectancy of over 10 and possibly 20 years less than for the non-indigenous population (Georgatos 2016). Indigenous Australians have higher death rates than non-Indigenous Australians and this is five times in the 35-44 age group. The rate of indigenous infant mortality has not shifted in recent years and remains more than twice that for non-indigenous
Australians (Australian Institute of Health and Welfare 2014, p. 34). Young indigenous men have extraordinary rates of suicide. While some of these statistics reflect lifestyle factors such as smoking and excessive alcohol consumption, they are a direct result of low socio-economic status, lack of cultural ‘fit’ (Calma 2008, 23) and their often remote location which together contribute to difficulties in accessing adequate health care. Both major parties acknowledge the problem and have provided financial and other resources to tackling what are seen as the social determinants of this health crisis. The debate has, sadly, focused around the cost of the services with little attention to empowering indigenous people to advise government what needs to be done to address this violation of their rights.

Another vulnerable group for whom Australia has responsibility are those seeking asylum but who have been sent to offshore detention centres for processing on Nauru and Manus Island in Papua New Guinea. These people are the primary responsibility of the federal government and while health facilities have been provided, their inadequacy is regularly revealed as asylum seekers with any complicated health ailment will need to be flown out for medical attention, usually to the Australian mainland. In terms of both accessibility and availability there is little question that what has been provided breaches Australia’s international human rights obligations but what has become even more troubling in recent times has been the irrefutable evidence that incarceration in these detention centres is causing grave mental harm, including trauma-related disorders (Newman 2012, p. 596). The two major parties have for the past 15 years been complicit in failing to seriously address these health concerns. Their reasoning is not financial as the detention centres’ cost is in the billions of dollars but can only be seen in terms of a paranoid obsession with using the harsh and cruel treatment of these people as a signal to seek to prevent future asylum seekers coming to Australia by boat. In contrast to their differences on Medicare, which directly concerns mainstream Australia, Labor has supported the Coalition on offshore detention though some differences have been expressed over the nature and level of the healthcare provided to the asylum seekers who are housed there.

Accessibility and availability and the hospital system

While the federal government is responsible for primary care services, including subsidising of Medicare and of pharmaceuticals, the state governments are responsible for hospitals though they have become increasingly dependent on the federal government funding. Acknowledging that health policy was a joint responsibility the Rudd Labor government in 2008 sought to end the ‘blame game’ and bring some coherency to the system through a National Health and Hospitals Reform Commission (NHHRC). While the Commission itself ceased to exist in 2009, a new institutional framework was established for the management of hospitals. The Local Hospital Networks (LHN) were set up in 2012 and funded through a statutory independent funding body which would receive up to 50 per cent federal funding until 2017 with additional service agreements with state and territory governments. This represented a slightly more public focus on the public/private mix of the hospital system but importantly was designed to subject the public hospital system to increased performance management. This contrasted with its predecessor, the
Howard Coalition government, which had favoured encouraging the private health care system, be it through private insurance subsidisation or the establishment of private hospitals.

The plan for up to 50 per cent federal funding for the LHNs was short-lived and the then Abbott Coalition government, in its first budget in 2014, removed AUD$1.5billion a year from each state government for hospital funding from July 1, 2017 (amounting to AUD$57 over 10 years). In the midst of a general election and with the prospect of the federal government facing a major budget deficit, this withdrawal of funds, as part of the Coalition government’s announced ‘budget repair’, has become a point of difference between the major parties. However, Labor refuses to be drawn on where it will find the funds to restore the original federal commitment. The original aim to bolster the public side of the public/private hospital mix and defuse the old ‘blame game’ between the levels of government seems to have become subsumed in a budgetary exercise. The funds are yet to be promised by either party while neither will they dare to declare that the funds are not needed in a hospital system long recognised as being ‘run down’.

Australia has 592 private hospitals sitting alongside the 753 public ones though the presence of these private hospitals has not reduced the load on the public hospitals with hospital admissions continuing to rise. Hospital spending is the major area of growth in health expenditure placing great strain on state governments, the level of government least able to afford it. With state governments responsible for the running of hospitals, they are held to be directly accountable for the management of the waitlists, an important indicator of how effectively health care services are being delivered. The waiting lists for elective surgery, the most publicised feature of how the mixed public/private hospital system operates, are a rationing tool for health (Brennan 2011, pp.118-9) revealing as they do differential access to surgery and effectively placing a financial barrier to the provision of health care (Duckett 2008, p. 323). Australia has made significant progress in this area since the UNCESCR criticised the long waiting periods, especially for surgery, in 2000 but the nature of the mixed system allows private health insurance allows patients to jump the queue and access ‘private’ surgeons who are practising in public hospitals.

Dental health care within the hospital system represents an area of retrogression in terms of accessibility and availability under the international human rights regime. The Commonwealth Dental Health Program, which was designed to provided dental care in a hospital to those unable to afford private dental care, was removed in 1996 by the then Coalition government. This is a major health care item not covered by Medicare and the Coalition government’s removal effectively pushes this back to the state governments who have disputed it was their responsibility. The result was that from 1996 until 2012, the most vulnerable in the community and largely dependent on government income support were denied access to dental care and thus increasingly susceptible to other health problems. In 2012, the Labor government, while rejecting a recommendation for a universal dental care scheme funded by an increase in the Medicare levy’s, introduced a new dental package worth AUD$4 billion over six years. This provided Medicare funded dental services to children and an expanded public dental service for low income adults and those in rural and regional areas. While a welcome move to address an area of health care neglect, this package represented a move away from the universality principle for a critical health care item. The Turnbull Coalition government has recently proposed to scrap
this means tested scheme and has instead provided funds directly to the states and territories for subsidised dental care for low income adults and all children (Gartrell 2016). Given the funds are being reduced for this high cost health care item and can only be accessed at what are already overcrowded public dental clinics, this initiative potentially further undermines accessibility to dental care for those on low incomes.

**The international right to adequate housing**

One of the fundamental economic and social rights is the right to adequate housing. This right is found in the three major human rights instruments of the United Nations: the *Universal Declaration of Human Rights* (Article 25), the *International Covenant on Civil and Political Rights* (ICCPR) through its empowering Article 2(2) to which states parties have agreed to ‘take all necessary steps, including the adoption of legislative or socioeconomic measures, to give effect to all ICCPR rights,’ and more specifically as a derivative to the broader right to an adequate standard of living and given in Article 11 (1) of the *International Covenant on Economic Social and Cultural Rights* (ICESCR).

This is more than just shelter and, as the Committee on Economic, Social and Cultural Rights has noted, the right to adequate housing is derived from the right to an adequate standard of living and remains of central importance to the enjoyment of economic, social and cultural rights (General Comments No. 4, para 1). In terms of homelessness, which is the most critical violation of this right, the Committee has stated that a person is homeless unless he or she has adequate housing that affords the right to live in security, peace and dignity (CESCR General Comment 4, para 7). The Committee reveals how this right draws from the Right to an Adequate Standard of Living and argues how integral it is to the fulfilment of other rights and the principles upon which the Covenant is premised. Many of the above rights have also acquired legal status as rules of customary international law by being accepted by states parties, including Australia, as providing the practice that they are obliged to follow.

While acknowledging that context is important to determining the nature of the right, the Committee has argued that the right should not be interpreted in a narrow or restrictive sense and refers to the following aspects to inform the right: legal security of tenure; availability of services and facilities for health, security, comfort and nutrition; affordability; habitability; accessibility; location; and cultural adequacy (General Comments No. 4, paras 7, 8). One illustration of the breadth of this interpretation, which refers to habitability and accessibility and the focus on availability, quality and the condition of housing reveals the breadth of this interpretation and its relationship to the right to health (Thiele 2002, p.713) and the right can be seen as ‘an essential conjunct to the rights of education and work, and it support a range of other activities necessary for survival’ (Austin 1996, p.16).

**Institutional arrangements for housing policy implementation**
There is no specific constitutional provision for housing and, like so many areas of social policy, it is a matter that has evolved into a shared jurisdiction between the national government and the states. While the 1994 Supported Accommodation Assistance Act (Cth) (SAAP) and other legislation that created the framework for federal-state cooperation in housing policy acknowledged the relevant international human rights conventions, it failed to provide for the right to housing or related consumer rights and concerned itself generally with service standards (Walsh 2011, p.16).

A federal bill of rights would not automatically bring the right to adequate housing into domestic law as has been shown by the limited interpretation in cases before the courts in the state of Victoria and the Australian Capital Territory where subnational bills of rights exist (Walsh 2011, p. 205). It would, however, allow for the direct implementation of these rights in the legislation in the area of housing policy and remove constraints on taking litigation in support of these rights (Bailey 1997, p. 36) while empowering individuals and groups to enforce their rights (Thiele 2002, p.714).

Housing policy issues are dealt with by tribunals rather than courts of law. What enforcement there is by these tribunals will be around policy implementation and service delivery and standards rather than adjudicating rights. In the state of Victoria, which does have a bill or rights, the tribunal has been prepared to entertain human rights arguments, but there remain limits to the sort of redress a tribunal can deliver, whether it be about judicial review applications, applications relating to social housing, summary trials at local court level regarding public spaces and administrative decisions regarding social security entitlements. The case law and litigation in this area remains on the margins (Walsh 2011, p.193) and in reviewing administrative activity, such as that relating to the provision of housing, the tribunal cannot provide enforcement to a claimant in terms of the substantive law or policy itself. The tribunal can only enquire into the nature of the process by which the administrative agency arrived at its decision.

From 1985 to 2009, the provision of public and social housing was the subject of Commonwealth-State Housing Agreements (CSHAs), negotiated periodically between the different levels of governments and from the early 1990s came under the Supported Accommodation Assistance Act 1994 (Cth) (SAAP). As part of these federal-state agreements (the CSHAs), funds were provided to state housing authorities and these had gone towards the provision of public housing, community housing (where people are on low incomes or with additional needs), crisis accommodation and private rent assistance. This was succeeded by the Rudd Labor government’s National Affordable Housing Agreement (NAHA) which, together with five national partnerships with the states, covered a range of housing areas including homelessness and the provision of social housing. Under these arrangements, which were not translated into law, the federal government agreed to continue to provide rental subsidies to those receiving social security income support under the Commonwealth Rent Assistance agreement and the states and territories would remain responsible for regulating tenancies and the not-for-profit housing sector (old community housing).

After eight years of neglect by the Coalition government, Labor’s attempts to establish a national housing strategy with a designated Minister for Housing represented a positive response to the concerns expressed by the Special
Rapporteur on adequate housing a few years earlier (Kothari 2007, p. 32). However, Labor’s new frameworks went the way of their predecessors under SAAP in proving incapable of preventing a withdrawal of funding over time. The result was less financial support for public housing and an increase in community run housing initiatives which tried to fill the space (Walsh 2011, p. 28). The framework has remained in place during the Abbott and Turnbull Coalition governments but with a marked withdrawal of funds by the Coalition government. While the drop in financial support was criticised by the Labor Opposition, this was not on the basis of its move against the progressive realisation of the right to housing and the reneging of Australia’s obligations under the ICESCR.

Neither Labor nor the Coalition have enacted a new housing Act to replace the Supported Accommodation Assistance Act but have chosen to make these housing arrangements through intergovernmental agreements. This leaves claimants with concerns at the operation of these arrangements and the instruments used to give them effect with no recourse but to take these concerns to administrative tribunals to address service standards rather than being able to claim either a legal breach, let alone claim a violation of their right to adequate housing. With the provision of housing being decided as a matter of policy rather than law places claimants in a weaker position and allows governments to renege on previous undertakings if it suits them as they pursue budget savings.

Political contestation and housing affordability

Australia now has the fifth most expensive housing market according to the OECD (OECD 2016) with, in the country’s two largest cities, an average house price to average annual income ratio in Sydney at 12.2 times and nearly 10 times in Melbourne. In 1982, 10% of home buyers spent more than 30% of their gross household income on housing costs while in 2011 these numbers had soared to 21% of all home buyers. The past few decades have seen a number of price booms, each higher than the last. Where households in 1990 on average valued their homes at a multiple that was four times their average household income, by 2011 this multiple had climbed to nearly six times average household income (Wood and Ong 2015).

Despite the postwar culture of home ownership (the ‘Australian dream’) these prices have effectively shut large segments of the population out of owning their own home, especially the 25 to 34year old population, and just as importantly, have fuelled much higher rentals, particularly in the major cities. As a government agency recently reported, ‘breaking into the market is becoming more challenging for young and low-to-moderate income earners’ and the ‘waiting lists for social housing (all forms of not-for-profit housing) continue to grow and supply is not keeping up’ (Australian Institute of Health and Welfare 2014). The property market is identified as being overvalued and this has been encouraged by historically low interest rates but particularly by taxation policies which have favoured investors taking on mortgage debt to purchase houses. The two tax policies which have favoured investors over home buyers are negative gearing, introduced by Labor in the 1980s, which enabled an investor to claim losses on a rental property as a tax deduction against her/his other income. This was followed in 1999 by the Coalition’s halving of the capital gains tax which reduced the amount of tax paid on the profit from the sale
of the property. It should also be noted that home ownership is encouraged in Australia by not taxing the value of the family home as an asset.

Until the current election campaign, both major political parties acknowledged there was a problem but were prepared to argue that the high and increasing property market was caused by growing demand and an inadequate supply of housing, particularly in Sydney and Melbourne. The major parties were also bolstered by the fact that the majority of homeowners were obviously very happy with the enhanced value of their own residence and, even more so should they have purchased any investment properties. A recent federal parliamentary inquiry\textsuperscript{viii} has confirmed the affordability problem and Labor has, for the first time in 30 years, decided to campaign on the removal of negative gearing for all but new properties as a point of differentiation from the Coalition parties.

Despite the rhetoric from both sides of the argument as to the impact of the removal of negative gearing, little change in affordability can be expected in the short term. The sensitivity of both sides of the debate is about the effect on the housing market, in terms of the value of houses, and the impact on an already constrained federal budget. The cost of negative gearing was estimated to have been AUD$8 billion per year in 2008 (Select Committee on Housing Affordability in Australia 2008, p.61) and could now be as much as AUD$11.7 billion per year. This is more than the federal government spends on housing assistance.\textsuperscript{viii} However, Labor’s campaign against negative gearing is about seeking to increase affordability for those seeking a home to live in rather than as an investment property, and again appealing to the mainstream, very much about privileging home ownership. There is no similar campaign to address the diminishing stock of public housing which has forced low income people on to the private rental market with its inflated rents. The debate also has had nothing to do with those renting in the market though if the overvalued property market is cooled, the excessive rental hikes should be a thing of the past.

The housing affordability problem is much broader and deep-seated than will be rectified by the abolition of negative gearing on existing dwellings, though its removal will be a move in the right direction. The structural problem of housing affordability reveals much common ground between the two major parties when in government. During the time of the Labor governments of 1983-2006 and the Coalition government which followed from 1996 to 2007, housing affordability had been largely neglected and reflecting a shared adherence to a neoliberal policy approach with all governments looked to the market to provide the solutions. Matters became worse during the Howard Coalition government of 1996-2007 with funding cuts and increased targeting of housing assistance and with government less directly responsible for the provision of social housing with housing policy problems reduced to a safety net/income assistance issue (Nicholls 2014, p. 334). The funding was redirected to a Commonwealth Rent Assistance (CRA) body and away from being applied by the Commonwealth-State Housing Agreement (CSHA). As in other areas of policy where the neoliberal paradigm was applied, while supply assistance for public housing declined, the Coalition government focused on the demand side and supply assistance for public housing was provided to the individual consumer in the private rental market (Dodson 2006, p. 237).

The Labor governments of 2007 to 2013 certainly sought to give housing affordability greater priority and created new institutions, the \textit{National Affordable Housing...}
Agreement (NAHA)\textsuperscript{xix} from 2009 as well as a National Rental Affordability Scheme (NRAS). A Social Housing Initiative (SHI) funded the construction of new social housing as well as upgrading existing ones. As the Labor Prime Minister at the time acknowledged, this funding was part of the attempt to deal with the Global Financial Crisis and went against the prevailing neoliberal orthodoxy (Rudd 2009, p.20). The federal government also set up five National Partnerships Agreements with the states and these were developed under the Council of Australian Governments (COAG) and regulated under the Federal Financial Relations Act 2009 (Cth). The increased funds going into public housing from 2008 to 2011 were part of a national housing affordability policy framework,\textsuperscript{xx} with additional funding provided for a housing assistance program to boost housing stock (Walsh 2011, p. 25). Despite the federal government’s avowed departure from neoliberal precepts to deal with the financial crisis of the time, the neoliberal policy paradigm remained in place and the government agencies dealing with housing policy have continued to reorientate service delivery towards individualised and targeted modes of delivery (Jacobs 2015, p.60).

The sharing of jurisdiction in the housing affordability policy area has not generated the same ‘blame game’ playing between the two levels of government as has occurred in the health policy area, mainly because housing has not attracted the same level of attention, largely because apart from the home ownership affordability issue, the majority of the population is unaffected and the policy neglect only affects the most vulnerable groups directly. Labor in government has tended to give more serious attention to the problems of access to housing than the Coalition governments. The institutional structures of 2009 around housing policy represented moves towards a more coherent and considered approach to the issue of affordability but the underlying neoliberal policy paradigm remained the same between the major parties. This has meant that problems of housing affordability and homelessness have continued to be interpreted in economic rather than social terms and any provision of services to address those in need has been taken from a welfare rather than a rights approach.

**Political contestation and homelessness**

The influence of neoliberalism over economic policy together with the lack of a coherent and comprehensive legal framework and policy position have their most damaging impact when we consider the condition of homelessness\textsuperscript{xxi} and this is where we are likely to see the most egregious cases of a violation of the right to adequate housing. A case of homelessness would probably signify that a number of challenges, physical, mental, financial and possibly cultural, are being confronted on a daily basis and that, together with the housing rights, a number of rights under the ICCPR have been infringed. Together with the right to adequate housing as given in Article 11 of ICESCR, the most important of these are the right to privacy (Article 17), which can occur even when a person has a form of shelter such as a room in a boarding house, and the right to be free from torture or cruel, inhumane or degrading treatment (Article 7), the right to liberty and security of the person (Article 9), the right to enjoy one’s culture (Article 27), and the right to freedom from discrimination. It is also arguable that homelessness constitutes a breach of customary international law given that a number of other rights, directly breached when someone is homeless or
without adequate housing, constitute norms that states are legally obliged to follow: the right to life, liberty and security of the person, the right to freedom from discrimination, and the right to be free from cruel, inhumane and degrading treatment of punishment (Lynch and Cole 2003, p.145).

In judging how Australia addresses the problem of homelessness, the housing assistance programs can be seen to qualify as progressive steps taken towards the realisation of the right as stipulated by Article 2 of the ICESCR. However, there has been a tendency in Australia not to see this as a broad problem but a targeted one about emergency relief with an emphasis on crisis accommodation (Walsh 2011, p. 16) and focused on individuals rather than as a systemic policy problem (Fopp 2013, p.2) which would reinforce feelings of exclusion while failing to acknowledge the flow on effects of being without a home.

The Labor government’s policy changes of 2008 sought to move away from the previous SAAP Act 1994 individualised service model and saw the support as about assisting people to increase their self-reliance and seek to deal with structural causes of homelessness (Bullen and Reynolds 2014, p. 281). As part of its new structural arrangements, Labor established a National Partnership Agreement on Homelessness (NPAH) which was continued by the Coalition government. A new NPAH was commenced for 2015-17 to provide funds over two years, matched by states and territories, to support frontline homelessness services. While the federal and state governments decided in late 2015 to consider reforms to housing and homelessness, the federal government has pre-empted this somewhat by a budget decision in May 2106 to end the NPAH from mid-2017 together with funding cuts to homelessness services, mental health programs and community legal centres (Browne 2016). Despite this announcement, neither major party has focused on homelessness in the current election campaign. While Labor has a 12year homelessness strategy to build on its 2008 Road to Home White Paper in its National Platform (ALP National Secretariat 2015, p.129), homelessness does not appear in either major party’s current campaign ‘plans’ and each approach to housing affordability has been pitched at the issue of housing ownership and affordability (ALP National Secretariat 2016; Liberal Party of Australia, 2016).

There is undoubtedly a need for government to see the ‘bigger picture’ and link homelessness and housing affordability and hereby address the international standards (Walsh 2011, p.16) but as evidenced from the differential treatment the major political parties give to each of these issues that essential linkage is hardly, if ever, made. Neoliberalism has had damaging influence over other aspects of housing policy which has exacerbated the problem of homelessness through an increased focus on the market mechanisms favouring private home-ownership and the private rental market with its market based rather than consumer price index (CPI) based rentals. With the decline in the stock of public housing and the increased dependence on the private rental market the problem has got worse as the private rental market has been unable to provide the increases in supply needed at the low end of the housing market (Groenhart and Burke 2014, p.131). The peak social service body has expressed concern that while the Commonwealth Rent Assistance program has markedly improved housing affordability for low income
renters, it is not keeping up with community living standards and the gap between their rent assistance and the average rent is growing and this was even before the Coalition government’s 2014 budgetary decision came into effect to reduce funding in this area (ACOSS 2014).

The approach of the major political parties to dealing with the problem of homelessness can be revealed through examining the provision of social housing. Social housing includes both public housing, provided by the state, and community housing provided by the not-for-profit sector. Recognising a major drop in the provision of public housing of about nine per cent during the Coalition government (1996-2007), the Labor government, as part of its national partnership agreements, established one on social housing and provided AUD$400 million from 2008 to 2010 to build almost 2000 social housing dwellings (Council of Australian Governments 2016). It was not renewed at the end of 2010 and, as ACOSS has identified, there is also a critical shortage of rental properties suitable for low income renters (ACOSS 2014).

There has been a decline in funding for public housing over more than twenty years and during periods of both Labor and Coalition governments. One recent estimate of base federal funding for social housing had it declining 10 per cent in real terms between 2003 and 2013 (Toohey 2014, p. 262). Over this period of declining funding there has been increased targeting of state-provided public housing to those in greatest need. With poorer tenants’ lack of financial resources, there has been a widening gap between the cost of public housing and the rents collected and, with governments not filling this gap, this has resulted in a decline in the number of properties available for public housing and an increased waiting list. There has also been a sale of public housing assets and increased reliance on the private market which has not been able to supply for the low cost end of the market. Assistance has been skewed in favour of increased housing allowances to support renting in the private market rather than for the provision of public housing and while community housing has also increased, this has not been enough to meet the demand (Groenhart and Burke 2014, p. 130). Over this period, there has been a tendency to envelop state-provided social housing and non-government provided community housing into one category of social housing, helping to disguise the decline in public provision and increased reliance on that provided by the non-government organisations (Walsh 2011, p. 28).

There are a number of Australian laws, principally at the state level, which effectively criminalize poverty and homelessness. Some examples include begging, public drinking and public space laws which, while varying between the states and territories, have been on the increase. Special Rapporteur Kothari, in his 2006 report, identified such laws as having a disproportionate impact upon homeless people and were in need of amendment to conform with human rights standards, including the right to be free from inhuman or degrading treatment or punishment (Kothari 2006, pp. 33, 47). The powers given to police to disperse or impose ‘on the spot’ fines for people who have been identified as engaging in inappropriate behaviour, such as street drinking or begging, has effectively criminalised people for being in the public space (Goldie, 2006). For those experiencing primary homelessness, such as those sleeping rough, state and territory legislation, local council by-laws and civic patrolling interventions have acted to regulate and
criminalise these people for simply seeking to meet basic human needs, such as sleeping, whilst living in public space (Goldie, 2002, pp. 279-280).

New and revised legislation aimed at making public areas safer have, not surprisingly, had a number of consequences for homeless people and added to their stress and debt levels (Kunnen and MacKay 2014, 198). The various forms of anti-social behaviour orders have been introduced by both major political parties and mirror some of the policies that have emerged in relation to the management of public housing to control what were defined as ‘social problems’ amongst certain tenants. In identifying certain anti-social behaviour as requiring sanctions and of individualising particular problems reveals the continuing influence of neoliberalism in policy making where certain problems, such as the focus on the ‘anti-social’ individual, are addressed while other, more serious, issues related to the problem of a shrinking supply of public housing are not (Jacobs 2006, 12). Both major political parties have been sensitive to being seen to be ‘tough on crime’ and with this have developed law and order strategies which involve regulating a range of activities in public places that are used to show that ‘community safety’ is the primary focus. The vulnerability of those homeless people living in these public spaces to human rights violations as a result of these regulations is made worse by their sometimes arbitrary and discretionary application (Lynch and Hilton 2006, p. 8). Even when governments have recognised that ‘move on’ powers have had the effect of giving police too wide discretion, as was the case recently in the state of Victoria, the focus of reform was not on the impact on the homeless but on allowing peaceful protests, including legal picketing by union members (Second Reading Speech 2015, p. 175). The wide powers which allow the police to move homeless people on for any number of general community safety reasons remain on the statute book.

**Concluding comments**

Australia as a liberal rather than a social democracy finds it more comfortable to engage around civil and political then economic, social and cultural rights despite its international rhetoric of being a ‘good international citizen’ that recognises the universality and indivisibility of all rights. When it comes to considering how it translates or contextualises the international rights obligations it has ratified we find Australia to be a reluctant implementer of rights, particularly economic and social rights. Its legal and constitutional arrangements are, largely following the British model, not conducive of rights implementation. Together with a political culture of majoritarianism and formal egalitarianism, these arrangements provided fertile ground for neoliberalism to develop as the dominant political discourse. Without a federal bill of rights or specific legislation referencing the recognition of the rights to health or housing, governments have allowed themselves the freedom to enact policy and practice without being called to account before the courts for any resultant violation of these rights.

Neoliberalism, with its market-based approach to public policy, calls for a reduced role for the state which is anathema to the promotion and protection of economic and social rights and their redistributive imperative upon the state. This reduced role for the state in social policy areas saw the government providing, in the main, targeted assistance and a safety net and often focused on the individual and her
circumstances, rather than addressing systemic problems and possible resultant rights violations. Despite the appearance of inter-party competition in the areas of the rights to health and housing, this paper has revealed the influence of neoliberalism in the policies of the major parties. This has been evident through similar policies that have served to commodify a social good, strongly endorse the private sector’s involvement, either directly or indirectly, while generally promoting market-based signalling, if not control.

The Labor and Coalition parties have shown a marked reluctance, and sometimes outright hostility, to recognise Australia’s failings in terms of the domestic activation of its international rights obligations. Even Labor, which revealed some interest in rectifying the problem and opened up a conversation around rights as recently as 2009, was all too ready to close that conversation down and ignore the strong recommendation for a federal bill of rights. Rights generally, and ESR in particular, have been provided scant opportunity for policy influence with neither major party prepared to challenge the dominance of neoliberalism, as the prism through which to implement policy, nor the constraints of the state’s institutional structures.

In relation to health policy, the obsessive focus on the cost of the health system with an emphasis on efficiency over equity issues has ignored the costs of not providing adequate health across the population, resulting in various violations of rights, particularly referenced by economic and geographic accessibility. In regard to housing policy, the current electoral contest reveals an inter-party competition solely focused on seeing housing affordability in terms of the interests of the majority who to seek to own a home. That the current policies serve to violate the right to adequate housing through keeping people out of ownership or the rental market has not rated a mention. As to the homeless, for whom the violation of this and other rights is the most egregious, the major parties have ignored them in the election campaign. Policies can be expected to continue to address the issue of homelessness through the targeting of crisis and emergency accommodation with reduced exit points, a reduction in social housing in favour of the private market, and an individualisation which includes the criminalisation of some public behaviour.

A liberal democracy such as Australia might be expected to have shown greater adherence to the international human rights regime and its obligations. The reality for Australia is one where the translation of these rights is contextualised by a pervasive neoliberal economic policy paradigm, which sees the individual not as a rights holder but as a consumer within particular markets, operating within an institutional structure focused on civil and political rights, if on rights at all, and more concerned with the rights between states and territories than with those of the people. As the neoliberal ideology has become more institutionalised within Australia, so the major parties have effectively self-limited their policy space to prevent contrary ideas from having much influence over policy and its implementation. Just as Australia’s international rights rhetoric should be recognised for what it is, so the limited nature of the political contestation between the major parties and their complicity in the denial of rights needs to be acknowledged.
The UN High Commissioner for Human Rights has summarised ESR, together with cultural rights as those rights under the International Covenant of Economic, Social and Cultural Rights (ICESCR) and which relate to ‘the workplace, social security, family life, participation in cultural rights, and access to housing, food, water, health care and education.’. Office of High Commissioner for Human Rights (2008) Frequently Asked Questions on Economic, Social and Cultural Rights, Fact Sheet No. 33, p. 1.


A useful explanation of 'political culture' is as a 'set of shared ideas, assumptions, preferences and customs that are usually taken for granted in a political system but are essential to its operation.' (Galligan 1994, p. 58).


The Australian Constitution contains no listing of rights guarantees as found in the United States Constitution despite the influence of the latter in the constitutional conventions that led to the adoption of the Australian Constitution.

The right can also be found in other instruments such as Article 5 (d) (iv) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Articles 11.1 (f) and 12 of the Convention on the Elimination of Discrimination Against Women (CEDAW), Article 24 of the Convention on the Rights of the Child (CRC), and Article 25 of the Convention on the Rights of People with Disabilities (CRPD). The right to health also complements and extends Article 7 of the International Covenant on Civil and Political Rights (ICCPR) which calls for the right to be free from torture and other cruel, inhumane or degrading treatment which includes being free from non-consensual medical treatment.

The most important national Acts are the Health Insurance Act 1973 dealing with the Medicare scheme, the National Health Act 1953 providing for pharmaceutical, sickness, hospital and medical and dental services, the Aged Care Act 1997 dealing with care and accommodation for those receiving aged care services.

These councils are the Australian Health Ministers’ Conference, the Community and Disability Services Ministers’ Conference and the Ministerial Conference on Ageing.

It should be noted that a private health insurance company can legally deny coverage to someone with a pre-existing medical condition, despite the CESCRI General Comment 20 stating that this would amount to discrimination.

A Local Hospital Network is an organisation of two or more hospitals to provide public hospital services across a certain geographical area in accordance with the agreement between the federal and state governments.


Other rights directly affected by a violation of this right include freedom of expression, freedom of association, right to family life and privacy, right to be free from discrimination, the right to health, the right to be free from cruel, inhuman or degrading treatment, the right of women and even the right to life: see Leckie 1989 p. 544.

Cases which reveal these limitations are the ACT case of Merritt and Commissioner for Housing (2004) ACTAAT 37 and the Victorian case of Director of Housing v IF (Residential Tenancies) (2008) VCAT 2413.


The important and continuing partnership agreements are the National Partnership Agreement on Social Housing, National Partnership Agreement on Homelessness, and the National Partnership Agreement on Remote Indigenous Housing.

The cost of private rentals increased by 75.8 per cent for houses and 91.9 percent for other dwellings between 2002 and 2012 (NGO Coalition Fact Sheet 6 2015, p. 2).

Select Committee on Housing Affordability in Australia 2008, A Good House is Hard to Find: Housing Affordability in Australia, Commonwealth Government, Canberra.

In the 2013/14 financial year, AUD$2 billion was spent on social housing and homelessness assistance (Australian Treasury 2013) and AUD$4 billion for Commonwealth Rent Assistance (FaHCSIA 2013, p. 61).

The National Affordable Housing Agreement had as its broad objectives addressing social inclusion, Indigenous disadvantage, improving housing affordability and homelessness: NAHA, clause 7.
REFERENCE LIST


Dickinson, H 2016, 'Why do we wait so long in hospital emergency departments and for elective surgery?', The Conversation, 17 March.


FaHCSIA (Department of Families, Housing, Communities and Indigenous Affairs) 2013, Portfolio Budget Statements 2013-14, Budget Related Paper 1.6, Commonwealth Government, Canberra,


Fopp, R 2013, 'Perspectives on ending Homelessness: Questioning Outputs for Better Outcomes, Parity, Vol. 27, pp. 4-6.


 Gartrell, A 2016, 'Dental plan: Turnbull government promises every child subsidised dental care', The Age Online, 23 April,


 Georgatos, G 2016, 'NACCHO #HealthElections16: Are Aboriginal and Torres Strait Islanders living more than 20 years less than the rest of the population', <https://nacchocommunique.com/2016/05/01/naccho-healthelections16-are-aboriginal-and-torres-strait-islanders-living-more-than-20-years-less-than-the-rest-of-the-population/>.


Human Rights Commission 1994, *CCPR General Comment 24: Issues Relating to Reservations Made on Ratification or Accession to the Covenant or the Optional Protocols Thereto, or in Relations to Declarations under Article 41 of the Covenant* [8], UN Doc CCPR/C/21/Rev.1/Add.6.


Hutchens, G 2016, ‘Labor to end freeze on Medicare rebates with $12.2bn funding pledge’ *Guardian Australian online*, 19 May,

<http://www.theguardian.com/australia-news/2016/may/19/labor-to-end-freeze-on-medicare-rebates-with-122bn-funding-pledge>


Joint NGO Submission on behalf of the Australian NGO Coalition 2015, *Australia’s 2nd Universal Periodic Review*, Human Rights Law Centre, Kingsford Law Centre, National Association of CLCs, Melbourne and Sydney.


Select Committee on Housing Affordability in Australia 2008, *A Good House is Hard to Find: Housing Affordability in Australia*, Commonwealth Government, Canberra,


Taylor, L 2016, 'Big pathology firms could reap millions from Coalition bulk bill deal – analyst', *Guardian Australia online*, May 18,


Vidot, A 2014, ‘Medicare Local cuts could also cut regional services’, ABC Rural online, April 22,


Wang, YA 2015, ‘Will the Trans Pacific Partnership hinder access to medicine? Part 1’, Law and Biosciences Blog, November,


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