Finding a Place

An Inquiry into
The Existence of Discriminatory Practices in Relation to the Provision of Public Housing and Related Services to Aboriginal People in Western Australia

There is no element in social policy for Aborigines the results of which have been so disappointing and so confusing as that related to housing

(Nugget Coombs as cited in Read, 2000: 115)
December 2004

The Hon JA McGinty
Attorney General
30th Floor, Allendale Square
77 St Georges Terrace
PERTH WA 6000

Dear Attorney,

Under Section 80 of the Equal Opportunity Act 1984, the Equal Opportunity Commissioner is empowered to

“For the purpose of eliminating discrimination…carry out investigations, research and enquiries relating to discrimination…rendered unlawful under this Act.”

In September 2002 the then Acting Commissioner Ms Moira Rayner established an Investigation into the Provision of Public Housing to Aboriginal and Torres Strait Islander people in Western Australia, thereafter referred to as the Inquiry.

I now have pleasure in presenting the results of that Inquiry titled "Finding a Place": An Inquiry into the existence of discriminatory practices in relation to the provision of public housing and related serviced to Aboriginal people in Western Australia.

Yours sincerely,

Yvonne Henderson
COMMISSIONER FOR EQUAL OPPORTUNITY
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<tbody>
<tr>
<td>AA</td>
<td>Aborigines Act 1905</td>
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<tr>
<td>AAT</td>
<td>Administrative Appeals Tribunal</td>
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<tr>
<td>ABS</td>
<td>Australian Bureau of Statistics</td>
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<tr>
<td>ACT</td>
<td>Australian Capital Territory</td>
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<tr>
<td>ADA</td>
<td>Age Discrimination Act 2004</td>
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<tr>
<td>AHB</td>
<td>Aboriginal Housing Board</td>
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<td>AHD</td>
<td>Aboriginal Housing Directorate</td>
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<td>AHIU</td>
<td>Aboriginal Housing and Infrastructure Unit</td>
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<td>AHOS</td>
<td>Aboriginal Home Ownership Scheme</td>
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<td>ALS</td>
<td>Aboriginal Legal Service</td>
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<tr>
<td>AP</td>
<td>Allocations Policy</td>
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<tr>
<td>ASRC</td>
<td>Anglican Social Responsibilities Commission</td>
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<tr>
<td>ATSIC</td>
<td>Aboriginal and Torres Strait Islander Commission</td>
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<tr>
<td>ATSS</td>
<td>Aboriginal Tenancy Support Service</td>
</tr>
<tr>
<td>BAS</td>
<td>Bond Assistance Scheme</td>
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<tr>
<td>CDD</td>
<td>Centrelink Direct Deduction</td>
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<tr>
<td>CDEP</td>
<td>Community Development Employment Program</td>
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<tr>
<td>CEDAW</td>
<td>Convention of the Elimination of all forms of Discrimination against Women</td>
</tr>
<tr>
<td>CERD</td>
<td>Convention of the Elimination of all forms of Racial Discrimination</td>
</tr>
<tr>
<td>CESCR</td>
<td>Committee on Economic, Social and Cultural Rights</td>
</tr>
<tr>
<td>CHRC</td>
<td>Canadian Human Rights Commission CROC</td>
</tr>
<tr>
<td>CMHC</td>
<td>Canada Mortgage and Housing Corporation</td>
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<tr>
<td>CMSAC</td>
<td>Carnarvon Medical Service Aboriginal Corporation</td>
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<tr>
<td>CSHA</td>
<td>Commonwealth State Housing Agreement</td>
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<tr>
<td>CSJC</td>
<td>Catholic Social Justice Commission</td>
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<tr>
<td>DCD</td>
<td>Department of Community Development</td>
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<tr>
<td>DCWC</td>
<td>Deaths in Custody Watch Committee</td>
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<tr>
<td>DDMP</td>
<td>Discretionary Decision Making Policy</td>
</tr>
<tr>
<td>DDP</td>
<td>Debt Discount Policy</td>
</tr>
<tr>
<td>DDS</td>
<td>Debt Discount Scheme</td>
</tr>
<tr>
<td>DHAC</td>
<td>Department of Health and Aged Care</td>
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<tr>
<td>*DHW</td>
<td>Department of Housing and Works</td>
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<tr>
<td>DIA</td>
<td>Department of Indigenous Affairs</td>
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<tr>
<td>DNW</td>
<td>Department of Native Welfare</td>
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<tr>
<td>EHP</td>
<td>Emergency Housing Policy</td>
</tr>
<tr>
<td>EOA</td>
<td>Equal Opportunity Act 1984</td>
</tr>
<tr>
<td>EOC</td>
<td>Equal Opportunity Commission</td>
</tr>
<tr>
<td>EOT</td>
<td>Equal Opportunity Tribunal</td>
</tr>
<tr>
<td>EP</td>
<td>Eligibility Policy</td>
</tr>
<tr>
<td>FDVP</td>
<td>Family and Domestic Violence Policy</td>
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<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<td>-----------</td>
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<tr>
<td>HA</td>
<td>Housing Act 1980</td>
</tr>
<tr>
<td>HAC</td>
<td>Housing Advisory Committee</td>
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<tr>
<td>HAL</td>
<td>Housing Access Loans</td>
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<tr>
<td>HAM</td>
<td>Homeswest Appeals Mechanism</td>
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<tr>
<td>HOP</td>
<td>Home Ownership Program</td>
</tr>
<tr>
<td>HORSCAA</td>
<td>House of Representatives Standing Committee on Aboriginal Affairs</td>
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<tr>
<td>HORSCATSIA</td>
<td>House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs</td>
</tr>
<tr>
<td>HREOC</td>
<td>Human Rights and Equal Opportunity Commission</td>
</tr>
<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
</tr>
<tr>
<td>JCC</td>
<td>Jacaranda Community Centre</td>
</tr>
<tr>
<td>KCP</td>
<td>Karawara Community Project</td>
</tr>
<tr>
<td>MIDLAS</td>
<td>Midland Information, Debt and Legal Advise Service</td>
</tr>
<tr>
<td>NLP</td>
<td>New Living Program</td>
</tr>
<tr>
<td>NSW</td>
<td>New South Wales</td>
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<tr>
<td>NT</td>
<td>Northern Territory</td>
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<tr>
<td>NWA</td>
<td>Native Welfare Act 1972</td>
</tr>
<tr>
<td>NZ HRC</td>
<td>New Zealand Human Rights Commission</td>
</tr>
<tr>
<td>NZ MWA</td>
<td>New Zealand Ministry of Women's Affairs</td>
</tr>
<tr>
<td>OUNHC</td>
<td>The Office of the United Nations High Commission on Human Rights</td>
</tr>
<tr>
<td>PAP</td>
<td>Priority Assistance Policy</td>
</tr>
<tr>
<td>PCLS</td>
<td>Pilbara Community Legal Service</td>
</tr>
<tr>
<td>RCAP</td>
<td>Royal Commission on Aboriginal Peoples</td>
</tr>
<tr>
<td>RCIA DIC</td>
<td>Royal Commission into Aboriginal Deaths in Custody</td>
</tr>
<tr>
<td>RDA</td>
<td>Racial Discrimination Act 1975</td>
</tr>
<tr>
<td>REIWA</td>
<td>Real Estate Institute of Western Australia</td>
</tr>
<tr>
<td>RTA</td>
<td>Residential Tenancies Act 1987</td>
</tr>
<tr>
<td>SA</td>
<td>South Australia</td>
</tr>
<tr>
<td>SDA</td>
<td>Sex Discrimination Act 1984</td>
</tr>
<tr>
<td>SHA</td>
<td>State Housing Act 1946</td>
</tr>
<tr>
<td>SHAP</td>
<td>Supported Housing Assistance Program</td>
</tr>
<tr>
<td>SHC</td>
<td>State Housing Commission</td>
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<tr>
<td>TAS</td>
<td>Tenants Advice Service</td>
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<tr>
<td>TP</td>
<td>Transfer Policy</td>
</tr>
<tr>
<td>UK</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>UNCESCR</td>
<td>United Nations Committee on Economic, Social and Cultural Rights</td>
</tr>
<tr>
<td>VRO</td>
<td>Violence Restraining Order</td>
</tr>
<tr>
<td>WA</td>
<td>Western Australia</td>
</tr>
<tr>
<td>WLMP</td>
<td>Waiting List Management Policy</td>
</tr>
<tr>
<td>WRAS</td>
<td>Welfare Rights Advocacy Service</td>
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</tbody>
</table>

* Note: In the Inquiry, the Western Australian Department of Housing and Works (DHW) is also referred to as the State Housing Commission (SHC) or Homeswest depending upon the time period discussed.*
Acknowledgments

The Equal Opportunity Commission (EOC) would like to thank all those who have participated in this Inquiry; in particular, those individuals who had the courage to share with EOC staff the personal aspects of their lives and the lives of their families.

The EOC would also like to thank all those who represented the interests of their particular community group or organisation and those who represented the interests of government departments.

Special thanks must go to the EOC staff who have given unstintingly of their time and energy to make this Inquiry happen after Moria Rayner announced the S80 Housing Investigation during her time as Acting Commissioner of the EOC between April 2002 and December 2002. The vision and passion of all these persons for Human Rights ensured the Inquiry progressed to produce the wide ranging recommendations detailed at the conclusion of this report.

The EOC gratefully acknowledges the invaluable contributions and support received from various groups and individuals.

Reference Group
- Pat Dudgeon (Chair)
- Ted Wilkes (Deputy Chair)
- Yvonne Henderson (EOC Commissioner)
- Darren Farmer (Aboriginal and Torres Strait Island Commission)
- George Hayden (Aboriginal and Torres Strait Island Commission)
- Barry Taylor (Aboriginal and Torres Strait Island Commission)
- Charlie Wright (Aboriginal and Torres Strait Island Commission)
- Hannah McGlade
- John Ballard
- Deborah Hunn (Secretary)

Funding Bodies
- Curtin University
- Department of Indigenous Affairs
- Office of Multicultural Interests
- Office of Women’s Interest
- ATSIC

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- Tom Mulholland
- Hannah McGlade
- Sandra Handscomb
- Marc Newhouse
- Allan Macdonald
- Ann-Marie McCann
- Jane Ardern
- University of Western Australia Law students (Suzanne Akilas, Sharoni de Silva, Rebekah Dornan, Brett Farmer, Jeremy Lee, Luke Russell, Adam Sharpe, Rebecca Tsang and Belinda Wong)

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- Nick Dunlop (Editor)
- Stephen Henderson (Assistant Director/Photography)

Advisory Support
- Pat Dudgeon (Head, Centre for Aboriginal Studies, Curtin University)
- Jim Ife (Associate Professor, Centre for Human Rights Education, Curtin University)

The EOC would like to thank the many hundreds of people and the many organisations that made submissions to this Inquiry in oral, written, tape-recorded or video format. Prior to making a submission, all were advised of their right to
confidentiality and were required to sign agreements relating to the level of confidentiality applied to their submission. Without their participation and willingness to convey personal information and at times difficult experiences this Inquiry would not have been possible.

Organisations and Individuals
- Aboriginal Legal Service
- Aboriginal and Torres Strait Island Commission
- Carnarvon Medical Service
- Catholic Social Justice Council
- Deaths in Watch Custody Committee
- Department of Housing and Works
- Department of Indigenous Affairs (Director General Richard Curry and Officers in Regional Western Australia)
- Department for Community Development
- Derbarl Yerrigan Aboriginal Health Service
- Disability Services Commission
- Jacaranda Community Centre (representing 23 Aboriginal women, Belmont)
- Jeannine Purdy
- Karawara Community Project
- Kimberley Community Legal Services
- Midland Information, Debt and Legal Advice Service
- Pilbara Community Legal Service
- Shelter WA
- Shire of Moora
- Social Responsibilities Commission
- Tenants Advice Service
- Welfare Rights and Advocacy Service

During the course of this Inquiry, numerous individuals and organisations from metropolitan and regional areas requested the opportunity to make a submission. Despite seemingly insurmountable barriers (distance, language and literacy), these submissions were gathered with the support and assistance of many Aboriginal Elders, community groups and advocates. Those involved co-ordinated meetings, interpreted, made appointments and shared extensive local knowledge. Without this help it would not have been possible to successfully conduct a thorough Inquiry. Those who assisted with consultations included:

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- Anne Annear
- Arina Aoina
- Betsy Buchanan
- Sue Chadwick
- Aaron Collard
- Venis Collard
- Dylan Desaubin
- Yvonne Duffield
- Leon Harp
- Ronwynie King
- Karen Merrin
- Robin Thorne
- Joanne Walsh

Great Southern Consultations
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- Meryl Hansen
- Hazel Hansen
- Beryl Kickett
- Lynley Pickett

Southwest Consultations
- Violet Little
- Rita KT Macri
- Trish McGowan
- Lorraine Morrison
- Val Riley

Goldfields Consultations
- Maria Bandry
- Richard Collard
- Garry Cooper
- Nola Kelly
- Frank Martin
- Maria Meredith
- ‘Doc’ Reynolds
**Midwest/Gascoyne Consultations**
- Calvin Ashwin
- Bill Ateo
- Les Cook
- Greg Cross
- Aunty Mavis Curley
- Bill Doble
- Diane Gray
- Nola Gregory
- Christine Heslington
- Roslyn Heslington
- Helen McNair

**Pilbara Consultations**
- Joan Chongwei
- Robyn Churnside
- Lorraine Coppin
- Jill Faulkner
- Maureen Hatton
- Kenny Jerrold
- Maude Jerrold
- Deanna McGowan
- Bob Neville
- Rose Russo
- Monique Simpson
- Renee Simpson
- Michael Woodley
- Maureen Whitby

**Kimberley Consultations**
- Dickie Bedford
- Russell Gregory
- Bettina Pitt-Lancaster
- Julie Sutherland
- Ian Trust
- Tarryn Wilkins
- Annie Wilson

**Women for Stronger Communities (Elders, Roebourne)**
- Elsie Adams
- Sylvia Allan
- Eva Connors
- Nita Fishhook
- Pansy Hicks
- Berry Malcolm
- Pansy Marnu
- Violet Samson
- Dora Solomon
- Betty Toby
- Shirley Wally
- Nelly Wally

**Interpreter (Roebourne)**
- Robyn Churnside

**Aboriginal Corporations**
- Albany Aboriginal Corporation
- Bay of Isles Aboriginal Corporation
- Bunna Yuroal Aboriginal Corporation
- Emama Gnuda Aboriginal Corporation
- Esperance Aboriginal Corporation
- Gaweloong Yawoodeng Aboriginal Corporation
- Jardamu Resource Centre
- Joorook Ngarmi Aboriginal Corporation
- Karrayili Adult Education Centre Aboriginal Corporation
- Karnany Aboriginal Corporation
- KARU
- Katanning Aboriginal Corporation
- Kimberley Language and Resource Centre
- Leonora Aboriginal Corporation
- Mumabalungin Aboriginal Corporation
- Mungallah Aboriginal Corporation
- Nguntju Tjitj Piirni Aboriginal Corporation
- Thoo Thoo Warinha Aboriginal Corporation
- Winan Gnari Aboriginal Corporation
- Winjan Aboriginal Corporation
- Wongutha Wonganara Aboriginal Corporation
The EOC would like to thank Homeswest and the Tenants Advice Service for hosting in-depth briefing sessions for EOC Inquiry committee members during the establishment phase in late 2002.

**Section 80 EOC Inquiry Committee Members**

- Yvonne Henderson (Chair)
- Anne Giles
- Sandra Handscomb
- Cathy Hollander
- Ann-Marie McCann
- Allan MacDonald
- Marc Newhouse
- Tulip Penny

The Section 80 EOC Inquiry Committee members would like to thank Claire Pickering for editing and formatting this report.
Abstract

This Inquiry aims to examine the possibility of indirect discrimination in the provision of public housing to Aboriginal people by Homeswest, within the Department of Housing and Works (DHW), and aims to disclose the far-reaching consequences of such a reality. This Inquiry recognises that there are two types of discrimination, direct and indirect, and that whilst both are evident in society and have the capacity to irrevocably damage a person's self-worth and everyday existence, it is indirect discrimination that may permeate the practices and procedures of organisations and reside in the unconsciousness of individuals. Such systemic discrimination whilst unintentional can seriously damage the life experiences of individuals.

Although indirect discrimination can be more difficult to grasp conceptually, it can reveal well camouflaged and considerably far-reaching discriminatory acts, including systemic, policy-based and management-led practices, which are supported by the highest levels of government and business... indirect discrimination may continue undetected in the workplace, in education and in the provision of housing for years...in the form of an apparently neutral policy or procedure [and] can adversely impact hundreds of people simultaneously (See Section Two - Indirect Discrimination).

This Inquiry understands that Homeswest is the housing provider of last resort, serving those most in need within society, and acknowledges the difficulty and commitment that such a function entails. This Inquiry believes that careful consideration should be given to the experiences of Aboriginal people accessing the services provided by Homeswest, and proposes that if disadvantage through indirect discrimination is perceived as likely to have occurred then purposeful action will need to be undertaken to alter the policies and practices involved to ensure that the future experiences of those Aboriginal people in need are enriching and unequivocally improve the quality of their lives.

Section One provides an overview of the procedures and people involved in the development of this Inquiry, specifically commenting on the development of the Terms of Reference and outlining the methodology utilised in the Inquiry. Section One also details the recommendations resulting from the Inquiry, which have emerged from the themes of the submissions.

Section Two explores the State, National and International legal context that forms the structural framework underpinning this Inquiry. Section Two primarily addresses the treaties relating to the human right to adequate housing and legislation outlawing discrimination. It also examines the legal definition of direct and indirect discrimination, four relevant discrimination cases, and an international comparison.

Section Three discusses the historical periods that relate to housing for Aboriginal people in Western Australia, and the important development of Homeswest, within the DHW, and its policies and practices. Section Three also presents a literature review that summarises the main policies and procedures influencing the provision of housing for Aboriginal people by Homeswest. These elements provide the social foundation upon which this Inquiry is based and aims to contribute to.

Section Four presents a quantitative analysis of the premise that the public housing provided by Homeswest, within the DHW, serves those groups of people most in need, namely both Aboriginal and non-Aboriginal. Section Four compares these groups of people utilising four main indicators (overcrowding, housing affordability, children living in poverty and accessibility to services). This study presents a statistical and graphical understanding of public housing and in conclusion contends that Aboriginal people experience
disproportionate disadvantage in terms of the four indicators.

Section Five delineates the methodology informing the conduct of this Inquiry through a qualitative study, specifically addressing the documents and processes involved in the collation of oral, written and video recorded individual and group submissions from Aboriginal people and advocates pertaining to the experiences of Aboriginal access to housing through Homeswest services. Section Five presents a number of themes that emerged from the submissions collated and offers examples of the experiences of Aboriginal people throughout regional and metropolitan Western Australia to illustrate the reality of disadvantage and less favourable treatment.

The video accompanying this Inquiry further illustrates the personal issues, experiences and environments that many Aboriginal people face in everyday life as a direct result of public housing and service that is provided to them by Homeswest.
SECTION ONE
Inquiry Overview and Recommendations

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   The Conduct of the Inquiry 18

Chapter Two: Recommendations 19
chapter one:
Executive Background

On December 10 2002, the Acting Commissioner for Equal Opportunity Ms Moira Rayner completed her term. The position was occupied in an Acting capacity by Mr Allan McDonald, Senior Legal Officer, until Ms Yvonne Henderson was appointed as Acting Commissioner on February 3 2003. On June 28 2003, Ms Henderson was appointed as the Commissioner for Equal Opportunity.

The Legal Framework

The Commissioner for the EOC is appointed to administer the *Equal Opportunity Act 1984* (EOA). The purposes of the EOA are detailed in section 3 and aim:

> ...to eliminate, so far as is possible, discrimination against persons on the ground of sex, marital status or pregnancy, family responsibility or family status, sexual orientation, race, religious or political conviction, impairment, age or, in certain cases, gender history in the areas of work, accommodation, education, the provision of goods, facilities and services and the activities of clubs.

In accordance with this, in September 2002 Ms Moira Rayner, the then Acting Commissioner established the Investigation into the Provision of Public Housing to Aboriginal and Torres Strait Islander people in Western Australia, formally called the Inquiry.

In accordance with section 80 and 82 of the EOA, the Inquiry aimed to assess whether the policies, programs, practices, guidelines or decision making processes within Homeswest contribute to direct or indirect discriminatory treatment of Aboriginal people in the provision of public housing and related services due to race or any other ground.

Section 80 of the EOA provides the Commissioner with power to:

- Carry out investigations, research or inquiries relating to discrimination.
- Acquire and disseminate knowledge on all matters relating to elimination of discrimination.
- Arrange and co-ordinate consultations, inquiries, discussions, seminars and conferences.
- Consult with governmental, business, industrial, and community groups in order to ascertain means of improving services and conditions affecting a person or persons who are subject to discrimination on the grounds referred to in the EOA.
- Publish any written reports compiled in the exercise of the Commissioner’s powers.

Section 82 of the EOA provides the Commissioner with power to “Undertake a review of government policies and practices with a view to identifying circumstances where discrimination on a ground referred to in the Act occurs and provide a report of the findings of the review to the Minister.”

An impetus for the Inquiry is the historically high number of complaints against Homeswest by Aboriginal people (the majority from women) on the grounds of race and impairment (EOC Data System, 2004). As these complaints are often resolved informally, the issue of alleged systemic discrimination remains unresolved. In part as a result of this, further complaints on similar grounds have been repeatedly brought to the attention of the Commissioner. In the year ending June 30 2002, the Commissioner received 634 complaints from Aboriginal people. Of these, 237 complaints were lodged against Homeswest, which represented 37% of all complaints received. These complaints covered the grounds of impairment, marital status, sex and race in the areas of...
accommodation and the provision of goods, services and facilities. Furthermore, of these, 210 complaints or 88% of complaints against Homeswest were lodged by women (EOC Data System, 2004). However, in reality a significant number of complaints brought to the EOC by Aboriginal people lapse, indicating that the formal process of conciliation does not necessarily produce an outcome for this group. (EOC, 2001).

Thus, the consistently high number of complaints received, the concerns regarding the integrity of the process for Aboriginal complainants, and the results of previous enquiries into public housing and Aboriginal people led to the commencement of an Inquiry into the provision of public housing by Homeswest for Aboriginal people in September 2002, in accordance with section 80 and 82 of the EOA. The results gathered through the Inquiry have informed and are contained within this report.

The Terms of Reference and Reference Group

The EOC is mindful of the sensitivities that exist in relation to the provision of public housing to Aboriginal people, and sought to ensure that stakeholders were confident about the integrity of the process. To achieve this, the Terms of Reference resulted from wide consultation. A Reference Group was formed to oversee the process of the Inquiry.

In September 2002, the preliminary Terms of Reference were released and the main issues identified to be addressed were:

- Whether any of the Western Australian Department of Housing and Work’s policies or programs, practices, guidelines and/or directions, training, decisions and/or decision-making processes might be directly or indirectly discriminatory treatment of Indigenous persons in Western Australia in the provision of accommodation and/or services, because of their race or characteristics of their race or because of any other ground of unlawful discrimination under the Equal Opportunity Act 1984 (EOC, 2002: 2)

The preliminary Terms of Reference were distributed amongst relevant bodies and submissions were requested as to the final Terms of Reference. The relevant bodies included government departments, Aboriginal community organisations, community organisations and individuals, and other identified interested parties. The information was also posted on the EOC website (www.eoc.wa.gov.au). In total, 18 written submissions about the preliminary Terms of Reference were received. The data from the submissions was analysed to identify the main issues raised and form the final Terms of Reference, which were released on December 10 2002. The final Terms of Reference (see appendix A) identified four key elements of this Inquiry:

1. To investigate, research and make inquiries relating to Department of Housing and Work’s policies or programs, practices, guidelines, directions, training, decisions and/or decision-making, review and appeal processes that may directly or indirectly discriminate against Aboriginal persons in Western Australia in the provision of accommodation and/or services, because of their race or characteristics of their race or the race of any associate or relative or because of any other ground of unlawful discrimination or harassment of the kinds rendered unlawful under the Equal Opportunity Act 1984.

2. To consult with government, business, industry and community groups in order to ascertain the means of improving any services and conditions of Aboriginal persons who may be subject to discrimination on any ground rendered unlawful under the Act.

3. The investigation will take into account such matters as may appear to become relevant during the investigation. The investigation will include but will not be limited to:
   (a) statutory responsibilities of DHW to provide accessible, affordable and appropriate accommodation and services to Aboriginal persons having regard to its function, powers and duties;
   (b) funding and resources reasonably available to DHW;
(c) responsibilities and relationships of DHW with other Western Australian, Commonwealth and Local government agencies, Ministers, and non-government agencies, that may affect the scope of the Department’s responsibilities and performance of its functions;

(d) evidence and findings of other relevant reviews and inquiries including Putting the Picture Together: Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities, 2002 (the ‘Gordon Report’) and the State Homelessness report, Addressing Homelessness in Western Australia, 2001;

(e) special programs for the accommodation of, and services to, Aboriginal, persons in Western Australia;

(f) Aboriginal person’s access to housing in the private rental market and community housing;

(g) trends, significant or recurring issues and matters documented in complaints and inquiries to the Commission since 1989;

(h) adequacy of the provision of advice, advocacy and support services to Aboriginal persons with respect to public housing and related services; and

(i) the role of advocates seeking to review or appeal against or complain about the provision of public housing to Aboriginal persons.

In the event of receiving substantial evidence that may indicate indirect discrimination, the Commissioner will enquire into the reasonableness of the relevant requirement or condition.

4. To publish a report on the investigation, including making recommendations for the development of any programs and policies, including structural, functional or procedural changes that might be made by DHW, to promote the achievement of the Objects of the Act and the functions of the Commissioner (EOC, 2002: 3).

The Commissioner appointed a Reference Group to guide and assist the Inquiry. The relationship between the EOC and the Reference Group was formalised through collaboration with stakeholders, and was mandated under the following headings:

- Recognition and acceptance of a Reference Group, comprising of a majority of Aboriginal people from most regions in Western Australia, to guide the investigation.

- The need for independent informed review from diverse Aboriginal perspectives before continued implementation drawing on expertise, knowledge and skill of members.

- Assess issues emerging including submissions received as it relates to the scope of the investigation.

- Analyse and prioritise emerging issues from an Aboriginal perspective and how other organisations might respond to the issues raised.

The members of the Reference Group met eight times and comprised:

- Pat Dudgeon - Chair
- Ted Wilkes - Deputy Chair
- Yvonne Henderson - EOC Commissioner
- Darren Farmer - ATSIC Representative
- George Hayden - ATSIC Representative
- Barry Taylor - ATSIC Representative
- Wright - ATSIC Representative
- Hannah McGlade
- John Ballard
- Deborah Hunn - Secretary

A section 80 EOC Inquiry Committee was also established and was chaired by the Commissioner and comprised of EOC officers. The section 80 Inquiry Committee co-ordinated the activities of the Inquiry in accordance with the Terms of Reference, conducted the Inquiry with assistance from the Reference Group, completed research and compiled the results of the Inquiry in this written report.
The Conduct of the Inquiry

As mentioned the Terms of Reference required the EOC Commissioner to:

...investigate, research and make enquiries relating to DHW Policies, programs, practices, guidelines, directions, training, decisions and or decision making, review and appeal process that may directly or indirectly discriminate against Aboriginal persons in Western Australia in the provision of accommodation and/or services, because of their race’ or any other ground of unlawful discrimination or harassment as defined under the Equal Opportunity Act 1984 (EOC, 2002: 2).

The Inquiry sought to achieve this end through the gathering of submissions from Aboriginal people who were either; prospective, current or past Homeswest tenants. Submissions were also taken from individuals and organisations involved in the provision of public housing to Aboriginal people and members of the general community.

To ensure that the Inquiry maximised consultation opportunities for Aboriginal people and others who wished to make a submission, EOC officers worked with Aboriginal organisations and networks throughout metropolitan and regional Western Australia. With assistance EOC officers conducted consultations in various towns in the Great Southern, Southwest, Goldfields, Midwest, Pilbara and the Kimberly and in suburbs in the Perth metropolitan area.

Throughout the inquiry there was awareness that it was important to take into consideration gathering of submissions in a culturally appropriate manner.

In order to achieve this, those who wished to make submissions about their experiences of public housing in Western Australia were offered options for recording their submission which included:

- written submission
- verbatim note taking
- tape recording
- video taping

These options were explained to people prior to the taking of the submissions and consent regarding the level of confidentiality of the submission was sought.

The Inquiry received a total of 50 written submissions from individuals and groups and 18 written submissions from organisations. A total of 526 individuals and groups made oral submissions. Each submission was read, transcribed if required, or viewed by EOC officers who then incorporated the main themes of those submissions into the written report. The analysis of the submissions can be located in section five of this report.

In recognising the importance of relaying the findings to those who made submissions to the Inquiry and in considering the accessibility of the findings, a video tape has also been constructed, which is intended to be viewed in conjunction with the written report. The recommendations that result from the analysis are detailed in the following chapter.
chapter two:
Recommendations

Creation of an Implementation and Monitoring Group
Legislative Reform
Policy Review
Promoting Awareness, Understanding and Accessibility
Eligibility
Waiting List
Allocation
Accommodation Offer
Emergency Housing
Priority Assistance
Rent to Income Transfer
Tenancy Management
Maintenance Tenant
Liability Appeals
Mechanism Anti-Social Behaviour
Family & Domestic Violence
Promoting a culture of awareness and understanding
Aboriginal Staff Other
Issues Administrative
Practices Housing Stock
New Living
Staff Training
The following recommendations address the main issues raised in the submissions made to the Inquiry.

**Creation of an Implementation and Monitoring Group**

1. An Implementation and Monitoring Group is to be established and adequately funded, under the auspices of the Equal Opportunity Commission. This group to include representatives from Aboriginal groups, community advocacy groups concerned with housing, welfare and advocacy, the Equal Opportunity Commission (EOC), the Department of Housing and Works (DHW), Department of Indigenous Affairs (DIA) and other relevant government departments. An executive officer/s to be appointed to service this group.

2. The Implementation and Monitoring Group is to determine a programme for the implementation, monitoring and review of the recommendations and to report on this as the first priority or within 6 months of the release of this report.

**Legislative Reform**

3. The *Equal Opportunity Act 1984* should be amended so that the test for indirect discrimination, on all grounds, is in terms identical or similar to that in the Commonwealth *Sex Discrimination Act 1995* and the *Age Discrimination Act 2004*.

4. That the Statutory Review of the Residential Tenancies Act currently being undertaken by the Department of Consumer and Employment Protection take into consideration the findings of the Equal Opportunity Commission’s Inquiry in making recommendations for amendment for the Residential Tenancies Act.

**Policy Review**

5. All Homeswest policies are to be reviewed to ensure that they do not directly or indirectly disadvantage Aboriginal tenants or prospective tenants in their content or their practice.

6. All Homeswest policies to be made transparent and accessible so that decisions that may adversely affect prospective or existing tenants are able to be challenged with the full knowledge of the processes that were applied by the decision maker. The principles of natural justice be applied at all levels of decision making to prospective or existing tenants.

**Promoting, Accessibility, Awareness and Understanding**

7. An independent person/s or organisation with expertise in the use of plain English to be contracted by the DHW in consultation with the Implementation Group to review all policies, documents, brochures (written materials) developed by Homeswest to ensure their ready comprehension by Aboriginal people.

8. Homeswest to produce clear simple brochures/fact sheets setting out their policies. Priority in the production of these brochures to be given to issues highlighted in this report, for example:

   - access to priority assistance
   - requirements for emergency housing
   - access to transfers
   - maintenance
   - eviction policies
   - tenant liability
   - appeals mechanisms
   - urgent assistance to victims of domestic violence

9. These brochures/fact sheets are to be widely distributed and all clients to be given relevant brochures when attending a DHW office for assistance.

10. Each fact sheet or brochure to be clearly titled, numbered and regularly updated.

11. Language, distribution and cultural considerations are to vary according to the region.
12. Policy information to be available in various formats to enable accessibility. For example by means of:
   - CD/Video
   - Information booths within offices where clients can watch a monitor using a touch screen to display short videos outlining Homeswest policy. These videos to be kept up to date.
13. Regional offices are to be provided regularly with updated policies. Regular training is to be provided to all Homeswest staff on policies and policy changes. Adherence to Homeswest policy across Western Australia by all officers is to be regularly monitored for consistency.

Interpreters

14. The Inquiry notes that there are no recognised government interpreters in Aboriginal languages. Regional Offices of Homeswest to provide interpreters where needed, for example, where English is not the first language of the client.

Privacy

15. Opportunities to be provided by Homeswest so that Aboriginal clients can be interviewed in private about their housing needs, rather than at a public counter.

Website

16. Homeswest to engage external consultants to evaluate their website for ease of accessibility by their clients, particularly having regard for literacy and cultural issues that affect Aboriginal people. Homeswest website is to meet minimum government guidelines for accessibility, in any event.

Letters and Notices

17. All standard letters are to be re-written in plain English and to give contact persons by name and telephone numbers.
18. Notices to be redrafted in plain English and, where forms are prescribed under any Act (for example, the RTA), to provide clear information describing the:
   - content and effect of the notice;
   - what the consequences are of doing or failing to do certain acts and;
   - the right of the tenant to challenge any notice if this is applicable to be provided. Such notices to provide regularly reviewed and updated lists of community advocacy and/or tenancy advocacy services, including any Aboriginal support services, from which clients can seek assistance in understanding their rights about such notices.
19. All letters advising of a decision by a Homeswest officer to refer to the appropriate policy and the method by which the tenant can seek a review of that decision together with appropriate fact sheets in relation to the relevant policy and mechanisms for appeal. Full details of the form in which an appeal should be submitted, matters required to be addressed and information about how the appeal will be processed to be provided to the tenant.
20. Where no response is received by Homeswest to a letter that has a potentially serious outcome, for example, removal of a client from a waiting list, Homeswest is to utilise a trained officer, preferably Aboriginal, to make face-to-face contact with the tenant or potential tenant before any action is taken. Homeswest to develop and provide specialised training for persons to act in this role.

Eligibility

21. Eligibility criteria to be reviewed so that these criteria reflect the reason for the existence of a public housing authority in Western Australia, that is, to provide housing to those most in need.
22. Homeswest to amend its policy on “Eligibility Relating to an Applicant with a Poor Tenancy History with Homeswest - such as Debt, Anti-Social Behaviour, Poor Property Standards.”
23. Homeswest to ensure that requirements for personal identification for people under 18
years of age reflect the reality that many young people do not hold a Driver’s Licence or a passport and that these requirements be amended accordingly.

Waiting List
24. Homeswest is to review its redevelopment program to ensure that the stock of public housing is increased in order to reduce the waiting list. The building program is to be tailored to reflect the needs of those on the waiting list. Homeswest to collect data and utilise this data about the housing needs of those on the waiting list.

Allocation of Public Housing
25. The ‘sensitive allocations policy’ is to be abolished.
26. In allocating housing to persons on the waiting list, the basic principle to be adhered to is that the next client on the list is to be offered the next available suitable property.
27. The only factor to be taken into account in allocating houses to Aboriginal tenants is to be need.
28. Reference to any other irrelevant matters to be discontinued and ultimately be deleted from the file. For example, past recovered debts; previous tenant liability matters that have been resolved; anti-social behaviour complaints unless these allegations have been properly investigated in accordance with the principles of natural justice and found to be substantiated; racial background of neighbours and their preferences regarding the racial makeup of the tenants in nearby properties.

Accommodation Offer
29. Review policy where applicants are removed from waiting lists for declining an offer of accommodation.
30. Factors to be considered as valid reason for declining an offer of a property to include:
- the condition of the property including lack of security, particularly for victims of domestic violence and older tenants or tenants with children; lack of heating, which could exacerbate a medical condition; incomplete maintenance with no evidence of when maintenance will be completed; inability to access the property or an essential part of the property due to disability.
- proximity to facilities for medical treatment; cultural obligations where applicable, for example, son-in-law not permitted to reside with mother-in-law, previous deaths in the house, pest infestation etc.
- property inappropriately located as a result of family circumstances such as housing Aboriginal families who are conflict required to live next door to each other.
31. Applicants to be given information, in writing, about the reasons accepted as valid for declining a property before they are required to provide a reason for declining the property.
32. Homeswest policy as to what constitutes a valid reason for declining an offer to be published in plain English and made freely available in pamphlet form.
33. Applicants are to be encouraged to bring a support person or advocate when they inspect a property and before making a decision as to whether to accept or decline a property.
34. Where the reason for decline of the offer relates to the condition of the property, the matter to be referred to the building inspection unit for an inspection to be carried out and a report prepared.
35. Applicants are to be given three working days following the inspection of a property in which to decide whether to accept or decline an offer of housing.
36. Persons on the waiting list to be entitled to decline two properties and be offered a third property before being removed from the list.
37. Where a tenant is to be removed from the waiting list for declining a valid offer this decision is to be reviewed by a more senior officer and the tenant is to be advised of their right of appeal against this decision. DHW officers to be required to provide the tenant with the details of relevant policies and their right of appeal and to note this on their file.

Emergency Housing
38. More stock is to be allocated for emergency housing in line with the findings of the Gordon Inquiry (Gordon, Hallahan and Henry, 2002).
39. Stock allocated for emergency housing not to come from current housing stock, hence increasing the waiting lists. It is recommended that new funding be earmarked to build emergency housing with the capacity to accommodate large families.

Priority Assistance
40. Where people have been assessed as in need of priority assistance that housing assistance to be provided within three months.

Viable Housing Option
41. Noting that the DHW’s current practice of DHW accepting residence with family or friends as a viable housing option has led to:
- overcrowding.
- increased tenant liability arising from wear and tear in proportion to the number of residents in the household.
- an increased likelihood of complaints of anti social behaviour from neighbours.
- loss of privacy for tenants.
- interruption of schooling for children and ultimately a greater likelihood of eviction.
- increased risk to the health and safety of children.

The Inquiry recommends that:

The condition of residing with friends or relatives, which was accepted by the Homelessness Taskforce as constituting secondary homelessness, be accepted by the DHW as satisfying the criteria for priority listing and it not to be identified as a viable housing option.

42. Where tenants applying for priority listing produce evidence of urgent housing need, for example, a child at risk of sexual abuse, domestic violence etc, then the tenants are not to be required to explore alternative housing options such as renting in the private market.

43. Where urgent need is established, as above, prior debts and history to the DHW are not to be taken into consideration in determining the listing for, or the allocation of emergency and priority housing.

44. Where the housing policy of a woman’s refuge, for example, precludes male children of a family from residing with the mother, the DHW is to take particular account of this in order to keep the family together, such as seeking to house the family urgently to prevent family break-up.

45. Assumptions that all Aboriginal people prefer to live with extended family be explored, and advice sought from appropriate Aboriginal research centres in tertiary institutions and elsewhere to incorporate the outcomes of such research into staff training.

46. The DHW to take into account that many Aboriginal people on the DHW housing waiting lists need to seek temporary accommodation with family and friends resulting in frequent changes of address, and that this often affects their ability to receive and respond to correspondence from the DHW. The DHW to recognise this need to frequently move house reflects the temporary nature of the accommodation, which should not be considered as a ‘viable housing’ option.
47. Homeswest establish a process for maintaining contact with transient applicants.

Overcrowding

48. Aboriginal people have reported that living in overcrowded extended family situations often increases the risk of sexual abuse of children. The DHW is to take this into account in urgently housing those in need.

49. It is recommended that Homeswest incorporate into policy a statement to the effect that in all decision making, the interests of children will be paramount in accordance with the Convention on the Rights of the Child (CROC).

50. The DHW to acknowledge that enforced living in overcrowded situations can lead to breaches of cultural norms such as ‘avoidance relationships’ that exist in some Aboriginal groups between certain persons as part of intricate cultural marriage regulations.

51. The Inquiry notes that Aboriginal families have become de facto emergency housing providers for family and friends as a result of the lack of adequate housing stock and that this may result in increased tenant liability, alleged anti social behaviour and a lack of privacy for Aboriginal tenants.

Private Rental Market

52. The Inquiry noted that many submissions referred to the existence of racist attitudes in the private rental market and the effect this has on the capacity of Aboriginal prospective tenants to gain housing. The Inquiry recommends that DHW conduct training sessions to raise awareness of this.

53. In view of the frequency with which Aboriginal people report race based discrimination in accessing the private housing rental market, the DHW to cease the practice of requiring that Aboriginal prospective tenants make multiple attempts to access the private rental market before the DHW will list these tenants for priority housing.

54. That all DHW officers, including regional officers, be made aware of and required to follow the new policy of not including a requirement to provide evidence of trying to obtain private rental housing before being considered for priority assistance.

Rent to Income

55. In establishing the ‘market rent’ of a house, consideration be taken of:
- the age of house.
- the condition of house at the time of entering into the lease.
- the location of house in relation to services, amenities etc.
- any maintenance requested but not performed on the house, in order that the ‘market value’ more closely reflects an accurate assessment of what the house could be rented for in the private market.

56. That Homeswest cease the practice of deeming occupants of a DHW house to be in receipt of Centrelink benefits in order to increase the rent chargeable to the tenant.

57. Where additional adult residents are living in a DHW tenancy and these residents are applicants for DHW assistance, income of these temporary residents not to be taken into account in determining the rent payable by the tenant.

58. Before any rental subsidy is removed from a tenant as a result of a non-lodgement of a form a face-to-face meeting is to occur between the tenant and the DHW.

59. That Homeswest cease the practice of automatically cancelling and backdating a rent increase if a subsidy form is not returned on time.

60. Recipients of the Commonwealth Development Employment Program (CDEP) or other assisted employment scheme benefits not to be disadvantaged by comparison to Centrelink benefit recipients in the calculation of their income for rental purposes.
61. The choice of the means of paying rent by a tenant should not be interpreted as indicating a negative attitude on the part of a tenant who declines to utilise direct debit.

62. The form by which tenants can choose to have rent regularly deducted from their Centrelink payments at source to be amended to prevent the deduction of amounts without the agreement of the tenant for items other than rent. These amounts are to be separately billed to the tenant with a clear explanation of each item.

Transfer Policy

63. All requests for transfers to be recorded with the date on which the request is made whether made orally or in writing, by telephone or face to face with a DHW officer.

64. Where the request for a transfer is based on a serious and significant reason, for example, domestic violence, normal requirements in relation to outstanding debts are to be negotiated in favour of the tenant.

65. Where a tenant has requested a transfer and anti social behaviour has been alleged the alleged breach must be investigated and substantiated prior to declining an application for a transfer.

66. Where tenant liability relates to maintenance, which has resulted from lack of prompt response to a request for maintenance, this is not to be used as a reason to decline an application for transfer. It is recommended that the method of investigation be reviewed and changes made to ensure that the principles of natural justice are adhered to.

67. The DHW to ensure that where an Aboriginal family has applied for a transfer as a result of racial harassment by a neighbour, normal requirements of clearance of outstanding debts etc to be waived in order to protect the family from ongoing harassment.

Tenancy Management

Property Inspections

68. Training to be provided to DHW staff who conduct inspections to ensure that they are sensitive to the possibility of the inspection process creating feelings of humiliation, degradation, worthlessness etc, and that officers be instructed as to appropriate standards of non-judgemental behaviour that are to be adopted. This training is to be to of an accredited standard and evaluated on a regular basis.

69. No inspections to be conducted without reasonable notice to the tenant. Such notice is not to be the leaving of a card or letter without confirmation of its receipt. Routine inspections are not to be conducted at more frequent intervals than every six months.

70. That Homeswest officers be sensitive to the power imbalance between themselves and their tenants when seeking to inspect with the agreement of the tenant at the time or immediately before, the time of entry as provided for by RTA 1987, S46(1)(h).

71. Property condition report forms to be revised. Full details of any defects to be noted and photographed and copies provided to the tenant. Any hand written material to be legible and if the tenant is unable to read it, it will be typed and provided to the tenant. All inspections to be conducted jointly, at a time convenient to the prospective tenant and the DHW, and the prospective tenant is to be encouraged to bring a support person or advocate with him or her.

72. The DHW to review what is considered necessary to meet ‘property standards’ to ensure that account is taken of:

- the age of the property.
- the condition of the property when it was first let to the tenant.
- any maintenance that has been performed during tenancy.
- any maintenance requested by the tenant.
which has not been performed.
- whether maintenance performed was inspected.
- whether the tenant made any complaint about the standard of maintenance performed.
- the number of adults and children living in the property.
- any disabilities or medical conditions of any of the tenants or their dependants.

73. Any maintenance required that is identified at inspection to be carried out within 14 days.
74. The DHW to establish a property inspection unit to be staffed by persons who are qualified to inspect and report on technical issues relating to maintenance carried out. A person from this unit to inspect each property on all vacated tenancies at the point of vacancy and prior to a new tenancy being entered into, and to carry out property inspections from time to time.

Debt
75. All Aboriginal tenants with debts are to be made aware of the existence of the Debt Discount System and how it operates.
76. Tenants who had not been previously notified be given the benefit of backdating of the discount.
77. Any debts that are statute barred are not to be revived by the DHW. Such old debts should not form any part of the consideration of an application for assistance from a tenant or prospective tenant and details of such old debts to be removed from the current or prospective tenants file.

Maintenance
78. The DHW is to provide sufficient funds for the proper, regular and adequate maintenance of its properties. Routine maintenance on all properties are to be scheduled.
79. All applications for maintenance, whether by telephone, in person or in writing, are to be documented on the tenant file with details of maintenance requested.
80. Where Homeswest fails to respond to a request for maintenance in accordance with its policies, a record of this is to be kept in a register that will be available for inspection.
81. That Homeswest comply with S42(1) of the RTA 1987 in relation to “Owners responsibility for cleanliness and repairs”.
82. If maintenance required is requested and is not carried out then tenants are not to be charged tenant liability in relation to this matter.
83. Homeswest to institute a system that provides for impromptu inspections of maintenance carried out to ensure adequate standards of work by contractors. Maintenance contractors who fail to meet these standards to be removed from the list of contractors utilised by the DHW. Contractors to be required, as far as possible, to match floor tiles, paintwork on cupboards, wall tiles etc to existing materials. Where general maintenance is required, which non-licensed persons are able to do, the DHW will endeavour to concurrently complete as many outstanding items as possible, such as, by utilising multi-skilled maintenance contractors.
84. Where a tenant or their representative complains either verbally or in writing of the standard of workmanship of repairs that have been performed, a person from the technical inspection unit is to conduct an inspection of the work carried out. Tenants are to be made aware of their rights in relation to this when they enter into a lease.
85. Maintenance is to be conducted according to need and is the landlords responsibility under the RTA. It is not to be delayed as a result of other factors relating to the tenancy.
86. No house is to be leased that does not meet minimum local government standards in relation to health; state of repair and environmental hazards.
87. The DHW to be encouraged to examine forming partnerships with Aboriginal
organisations, including CDEP, to provide maintenance services to the DHW properties.

**Tenant Liability**

88. The DHW to review its procedures for assessing tenant liability taking into account the condition of the property at time of entry, and fair wear and tear based on the number of occupants.

89. Tenant liability claims made by the DHW to the tenant to be written in plain English with clear explanation for any codes used and a clear indication of any allowance made for:
   - age of item/s
   - fair wear and tear and depreciation of item/s.

90. The DHW to develop a formula for fair wear and tear which takes into account the number of occupants of a house whether paying rent to the DHW or not, number of children, age and expected life of household items.

91. The DHW is not to be able to charge rent for persons living in a tenancy that is not their own and who would otherwise be homeless if this is a result of:
   - persons awaiting allocation of housing by the DHW.
   - they have an outstanding debt to the DHW that they are in the process of paying off but which precludes them from being housed until they are eligible.

92. DHW is to ensure that:
   - full and detailed notes and/or photographs are taken of a leased property at the commencement of occupation and a copy of these to be given to the tenant.
   - a full and complete record of all maintenance performed on the property to be kept and provided to the tenant on request.
   - a final inspection, full notes and/photographs to be taken at the time of departure from a property with a copy to be given to the tenant.

93. No tenant to be charged tenant liability except where damage is caused by misuse, neglect or is wilful as provided for by the RTA 1987.

94. A central data base in relation to tenant liability to be established to include age of property, number of previous property tenancies, maintenance performed on the property, age of items being charged for etc.

95. Tenant liability decisions are to be subject to the third level of the appeal process.

96. That Homeswest comply with its insurance policy in relation to accidental damage (for example, a football through the window). Tenants to be made aware of Homeswest insurance policy.

97. Regular statements/accounts to be sent to all tenants showing amounts paid with a clear indication of the content of charges to the tenant and what monies paid by the tenant have been used for. The use of symbols and combinations of letters as a legend on tenant liability accounts to be discontinued.

**Homeswest Appeals Mechanism (HAM)**

98. That consideration be given to developing a review capability within the State Administrative Appeals Tribunal to hear appeals against Homeswest decisions.

99. In the interim, that the Homeswest Appeals Mechanism be reviewed with a view to establishing a system characterised by its:
   - independence from DHW.
   - informality without prejudice to the principles of natural justice.
   - expeditious resolution of matters.
   - the ready access of tenants to all materials in plain English that are required to appeal a decision, for example, all relevant Homeswest policies, procedures, practice manuals, administrative instructions, all documents from their own file together with readily understandable explanations for decisions made.
   - the HAM to be extended to include all decisions made by Homeswest officers, and
the clients right to review an appeal be made explicit with all decisions.
- tenants are to be provided with reasons for decisions made on appeal. These reasons to be electronically recorded for later transcription if required.

100. Ensure that all members of the appeals committees are adequately trained in relevant issues such as the RTA 1987, the Equal Opportunity Act 1984 and are able to demonstrate an understanding of cultural diversity and anti-racism strategies.

101. Access to the Appeals System to be made available to all DHW tenants regardless of any complaints that may have been lodged elsewhere, for example, at the EOC.

**Anti Social Behaviour**

102. That the DHW definition of “anti social behaviour” be amended so that it does not include trivial matters, for example, numbers of visitors at a property where this does not unduly impact upon the neighbour and would not normally be investigated by a landlord in the private sector. It is noted that some issues that have been described as anti social should not fall within this definition, for example, the tidiness or cleanliness of a tenants own house where this is not a public health issue.

103. That DHW consider transfer before eviction.

104. The DHW is to be cognisant of the rights of the tenant to the quiet enjoyment of their property free from constant enquiries from the DHW in relation to trivial complaints.

105. The DHW to discourage and not record trivial complaints from neighbours regarding issues such as children running across verges and cutting corners, balls thrown over fences, loud music, etc. The DHW to refer these complaints to appropriate bodies, for example, excessive noise to the local authority; disputes in relation to children’s behaviour to appropriate local mediation services etc.

106. The DHW not to offer advice that could be construed as encouragement to a neighbour wishing to complain about a tenants behaviour, for example, as to whether that person should go to the Police, should gather a petition against the tenant, approach a local Member of Parliament etc.

107. Where a complaint is of a sufficiently serious nature as to require investigation, the DHW is to conduct a complete investigation, including seeking the response of the tenant to the allegations.

108. The DHW to remove from a tenant’s file any reference to anti social behaviour claims that were not found to be substantiated after investigation by the appropriate authority, or in any event after three years.

109. The DHW is to engage independent mediators to assist in disputes between neighbours.

110. That a specialised independent mediation service with trained mediators be established to deal with socially based disputes between neighbours to prevent the escalation of these matters. The availability of this service is to be widely publicised amongst DHW tenants.

111. The DHW to ensure that all officers receive training to sensitise them to cultural difficulties, for example, preferred socialising etc, which could result in a better understanding of situations that are culturally influenced that could give rise to complaints from neighbours, and that Homeswest use this knowledge to respond to complaints.

**Family and Domestic Violence**

112. Living in a refuge to escape domestic violence should be accepted as a prima facie reason for placement in priority housing regardless of prior debts or other previous tenancy listing matters. The safety and security of women and children in this situation is paramount.

113. The Department of Community Development (DCD) to consider the provision of support services, including measures to assist perpetrators of domestic violence to find alternative housing, and other support to enable victims of domestic violence and their
families to remain where possible in the family home.

114. Review the requirement of the tenant to furnish proof of domestic violence such as police reports as a precondition to assistance. The welfare of the victim of violence, including any children involved, should be the paramount consideration in these cases.

Administrative Practices

115. A comprehensive review of Homeswest’s administrative practices to be undertaken, including a review of decision making, record management and property management processes, by an appropriate authority, particularly in terms of transparency and accountability.

Discretionary Decision Making

116. Policies to be applied consistently, save that discretion to depart from the policy to be exercised only in favour of the tenant or prospective tenant.

117. Where senior DHW officers are required to exercise their discretion, as a result of a priority housing applications falling outside existing guidelines, then this discretion is to be exercised in favour of the tenant in order to meet the tenant’s urgent housing need.

118. That guidelines for discretionary decision-making be established to ensure all relevant information is given due consideration (for example, number and age of children/elderly in the household, health issues, viable housing alternatives etc).

119. A register to be kept of all decisions where a discretionary decision was made and the reasons for this decision.

Data Collection

120. Homeswest is to maintain and update a database of comparative data with respect to Aboriginal and non-Aboriginal tenants, and applicants for housing. The data must be in a form that allows a comparison between Aboriginal and non-Aboriginal people with respect to the application of and their compliance with each of the Homeswest policies and procedures.

Comments of the Equal Opportunity Tribunal (EOT) about the lack of data to enable it to adequately determine allegations of indirect discrimination are relevant to this recommendation. The absence of the necessary statistical information makes it extremely difficult to determine whether Homeswest in fact discriminates against Aboriginal people or whether the perception held by the Aboriginal community is a ‘myth.’ The improvement of data collection practices will also enable information to be used by the various agencies in their needs based planning.

Other issues

121. The DHW is to review its charter and objectives to ensure that the primary goal is to house those in need and that the development and redevelopment of land and housing to be secondary to this.

122. The Board of the DHW should include Aboriginal members.

Promoting a Culture of Awareness and Understanding

123. Priority should be given to the improvement of the relationship between Aboriginal people and Homeswest staff. Homeswest staff to be trained to be better able to relate to Aboriginal people and to develop a more comprehensive understanding of social influences on Aboriginal people. Present training and development may be inadequate.

124. The DHW to develop appropriate policies that require that all staff dealing with Aboriginal people to:
- treat Aboriginal clients with respect and dignity.
- be sensitive to Aboriginal cultural issues including kinship obligations.
- provide a mechanism for independent review of complaints by Aboriginal people
in relation to their treatment by DHW officers.
- take all the cultural circumstances of a situation into account and to handle them in a culturally appropriate way.

125. Homeswest is to conduct consultations with relevant Aboriginal people, groups and organisations, and include them in reviewing and developing policies, practices and strategies to resolve these issues. The DHW is to consult with the Department of Indigenous Affairs (DIA) as to the method of carrying out these consultations.

126. The use amongst staff of the term ‘Fund 6’ to refer to Aboriginal people be immediately discontinued. That a management directive in this regard be issued.

Role of Accommodation Manager

127. The role of Accommodation Manager to be reviewed to ensure that equal emphasis is given to fulfilling the landlord’s responsibilities, for example, maintenance of the property as is given to enforcing the tenants responsibilities, such as to pay rent.

128. Performance of Accommodation Managers not to be measured by the levels of outstanding debt, levels of complaint of anti social behaviour regarding tenants from neighbours or other matters outside the direct control of the Accommodation Manager.

129. A career path to be developed for Accommodation Managers, which is to include the completion of appropriate training to carry out their tasks in accordance with the policies outlined above. The Accommodation Manager role is to be documented as a wider role than rent collection, and is to specifically include providing support to Aboriginal tenants to prevent the issuing of breach notices.

130. It is recommended that the number of properties managed by each accommodation manager be reduced to provide more time to service clients in accordance with their obligations and their tenants needs and circumstances. This expanded role is considered necessary despite the existence of other programs such as the Supported Housing Assistance Program (SHAP) program.

131. The Job Description Form (JDF) for the Accommodation Manager to be changed to reflect this expanded role, including the greater range of skills that will be required. Appropriate training is to be provided for all Accommodation Managers.

132. Current high turnover rates of accommodation managers are detrimental to the maintenance of a good relationship between Homeswest and its tenants. Homeswest is to develop policies to address this issue to ensure a lower level of turnover.

133. It is recommended that Regional Manager positions, in towns with a significant population of Aboriginal people, to be required to meet appropriate standards of local cultural awareness and have a demonstrated ability to work with Aboriginal groups to resolve housing issues prior to appointment to these positions.

Aboriginal Staff

The following recommendations should be implemented in consultation with current Aboriginal Homeswest staff.

134. The DHW to recruit Aboriginal employees with the aim that the proportion of Aboriginal employees will eventually reflect the Aboriginal proportion of DHW clientele. These Aboriginal employees are to be distributed across the whole organisation at all levels. The DHW is to be encouraged to use section 5OD and section 51 of the EOA to recruit.

135. The DHW to establish an Aboriginal Employees Network to enable Aboriginal employees to share experiences and to support each other. Two representatives from the network are to attend and participate in corporate executive meetings.

136. A mentoring scheme is to be developed for Aboriginal Staff, possibly in consultation with the mentoring scheme at the University of Western Australia (UWA) or a similar scheme.
All mentors and mentees are to be volunteers, and mentors to be given training for the role of a mentor.

**Staff Training**

137. Training to be provided to all Homeswest staff to enhance an understanding of direct and systemic racial discrimination to ensure a greater awareness of the existence and consequences of unintentional, but institutionalised, racial discrimination.

138. The DHW staff to be trained by accredited external trainers who are to be required to liaise with local Aboriginal leaders and elders to ensure there is local input to the training and awareness-raising of staff.

139. Training in systemic racial discrimination to be provided to all DHW corporate executive members by an Aboriginal accredited trainer and that the success of this training be independently assessed.

140. Homeswest’s training programs be reviewed and that appropriate mandatory training strategies be implemented as a matter of priority with regard to the RTA, the EOA, cultural awareness, anti-racism, domestic violence and disability issues.

141. The establishment of specialist units in all Homeswest Regional offices, with officers specially trained and authorised to assess and deal with health, domestic violence and cultural issues.

142. JDF’s are to be rewritten to incorporate a requirement for a demonstrated understanding and application of the principles of equality and respect for diversity.

**Housing Stock**

143. That DHW to produce data to show the provision of funding for the construction of housing that is allocated to Aboriginal tenants on an annual basis, and which is not funded as a result of the Commonwealth State Housing Agreement (CSHA).

144. Steps to be taken to ensure that the share of non-Commonwealth funds allocated to the construction and maintenance of housing in Western Australia by the DHW be allocated in accordance with the needs of its tenants and prospective tenants in proportion to the numbers from different racial backgrounds. For example, a minimum of 18% of funds expended each year from non-Commonwealth monies should result in the construction and maintenance of housing for Aboriginal persons from the waiting list.

145. Where houses are funded under the CSHA for Aboriginal people, a program be instituted to distribute these houses throughout the Perth metropolitan area, which will result in the sale or demolition of some older properties and the purchase of some new sites or houses.

146. Homeswest to construct sufficient housing to accommodate young people in need and to liaise with appropriate youth housing services, including any peak bodies, about the appropriate location and style of housing required.

147. Consideration to be given to the development of small clusters of units for young single Aboriginal mothers to enable them to support each other whilst maintaining their independence with some communal facilities, for example, secure play areas for children, in consultation with Aboriginal groups.

**Family Size and Housing**

148. The DHW to develop mechanisms to ensure that housing supply is capable of responding to the needs of Aboriginal people especially in relation to large families, kinship, teenage children, singles and single parent households.

149. The DHW to construct more houses with five or more bedrooms to accommodate the larger average size of Aboriginal families and their cultural obligations in relation to their extended family.

150. The DHW to increase the stock available for emergency short term housing including housing suitable for singles, couples, families with children, extended families, elderly persons and people with disabilities to
ensure that homeless persons are not left unhoused. This stock to be in good condition and well maintained as many persons seeking emergency housing are fleeing domestic violence and require good security.

Housing Design

151. The DHW is to liaise with Aboriginal organisations to determine the most appropriate design for houses for Aboriginal people particularly in remote areas.

New Living

152. The DHW to provide in its annual report detailed figures in relation to the numbers of public housing units that are available in ‘new living’ areas, compared with the numbers that were available prior to redevelopment, and the corresponding overall figures for available public rental properties for the Perth metropolitan area.

153. That the DHW, in addition to their annual new home building program, build new units of housing sufficient to replace all units of public housing ‘lost’ through the New Living Program (NLP) so that public housing stock in Western Australia increases each year in accordance with demand.

154. DHW is to provide data regarding the numbers of Aboriginal and non-Aboriginal persons who have been displaced by the NLP.

155. That the DHW retain sufficient family properties with four or five bedrooms to enable Aboriginal families who have lived in areas designated for redevelopment to remain in the area they had lived.

156. The DHW to be cognisant of its role as a public housing authority to provide housing for those in need preferably close to amenities and public services rather than as a land developer of infill housing.

157. That a Council of appropriate State Government Departments and Authorities be established to ensure that any Government owned vacant properties that become available are allocated for occupation by public housing tenants.

Programs

158. Promotion of wider understanding of programs Aboriginal people can access, how they can access them and the processes required.

159. Whilst recognising the value of the various support programs provided, the DHW to be cognisant that these programs are voluntary and reluctance by a tenant to participate in a particular program should not be taken to indicate lack of commitment by a tenant to their tenancy. Any remarks reflecting this view to be removed from tenant’s files. Participation in these programs not to be made a condition of acceptance by the DHW for entry into a housing list nor to be made a condition for the provision of further assistance to the tenant by the DHW.

160. The DHW to respect the independence of the various community based bodies, which it funds, to provide assistance to tenants and to respect the privacy of tenants utilising these services.

161. Where tenant advocacy services are lacking, the DHW to consider providing some support to appropriate existing community groups, which could act as tenant advocates.

162. The Inquiry notes that the Tenant Advice Service (TAS) states that 60% of persons contacting the homeless helpline in 2001 received no assistance at all. The DHW is to immediately review its practices and report to the Implementation Group on measures to provide immediate assistance to homeless persons.

163. All housing support services be funded independently of Homeswest, that funding to Aboriginal support services particularly be increased, and that an Aboriginal Tenant Advocacy Service be established and adequately resourced.

164. That before Aboriginal clients be encouraged to apply for home ownership that they be fully informed of the additional costs they will be required to meet in order to achieve home ownership.
165. That the DHW be encouraged to work with local authorities to develop appropriate housing for Aboriginal Seniors in consultation with local Aboriginal leaders and elders.
SECTION TWO
Legal Context

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chapter three:
The Human Right to Housing

“Adequate housing is essential for human survival with dignity. Without a right to housing many other basic rights will be compromised, including the right to family life and privacy, the right to freedom of movement, the right to assembly and association, the right to health and the right to development. The right to housing is clearly supported by international laws which form the basis of Australia’s human rights obligations”. Sidoti (1997:23)

The right to housing is contained throughout international law. It is at the very centre of the modern international human rights system introduced and promoted by the United Nations. Article 25 of the Universal Declaration of Human Rights states: “Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including...housing.”

The most important articulation of the right to adequate housing is recognised in Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) to which Australia is a party. This article recognises, “...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... and that State Parties will take appropriate steps to ensure the realisation of this right”.

While the right to adequate housing is recognised in the ICESCR there are many other treaties that enshrine rights relevant to housing, including the Convention On The Rights Of The Child (CROC) and, in the context of non-discrimination, in the Convention Of The Elimination Of All Forms Of Racial Discrimination (CERD) and The Convention On The Elimination Of All Forms Of Discrimination Against Women (CEDAW). Sidoti (1997:23)

The Committee on Economic, Social, and Cultural Rights (CESCR) has established that housing should not be limited to simply meaning shelter but should also include, “the right to live in security, peace and dignity”. Nicholson (2004: 16)

“General Comment No. 4, of the CESCR Committee on the Right to Adequate Housing defines this right as being comprised of a variety of specific concerns. Viewed in their entirety, these entitlements form the core guarantees which, under international law, are legally vested in all persons.

1. Legal security of tenure
   All persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.

2. Availability of services, materials and infrastructure
   All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources including clean drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, food storage facilities, refuse disposal, site drainage and emergency services.

3. Affordable housing
   Personal or household costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Housing subsidies should be available for those unable to obtain affordable housing, and tenants should be protected from unreasonable rent levels or rent increases.

4. Habitable housing
   Adequate housing must be habitable. In other words, it must provide the inhabitants with adequate space and protect them from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease. The
physical safety of occupants must also be guaranteed.

5. Accessible housing

Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other vulnerable groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups.

6. Location

Adequate housing must be in a location that allows access to employment options, health care services, schools, child care centres and other social facilities. Housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants.

7. Culturally adequate housing

The way housing is constructed, the building materials used and the policies underlying these must appropriately enable the expression of cultural identity and diversity. Activities geared towards development or modernisation in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed.

These extensive entitlements reveal some of the complexities associated with the right to adequate housing. They also show the many areas which must be fully considered by States with legal obligations to satisfy the housing rights of their population. Any person, family, household, group or community living in conditions in which these entitlements are not fully satisfied, could reasonably claim that they do not enjoy the right to adequate housing as enshrined in international human rights law.” OUNHC (2004:9)

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1 “In Australia, there is no universally accepted benchmark, for affordability. While most “State housing authorities use a 25% benchmark, the 1991 National Housing Strategy used a 30% benchmark. Affordable housing advocates have argued that for people on low incomes, even 25% is too high a rental cost to leave adequate income remaining to meet other costs of living.” Nicholson, D. (2004). The Human Right to Housing in Australia. Housing is a Human Right Project.
chapter four:
Race Discrimination Law in Australia

Introduction
As a nation, Australia is a party to several international treaties that enshrine universal human rights for all people and provide legal validity to the declaration and enforcement of those rights. The Commonwealth Constitution enables the Commonwealth to sign and ratify treaties, and, as a consequence, bind Australia to them.1 In addition, states and territories within Australia are bound by specific legislation that precludes discrimination on a number of grounds, including race. These include the Racial Discrimination Act 1975 (RDA), the Western Australian Equal Opportunity Act 1984 (EOA) and various equivalent Acts of other States and Territories. Each of these recognises unlawful discrimination as occurring either directly or indirectly. The concepts of direct discrimination and indirect discrimination are integral to the different forms of discrimination experienced.

The Convention
In September 1975, Australia ratified the United Nations International Convention on the Elimination of all Forms of Racial Discrimination (the Convention). Article 1(1) of the Convention defines racial discrimination as:

...any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or in any other field of public life.

Article 5(e) of the Convention obliges state political parties to ensure that all persons, regardless of race, have equal access to and enjoyment of a range of civil rights, including the right to housing.

The Racial Discrimination Act 1975
As part of Australia’s international obligation to enact domestic legislation and in readiness for the ratification of the Convention, the Commonwealth Parliament passed the RDA. Both the Convention and the RDA took effect in October 1975. Section 9(1) of the RDA is almost an identical reproduction of Article 1 of the Convention. Also, section 9(2) of the RDA makes express reference to Article 5 of the Convention, thus importing all international civil rights into domestic law. Aside from the Commonwealth, the RDA binds all Australian states and territories, including their instrumentalities, and extends to all aspects of public life, such as employment and education.

The Equal Opportunity Act 1984
Under Australia’s constitutional system, the states are not direct parties to treaties or conventions ratified by the Commonwealth. In the main, they are free to enact laws giving effect to the subject matter of a convention, unless there is Commonwealth law on the same subject matter, in which case the Commonwealth law is said to ‘cover the field.’2 With respect to discrimination law in Australia, each state and territory has passed legislation making it unlawful for a person to discriminate against another person on one or more grounds, including race, in a number of areas of public life. Generally, these laws are consistent with Commonwealth laws dealing with

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1 The Constitution (section 51: xxix) gives the Commonwealth legislative power with respect to ‘external affairs.’

2 The Commonwealth has amended the RDA so that it does not ‘cover the field’, so states and territories are free to enact their own laws on the same subject matter.
the same subject matter, and have corresponding application in each jurisdiction.³

The EOA was passed by the Western Australian parliament in 1984 and took effect in July 1985. Like the RDA (part II), the EOA (part III) makes discrimination on the ground of race unlawful in a number of areas of public life, including employment, education, the provision of services and housing. In most instances, a person aggrieved by an act of race discrimination has a choice between the RDA and the EOA when making a complaint. The term ‘race’ is defined under section 4 of the EOA as including colour, descent, ethnic or national origin or nationality.

**Direct Discrimination**

All Commonwealth, state, and territory discrimination laws recognise unlawful discrimination in two ways, direct and indirect. Direct discrimination occurs when a person with a particular attribute, such as race or sex, is treated less favourably than another person without that attribute, in the same circumstances.⁴ In reality, the other person is not necessary, as a hypothetical comparison is sufficient to establish unlawful discrimination. In addition, it is not necessary to show that the discrimination was intended, only that the impugned act resulted in less favourable treatment. According to the EOA (section 5), the commission of a discriminatory act remains unlawful even if it is among several other non-discriminatory acts. In a legal context, direct discrimination can be understood at a practical level as it easily fits into the notion of cause and effect, its perpetrators are clearly identifiable and their actions investigated.

**Indirect Discrimination**

Although indirect discrimination can be more difficult to grasp conceptually, it can reveal well camouflaged and considerably far-reaching discriminatory acts, including systemic, policy-based and management-led practices, which are supported by the highest levels of government and business. Such practices appear fair in form and intention, but are discriminatory in impact and outcome.⁵ Whilst overt, intentional direct discrimination acts are usually greeted with understandable condemnation by the general community, indirect discrimination may continue undetected in the workplace, in education and in the provision of housing for years. Also, whilst an act of direct discrimination may affect one person or possibly several, indirect discrimination in the form of an apparently neutral policy or procedure can adversely impact hundreds of people simultaneously. In precise terms, section 36(2) of the EOA defines indirect race discrimination in the following way:

> For the purposes of this Act, a person (in this subsection referred to as ‘the discriminator’) discriminates against another person (in this subsection referred to as the ‘aggrieved person’) on the ground of the race of the aggrieved person if the discriminator requires the aggrieved person to comply with a requirement or condition -

- a) with which a substantially higher proportion of persons not of the same race as the aggrieved person comply or are able to comply;
- b) which is not reasonable having regard to the circumstances of the case; and
- c) with which the aggrieved person does not or is not able to comply.

Due to its complexity, the definition of indirect discrimination, whether on the ground of race or another ground, has been the subject of much judicial comment on appeal in the courts.

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⁴ The Discrimination Act 1991 (ACT) does not require a comparison to be made between the person discriminated against and another person without the relevant attribute.

Defining the ‘requirement or condition’

The words ‘requirement or condition’ should be construed broadly so as to cover any form of qualification or prerequisite. However, the actual requirement or condition should be formulated with some precision, as is appropriate to each case.6

The concept of a requirement or condition is broad enough to embrace any stipulation that must be satisfied if there is to be a practical, not merely a theoretical, chance of compliance.7 For example, a typical requirement often imposed by employers in certain industries is that employees be available to work rotational shift work on a 24-hour roster system. The requirement of ‘availability’ may not actually be specified in the employment contract or in any industrial agreement. Thus, it is a practical requirement that is implied in practice even when the employer gives no express direction. However, workers entrusted with the care of another person at home may find the requirement impossible to comply with.

Determining a ‘substantially higher proportion’

To establish indirect discrimination in law, it is necessary to make a comparison of proportions within a ‘base group.’ The comparison must reveal whether the relevant group is less able to comply with the requirement. In the case of alleged race discrimination, this involves ascertaining the number of persons of the complainant’s race who comply with the requirement, as a proportion of the total number of persons of the same race within the base group.8 The same method is applied to the persons not of the complainant’s race, as a proportion of the base group. In the case of an indirect discrimination complaint, the court should determine for itself as a matter of law the appropriate base groups that will reveal whether the relevant ground is a significant factor.9 The base group should identify the particular group of persons to whom the requirement or condition is directed, or upon whom it is imposed.10

For the purposes of this Inquiry, the base group may be expressed as ‘all Aboriginal applicants/tenants who are subjected to the policy, requirement or condition;’ and the other base group may be expressed as ‘all non-Aboriginal people who are subjected to the policy, requirement or condition.’ The relevant proportions for each base group then become those Aboriginal applicants/tenants who are able to comply with the requirement, compared with the equivalent proportion of compliance for non-Aboriginal applicants/tenants.

The EOA does not provide any explicit guidance as to when one proportion becomes ‘substantially’ higher than another. The ‘substantially higher proportion’ phrase will take some of its meaning from the context, particularly as it refers to substantial in a relative rather than an absolute sense.11 Once the proportions have been determined, the issue of substantially higher becomes a question of fact. Based on the evidence presented, it is for the tribunal of fact to assess the context in which the respective requirements were imposed, and the ordinary meaning of the words in question.12

Distinguishing ‘does not or not able to comply’

With respect to indirect race discrimination, this part has been held to apply to the situation where the aggrieved person is physically able, but does not comply with the requirement or condition in question because it would be inconsistent with some cultural attribute of that person’s race; or

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6 See Australian Iron & Steel Pty Ltd v Banovic & Anor (1989) EOC 92-271, at 77,737, Dawson J
8 See Miller v Minister for Education (2001) EOC 93-115; Kemp, supra, at 78,370
9 See Banovic, supra, at 77,734, Gaudron and Deane JJ; Kemp, supra, at 78,368; Commonwealth Bank of Australia v HREOC & Anor (1998) EOC 92-908, at 78,066, Sackville J; Bogle, supra, at 74,224
10 See Kemp, supra, at 78,370; Finance Sector Union, supra, at 77,236; Commonwealth Bank, supra, at 78,066.
11 See Finance Sector Union, supra, at 77,235; Styles v The Secretary of the Department of Foreign Affairs and Trade & Anor (1988) EOC 92-239, at 77,237, Wilcox J.
the aggrieved person is physically not able to comply with the requirement or condition because of an actual inability that is attributable to that person’s race. Thus, the aggrieved person does not comply with the requirement or condition because it would involve renouncing a distinctive custom and cultural rule, or alternatively because of some inherited and unalterable racial characteristic.

Regarding housing, various cultural or historical realities, for example large family groups, embedded poverty, chronic ill-health, customs or beliefs to do with funerals or the death of a family member, may impede or prevent the efforts of the tenant/occupant to comply with particular requirements imposed by the owner of the property. The definition of indirect discrimination is capable of accommodating these attributes as variables that then question the level of compliance.

**Dimension of ‘not reasonable’**

The legal test of reasonableness is less demanding than a test of necessity, but more demanding than a test of convenience. The test criterion is objective, on the one hand it requires the court to weigh the nature and extent of the discriminatory effect, and on the other hand against the reasons advanced in favour of the requirement or condition. All the circumstances of the case must be taken into account.

When considering whether a complainant has demonstrated a requirement or condition that is not reasonable it is necessary to consider four elements: first, the nature and extent of the discriminatory effect; second, the activity or transaction being performed by the respondent; third, whether the activity or transaction can be performed without imposing the discriminatory requirement; fourth, the effectiveness, efficiency and convenience.

However, a requirement is not automatically discriminatory simply because alternatives that are more favourable to the complainant are not implemented. It is the requirement or condition itself that must be unreasonable. There is no obligation under the law to treat a person more favourably than another person by giving that person special consideration because of his or her race.

**Summary**

Overall, direct discrimination and indirect discrimination remain potent legal concepts in the effort to identify and eliminate unlawful discrimination in Western Australia and elsewhere. However, it is not hard to see that there are many hurdles for a person who believes that he/she has been unlawfully directly or indirectly discriminated against. It is difficult enough for an experienced advocate or official, let alone the victim of discrimination, to negotiate the legal tests set down in the statutes. Although, it is not the theoretical test that presents the greatest difficulty, but the much larger problem of ‘proof.’ As discussed in the following chapter, proving race discrimination to the requisite standard required by law remains the single biggest obstacle to obtaining relief under equal opportunity legislation. In this sense, a good intention in principle has been significantly compromised by the realities of the adversarial system.

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12 See Finance Sector Union, supra, at 77,239.


15 See Bogle, supra, at 74,226; Commonwealth Bank, supra, at 78,071-072

16 See State of Victoria v Schou [2004] VSCA 71. This discusses the issue regarding family responsibility discrimination in employment.
Introduction

Between 1996 and 2004, the Western Australian Equal Opportunity Commission (EOC) received over 400 complaints from Aboriginal tenants and applicants for housing against the Department of Housing and Works (DHW), trading in the name of Homeswest. These complaints alleged that Homeswest had directly or indirectly discriminated against them on the basis of race. Out of these 400 plus complaints, only 4 have gone before the Equal Opportunity Tribunal (EOT) for judicial determination. The first case was Martin v State Housing Commission, the second was Walley v State Housing Commission the third was Penny v State Housing Commission and most recently Jones v Department of Housing and Works. This chapter discusses these four cases and contributes two resulting recommendations. The first recommendation is that Homeswest generate and maintain data in a form that makes the investigation of indirect discrimination complaints more effective. The second recommendation is that the Equal Opportunity Act 1984 (EOA) be amended so that the onus of proof in such complaints is reversed.

The Martin Case

Mrs Martin, an Aboriginal woman, had complained to the Commissioner for the EOC that Homeswest had discriminated against her on the ground of her race in the provision of accommodation. The Commissioner investigated the complaint and endeavoured to conciliate it, but in due course reached the conclusion that the complaint was misconceived and dismissed it. Mrs Martin exercised her right to have the complaint referred to the EOT. The EOT also reached the conclusion that discrimination on the ground of race had not occurred and dismissed the complaint. Upon the dismissal, the EOT observed that had it upheld the complaint Mrs Martin would in all likelihood have been awarded the maximum allowable of $40,000 under the EOA.

Mrs Martin was a tenant of Homeswest for some 17 years. Prior to 1994, she had occupied premises in Pascoe Street, Karrinyup. In 1994, she was transferred to a tenancy at 3 Paris Way, Karrinyup. In early 1997, Homeswest served Mrs Martin a breach of tenancy notice due to an alleged nuisance. In April 1997, the Local Court granted an eviction order with a stay of 30 days. It was in relation to the Homeswest eviction proceedings that Mrs Martin made her complaint of discrimination. The EOT granted an interim order staying the eviction pending the hearing of the matter.

The alleged nuisance arose as a result of Mrs Martin taking in family members, who in turn had been evicted from their houses by Homeswest. Prior to Mrs Martin’s eviction, there were 17 family members, children and grandchildren of Mrs Martin, living on her property. Mrs Martin claimed that her cultural obligations required her to house her family, and that Homeswest, by requiring her and the occupants of the property not to commit a nuisance, were in effect imposing a condition that she not overcrowd the property. Mrs Martin, among other Aboriginal people, could not comply with a condition not to overcrowd because of cultural obligations, and considering these circumstances the condition was not

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1 The EOT is a statutory body created by the EOA, and is independent from the EOC.
3 See (1999) EOC 93-023.
reasonable. It was argued that this amounted to indirect discrimination on the ground of race.

On behalf of Mrs Martin it was also argued that she had been directly discriminated against and treated less favourably than a non-Aboriginal person, both in the events leading up to the eviction and in relation to an offer made to rehouse her in an Aboriginal Community known as Cullacabardee.

The EOT rejected the arguments that there had been direct or indirect discrimination and dismissed the complaints. In particular, the EOT found that there was an ongoing problem with the tenancy and asserted that a non-Aboriginal tenant who was consistently in default would have been treated no differently. The EOT also found that the offer to house Mrs Martin at Cullacabardee was not less favourable treatment, but simply another attempt to solve the problem.

Regarding the indirect discrimination claim, although the EOT respected Mrs Martin’s decision to house her family, they were not satisfied that Mrs Martin’s cultural obligations acted independently of her sense of responsibility as a mother. Furthermore, the EOT commented that there was a lack of evidence to support the argument that a higher proportion of non-Aboriginal tenants could comply with the condition not to overcrowd. Finally, the EOT found that the condition not to overcrowd so as to cause a nuisance in breach of the tenancy agreement was reasonable in all the circumstances.

Mrs Martin appealed the EOT decision to a single judge of the Supreme Court. Although the Court did not uphold the appeal with respect to direct discrimination, it did find that indirect discrimination had occurred. In particular, the Court found that there was no reason why the EOT should not have accepted the expert evidence given in support of Mrs Martin, as opposed to that given by Homeswest, concerning the cultural obligations of Aboriginal people to take in relatives needing accommodation. The Court accepted this evidence and asserted that it was not necessary for Mrs Martin’s cultural obligations to operate independently from her obligations as a mother.

The Court stated that the EOT did not pay sufficient regard to the actions of Homeswest, which subsequently led to the members of Mrs Martin’s family arriving at her home. The Court found that Homeswest had inadvertently caused an influx of people into Mrs Martin’s house by evicting members of her family from their houses, and that the requirement not to overcrowd was not reasonable in all the circumstances. However, the Court considered that the appropriate award of damages was $20,000, as opposed to the maximum $40,000.

Homeswest appealed this decision, including the award of $20,000. The Full Court upheld this appeal.7 The Court found that the evidence regarding the cultural obligations of Aboriginal people to take in relatives needing accommodation and assistance was uncertain due to the limitations of such obligations. The Court stated that overcrowding was one matter, but overcrowding resulting in acts of nuisance was quite another. The evidence did not warrant a finding that cultural obligations extended to the accommodation of so many persons that resulted in acts of nuisance contrary to the lease agreement.

The Full Court found that the breach regarded the condition not to commit a nuisance, as opposed to the condition not to overcrowd. The EOT had found most Aboriginal tenants live in harmony with their neighbours. Therefore, it could not be shown that a significant proportion of Aboriginal people could not meet the condition not to commit a nuisance.

The Full Court observed that the condition not to commit a nuisance was not unreasonable and noted that some of the acts of nuisance on the eviction notice did not relate to overcrowding.
Consequently, none of the matters required for indirect discrimination were established. At the end of this long and traumatic legal battle Homeswest finally evicted Ms Martin and her family.

The Walley Case

In Walley v State Housing Commission, Mrs Walley, a woman of Aboriginal descent, claimed that Homeswest had directly and indirectly discriminated against her on the grounds of her race by requiring her to enter into a fixed term tenancy agreement subject to several conditions.

Mrs Walley asserted that the conditions imposed on her tenancy constituted less favourable treatment than what a non-Aboriginal person would be subjected to. She also argued that through evicting her Homeswest indirectly discriminated against her by requiring her to find private accommodation. This was a requirement that she could not comply with, compared to a high proportion of non-Aboriginal people that could comply.

The EOT dismissed most of her claims, but stated that whilst:

\[...the \textit{respondent was justified in entering into a fixed term tenancy with the complainant because she and members of her household were responsible for various acts of nuisance and anti-social behaviour... the respondent's decisions not to renew the tenancy on the basis that a member of the complainant's household was charged with a criminal offence was found to be discriminatory} \] 8

However, given that most of Mrs Walley’s allegations against Homeswest were found to be unsubstantiated and that the respondent had acted reasonably in all circumstances, the EOT was not prepared to award damages. Instead, the EOT ordered that the tenancy be reinstated for a further fixed term.

This case remains the only example in Western Australia of an Aboriginal complainant ultimately proving race discrimination by Homeswest before the Equal Opportunity Tribunal in Western Australia.

The Penny Case

Against this background, involving one short-lived but overturned legal victory and one shallow win before the EOT, Mrs Penny lodged a complaint against Homeswest on the grounds of her own personal circumstances.

The EOC investigated the complaint and dismissed it, but gave Mrs Penny the option of having it referred to the EOT if she wished to present her case without EOC assistance. Mrs Penny chose this option, and the matter was referred pursuant to section 90 of the EOA. The Tenants Advice Service (TAS) represented her before the EOT.

Mrs Penny, an Aboriginal woman, had been a tenant of Homeswest for a long time at over 11 properties. She performed an important role in raising and caring for her extended family, and in providing accommodation for young homeless Aboriginal people. However, this brought some difficulties into previous tenancies, including overcrowding and allegations by neighbours of anti-social behaviour.

In 1992, Homeswest and Mrs Penny entered into an agreement where her responsibilities as an Aboriginal matriarch were acknowledged by the landlord, but obliged her to notify all relevant agencies that her property was no longer available as crisis accommodation for homeless Aboriginal people. This agreement also included a term binding Mrs Penny to acknowledge that she was legally responsible for the behaviour of all residents and visitors on her property, and that she would endeavour to prevent any nuisance to her neighbours.

In 1996, Homeswest issued a Notice of Breach of Agreement under the Residential Tenancies Act 1987 (RTA), which alleged that she had failed to:

- pay water consumption charges and repairs.

8 Walley, at p.79,479
- keep the premises in a reasonable state of cleanliness.
- allow inspection of the premises by the owner.

Meanwhile, Mrs Penny requested a transfer to another Homeswest property, which was declined. Mrs Penny lodged a complaint with the EOC alleging that Homeswest had discriminated against her on the grounds of her race by refusing her application for transfer. Homeswest obtained an eviction order from the Court of Petty Sessions, but Mrs Penny applied for an interim order from the EOT preventing Homeswest from acting on the eviction order.

Nevertheless, the EOT dismissed Mrs Penny’s application and Homeswest evicted her. She moved into her granddaughter’s house, which Homeswest had provided to Ms Penny a couple of weeks before, and remained there until Homeswest re-housed her elsewhere. The re-housing was conditional on Mrs Penny paying her tenant liability debt to Homeswest by making instalments of $100.00 per fortnight by direct debit. The debt amounted to $7,321.70.

Homeswest advised Mrs Penny that she was entitled to appeal the decision relating to the debt amount and enclosed an appeal form. She had 12 months to appeal. The TAS assisted Mrs Penny in requesting further information regarding the debt components, and sought an extension of time to allow them to process the appeal after receiving the requested information. Homeswest advised the TAS that they could not disclose the information without Mrs Penny’s consent in writing and that Mrs Penny could appeal any of the charges by simply completing the appeal form.

The TAS insisted on obtaining the information from Homeswest and argued that Mrs Penny needed it to determine exactly what was to be appealed. Homeswest replied that they were unable to obtain the information as Mrs Penny’s file was with the State Ombudsman for enquiries. Meanwhile, Homeswest advised Mrs Penny that they were looking for another property for her, but that the transfer would be conditional upon:
- Mrs Penny continuing to pay her debt to Homeswest.
- Mrs Penny’s tenancy to be pursuant to a head lease with an Aboriginal Corporation.
- That the property would be “...specifically selected to ensure minimum impact on neighbours.”

Eventually, Homeswest provided documents itemising the components of Mrs Penny’s vacated debt. The TAS contacted Homeswest advising that Mrs Penny needed more time to file the appeal as she was still waiting for the release of documents under the Freedom of Information Act 1982. There were some further delays by Homeswest to provide the sought information. By the time the information was provided the 12 month deadline for the appeal had expired by 6 days. Homeswest refused to refer the matter to the appeal process, and instead conducted its own ‘internal review’ process.

Mrs Penny’s Claim

Mrs Penny claimed that Homeswest directly and indirectly discriminated against her on the ground of her race in the area of accommodation by:
- delaying her request for review of the debt.
- applying its policies in determining her debt arising from the previous tenancy.
- delaying her request to be re-housed after being evicted from her previous property.
- re-housing her in substandard accommodation.
- requiring her to enter into a head lease agreement with an Aboriginal corporation.

The EOT dismissed the case for a number of reasons. They stated that Mrs Penny’s tenancies were marked by anti-social behaviour, including street fighting, threats, foul language and rock throwing. The EOT affirmed that the action of Homeswest not to house her in one of their properties, on the request of neighbours, was not necessarily indicative of a discriminatory attitude. They surmised that to put another Aboriginal family in the property would not benefit that family nor benefit the community, and as a result the most appropriate solution was for the next tenant to be non-Aboriginal. However, the EOT...
remarked that this decision, “...had the unfortunate, if unintended, consequence of reinforcing negative stereotypes.” 10

In addition, the EOT advised that the nature of the conditions imposed on Mrs Penny did not evidence a discriminatory attitude on the part of Homeswest, and that they were not obliged to re-house her following eviction, conditionally or unconditionally. The EOT asserted that Mrs Penny’s need for re-housing was a situation of her own making, and that a requirement for a head lease was not regarded as only imposed on Aboriginal tenants.

The EOT also pointed out that there was no evidence with sufficient weight proving that the housing Homeswest provided to Mrs Penny was sub-standard. The EOT found that the statistical evidence provided regarding the allocation of Homeswest priority housing was too small in size and not subjected to rigorous statistical analysis. However, witnesses for the respondent adduced possible explanations justifying the discrepancies identified. 11 The EOT observed:

Much of the material provided to the Tribunal in this case indicated that there is a firmly held perception amongst members of the Aboriginal community and amongst Aboriginal organisations that Homeswest discriminates against Aboriginal people. Rebutting such allegations at all levels up to and including this Tribunal must be resource intensive. In those circumstances, maintaining comparative and explanatory data is a first and significant step in determining whether such allegations have merit. The absence of the necessary statistical information makes it extremely difficult to determine whether Homeswest in fact discriminates against Aboriginal people or whether the perception held by the Aboriginal community is a myth. 12

Although the nature of the EOA is ‘beneficial’ in spirit and in law, in practice a complainant must still overcome several hurdles to prove allegations. Although the rules of evidence are relaxed, the system remains adversarial in nature.

Section 3(a) and 3(d) of the EOA comment that its object and purpose includes the elimination of discrimination against persons on the ground of race in the area of accommodation and the promotion of recognition and acceptance within the community of the equality of all races. However beneficial the EOA intended to be and however flexible the EOT may choose to be in hearing a matter within the constraints of the EOA, the system remains adversarial.

In Penny v State Housing Commission, the EOT concluded this case with a comment encapsulating what it takes to prove direct and indirect discrimination.

The Tribunal wishes to express its concern at the fact that claims proceed to trial before the Tribunal where complainants fail to adduce cogent evidence of each essential requirement of the Act. This claim falls into this category. The Tribunal appreciates that it is often exceedingly difficult to establish discrimination even where it exists, but the answer does not lie with proceeding with claims where there is no evidence in support of essential elements of the claim. Many complainants have a firmly held belief that they have been discriminated against. In almost all cases the existence of such a belief, without more, will not suffice to establish a claim in this tribunal...

In cases of direct discrimination it is not enough to establish that the conduct of the respondent has caused a detriment and that the complainant has one of the characteristics protected from discrimination by the Act. It is also necessary to prove, either by direct evidence or evidence from which an inference can properly be drawn, that the complaint was treated less favourably than a person who does not share that characteristic and that the less favourable treatment was because of that

10 Penny, at p.63
11 Penny, at p.66
12 Penny, at pp.66,67
characteristic and not for some other reason.

In cases of indirect discrimination it is essential for the complainant to establish, by direct evidence or evidence from which an inference can properly be drawn, that a substantially higher proportion of people who do not share the relevant characteristic would be able to comply with the conditions of which complaint is made and with which the complainant cannot comply. 13

"The Jones Case

In Jones v Department of Housing & Works, Mr Jones, an Aboriginal tenant of a Homeswest property in Waroona, claimed that the Department discriminated against him by commencing an investigation into complaints of anti-social behaviour attributed to his grandchild, who lived with him under his care. Mr Jones alleged that the investigation was initiated by the local State MP, who contacted the Bunbury office of Homeswest after receiving complaints from other residents in Waroona about the behaviour of children in the street where Mr Jones lived, many of whom were Aboriginal.

Mr Jones’ claimed that after receiving a telephone call from the MP’s office, Homeswest hastily began an investigation based on the incorrect and discriminatory assumption that because his Aboriginal grandchild had been mentioned in previous complaints to Homeswest, he must be one of the children involved in this most recent complaint. Homeswest automatically assumed that Aboriginal children, and specifically his grandchild, must be at the source of the complaints, Mr Jones claimed. The investigation came to a head when the Manager of Homeswest, South West, arrived at Mr Jones’ house and took a photograph of the property, with no prior warning or invitation. Mr Jones confronted the Manager in an angry manner, after which the Manager visited the Waroona Police Station.

A subsequent meeting took place between the Manager and Mr Jones at his property later that day. The Manager agreed to provide Mr Jones with documentary evidence of complaints made by residents to the police about the behaviour of children in his care. Mr Jones claimed that these complaints pre-dated the latest ones by several months, were unsubstantiated, were concerned in any event with alleged anti-social behaviour elsewhere in Waroona, and had nothing to do with the complaints made to the MP’s office.

The Tribunal dismissed Mr Jones complaint. It found that although the investigation prompted by the complaints to the MP’s office were not connected to the earlier complaints made to the police, there was some evidence the more recent complaints were focused on certain tenancies in two streets, including Mr Jones’ tenancy. The Tribunal questioned the lack of clear records kept by the Bunbury office about the complaints coming from the MP’s office, given that Homeswest treated the issue with some urgency. Ultimately, however, Mr Jones was unable to prove that his Aboriginality, or that of his grandchild, was a cause of the investigation.

Although the Tribunal concluded that the complaint should be dismissed, it reserved its strongest criticism for the Department’s policy in relation to investigating complaints of anti-social behaviour. It observed:

"Finally, the Tribunal wishes to comment on the role of Homeswest in investigating complaints of antisocial behaviour. There does not seem to be any legislative or other basis upon which such investigations can be made unless such behaviour is alleged to be creating a nuisance, in the legal sense, or interfering with quiet enjoyment of the Homeswest tenants. However, Homeswest appears to take the view that it has a role investigating any antisocial behaviour by any of its tenants. Unless some legislative basis does exist for such a view, in the Tribunal’s opinion, Homeswest has no such role." 14
Lack of Statistical Information

At times, Homeswest has stated that not one complaint of race discrimination against them has succeeded in the EOT. Apart from being incorrect, as the above discussion about Mrs Walley’s case, reveals, the observation by the EOT in the Penny case that “...maintaining comparative and explanatory data is a first and significant step in determining whether such allegations have merit” is compelling. Thus, the current position of Homeswest is self-serving. If it does not maintain the data required to satisfy this ‘first step’ then complaints of race discrimination against it are unlikely to succeed. If complaints cannot succeed then Homeswest is able to promote the favourable impression that it does not discriminate against Aboriginal tenants and applicants.

Clearly, Homeswest should be required to maintain and update comparative data in a readily available form, so that the rate of compliance by Aboriginal and non-Aboriginal tenants with Homeswest policies and procedures and any action resulting from the application of these policies can be investigated. This information needs to be produced to the Commissioner when a complaint of race discrimination against Homeswest is being investigated. It is in the interests of Homeswest to do so, as prompt disclosure of comparative data relating to the application and effect of particular policies will enable the Commissioner to quickly form a view as to the substance of the complaint, and significantly reduce delays in the investigation process. This is the first step in ensuring that the EOC and EOT can properly examine the actions of Homeswest.

Reversing the Onus of Proof

Traditionally, a complainant who alleges unlawful discrimination shoulders the burden of proving it to an accepted civil standard. A finder of fact must be reasonably satisfied on a balance of probabilities that the alleged conduct not only occurred, on the ground of discrimination advanced by the complainant. Finding direct evidence of discrimination is notoriously difficult, which makes inferences drawn from surrounding circumstances all the more important for a complainant (Hunyor, 2003). Tribunals and courts hearing complaints of discrimination accept this, and could reasonably expect a respondent to a discrimination complaint to put forward evidence explaining their conduct.

Regardless, the formal burden remains with the complainant, who must first adduce some evidence capable of supporting a direct finding or an inescapable inference that the respondent has been discriminatory. The respondent does not need to reasonably satisfy a tribunal or court that it did not discriminate against the complainant. Consequently, the mere failure by the respondent to adequately explain or contradict the allegations made against it is not in itself proof of discrimination.

For this reason, complaints of direct discrimination on the ground of race rarely succeed where the complainant alleges that the respondent, often a large employer or service provider, is carrying out discriminatory practices or procedures that are entrenched and systemic. The discriminatory nature of such practices may only be revealed once the principles of indirect discrimination are applied to the particular circumstances. Most complaints of race discrimination against Homeswest are concerned with the indirect but disproportionate impact of Homeswest policies on Aboriginal tenants and applicants. Despite the complexity of indirect discrimination complaints, it is the complainant who shoulders the burden of proving that a substantially higher proportion of persons of the same race as the complainant are unable to comply with a particular policy, and also of proving that the policy is unreasonable in the circumstances.

Other Australian jurisdictions have acknowledged the difficulty this places a complainant under.

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15 Tribunals and courts in Australia require a complaint to be proven on the ‘balance of probabilities.’ For a Western Australian example see McIntosh v Hautileau Pty Ltd t/as Russell Pathology (1999) EOC 92-985, at 79,257

16 See KLK Investments Pty Ltd v Riley (No.1) (1993) EOC 95-525
Prior to 1996, the test for indirect discrimination in section 5(2) of the Sex Discrimination Act 1984 (SDA) was in similar terms to that found in section 8(2) of the EOA. The Sex Discrimination Amendment Act 1995 amended the definition of indirect sex discrimination so that:

“...the new test does not require a complainant alleging indirect discrimination to satisfy the proportionality test nor prove that a requirement or condition is unreasonable in the circumstances. The new test provides a ‘reasonableness’ defence to the person who it is alleged discriminated against another person. (Explanatory memorandum SDA Amendment Bill 1995, para 16)

In other words, under the SDA the respondent must prove by way of a defence that the requirement or condition is reasonable.

In section 7B(2) the SDA sets out the matters that are to be taken into account in deciding whether a requirement or condition is reasonable. These include the nature and extent of the disadvantage resulting from the imposition of the requirement, the feasibility of overcoming or mitigating that disadvantage, and whether the disadvantage is proportionate to the result sought by the person who imposes the requirement. In the Bill’s second reading Michael Lavarch, the then Attorney General, observed:

Some opponents of this bill object to the fact that, after these amendments, it will be the respondent who faces the task of showing that a discriminatory condition or practice is reasonable. In fact, it far more appropriate for respondents to be expected to prove that a condition or practice is reasonable than for complainants to be expected that it is not, since the relevant information or reasons for imposing the condition will be within the knowledge of the respondent - the person or corporation imposing the condition. It does not make sense to expect a complainant to second guess the respondent’s reasons for the discriminatory practice imposed by the respondents. Providing a ‘reasonable defence’ for respondents is consistent with the approach adopted in recent anti-discrimination legislation in the ACT, and in Queensland as well as overseas jurisdictions, such as the UK and Canada (Hansard, 28/06/95:2456).

The recently passed Age Discrimination Act 2004 (ADA) contains a definition of indirect discrimination in section 15 that is similar to the one in the SDA. Like the SDA, the ADA does not include a proportionality test and the respondent must prove that the condition or requirement is reasonable. However, the ADA does not provide express guidance as to what matters are to be considered in determining the reasonableness of a particular practice or condition.

The test for indirect discrimination in section 8(1)(b) and 8(2) under the ACT Discrimination Act 1991 is similar in effect to the SDA and the ADA. Section 9(1A) of the Racial Discrimination Act 1975 (RDA) and the Tasmanian Anti-Discrimination Act 1998 do not include proportionality tests either, but the burden of proving that the requirement or condition is unreasonable remains with the complainant. Conversely, section 205 of the Queensland Anti-Discrimination Act 1991 contains a proportionality test, but the respondent must prove that the requirement or condition is reasonable. The relevant legislation in the remaining states, New South Wales, Victoria and South Australia, provide definitions of indirect discrimination that are similar in effect to the Western Australian EOA.

Considering the obvious significant imbalance in resources and expertise that exists between complainants and respondents in complaints of indirect discrimination, the argument in favour of amending the EOA and aligning it with the approach adopted by the Commonwealth and other states is compelling. The proportionality test should be eliminated and the respondent should be required to prove that the condition or requirement, and the subject of the complaint is reasonable.

Summary

The four Western Australian discrimination cases referred to above suggest that litigation under the present statutory scheme is unlikely to lead to a
conclusive finding that unlawful race discrimination has or is occurring in the provision of public housing. First, it is too much to expect that an individual Aboriginal complainant will ever be able to muster the resources required to place complex statistical evidence before the EOT that links a person’s race with alleged less favourable treatment by Homeswest, either directly or indirectly. Thus, an initial recommendation is that Homeswest generate and maintain data in a form that makes the investigation of indirect discrimination complaints more effective. Second, it is too great a burden for an individual Aboriginal complainant to find evidence or an inescapable inference to reasonably satisfy parties that the alleged conduct occurred and was discriminatory knowing that the respondent need not say anything profound to satisfactorily prove otherwise. Thus, a further recommendation is that the EOA be amended so that the onus of proof in such complaints is reversed.
chapter six:
Human Rights Comparison

Introduction
This chapter initially gives an overview of the complaint based human rights legislation in Western Australia, and other Australian jurisdictions, utilised by Aboriginal people in relation to accessing public housing. There is a large volume of titles supporting the findings of the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (HORSCATSIA) (2001) report that Aboriginal access to appropriate and affordable housing is a problem throughout Australia. All States and the Northern Territory have legislation intended to provide solutions to complaints of race discrimination in accessing public services and facilities. With the exception of Western Australia, the use of these statutes by Aboriginal people to lay complaints regarding public housing has been very low. For comparison, this chapter also explores other overseas jurisdictions with Indigenous populations, namely New Zealand and Canada.

Australian State and Territory Jurisdictions
Western Australia is the only Australian jurisdiction in which anti-discrimination and equal opportunity laws have been used extensively by Aboriginal people to seek a solution for allegations of discrimination in access to public housing. Aboriginal people have lodged a large number of complaints pursuant to the Equal Opportunity Act 1984 (EOA), alleging discrimination by Homeswest in the provision of public housing. Only one has been upheld and then later overturned on appeal, and a very large proportion has lapsed. The apparent inability of either the Equal Opportunity Commission (EOC) or Homeswest to resolve complaints by Aboriginal people regarding public housing has led to a number of reports/investigations. These will be referred to in the literature review chapter in the following section. In sum, this literature has examined:

- whether there is experiential evidence indicating direct or indirect discrimination, as defined by the EOA, occurring through Homeswest policies and practices.
- whether Homeswest records indicate direct or indirect discrimination through the utilisation of its policies and practices.
- the reasons for the low levels of complaint resolution to the EOC relating to discrimination in provision of public housing for Aboriginal people.

By comparison, similar bodies in other Australian jurisdictions record small numbers of complaints by Aboriginal people on the grounds of race in relation to accommodation (South Australian EOC, 2002-2003; New South Wales Anti-Discrimination Board, 2001-2002; Queensland Anti-Discrimination Commission, 2002-2003; and Northern Territory Anti-Discrimination Commission, 2002-2003). None of these identify Aboriginal access to public rental accommodation as a priority issue. This is not to say that similar problems to those appearing in Western Australia may not also be present in other states and territories.

Indeed, the South Australian EOC (2002-2003: 13) identified “...low levels of formal complaints, and reported lack of trust and confidence in current systems of justice” by Aboriginal communities as an issue, and is seeking to address this by placing improved “access to the Commission’s services is a priority.” The South Australian EOC (2002-2003) reported that the vast majority of complaints related to employment, and only a small proportion (about 6%) were on the grounds of

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1 See Equal Opportunity Commission (EOC), 2002. Statistics on complaints and inquiries to the Western Australian EOC are included throughout the main body of the report.
race. However, whether these complaints were by Aboriginal people is unidentified. In addition, only ten complaints related to alleged race discrimination in access to ‘accommodation, land and housing,’ which comprised only 8% of all complaints directed at housing and related issues (South Australian EOC, 2002-2003).

Similarly, the New South Wales Anti-Discrimination Board (2001-2002) reported that although 76% of all complaints by Aboriginal people were on the ground of race, there were very low numbers of complaints regarding housing discrimination. That is, of 81 complaints by Aboriginal people on the general ground of race, just over 12% related to housing.

In the Northern Territory, out of only 11 in total, five queries and three complaints were directed at housing issues on the grounds of race, with no indication about whether these were from Aboriginal people. Thus, complaints in relation to housing on the grounds of race comprised only 8% of all complaints on the general grounds of race (Northern Territory Anti-Discrimination Commission, 2002-2003). Concurrently, the Aboriginal and Torres Strait Islander Commission (ATSIC) noted that according to the 1996 Census:

- 66% of Aboriginal households in the Northern Territory were rental, compared to just under 50% of non-Aboriginal.
- 14% of Aboriginal households have entered home ownership, compared to about 50% of non-Aboriginal households.
- 13% of Aboriginal households were classified as ‘improvised,’ compared to 5% of non-Aboriginal households.
- the number of people per Aboriginal household was double that for non-Aboriginal households.

(Indigenous Housing Authority: website).

In noting the high rate of Aboriginal homelessness in the Northern Territory, Goldie (2001: 5) commented that the Northern Territory government:

...continues to refuse to develop culturally appropriate designs. Instead its primary solution has been to implement educational and punitive strategies to force Indigenous people to live in a ‘European’ way in particular by not having extended family to stay.

The Northern Territory Anti-Discrimination Act 1992 (section 24) obligates the Territory Housing Authority to accommodate the special needs of Aboriginal people pursuant to their race, to the extent “…that this is not unreasonable.” The government appears willing to respond to the special needs of other groups (for example, seniors or people with disabilities), and indeed actively promotes the provision of housing according to the needs of such groups (Goldie, 2001).

International Jurisdictions

New Zealand and Canada have human rights legislation that is broadly comparable to Australia. In addition, they:

- have a common history of colonisation by Britain.
- operate according to the Westminster system of liberal democratic government, under which principles such as the rule of the majority, division of powers and Ministerial responsibility are key features.
- have substantial Indigenous minorities, whose relationship with the majority population is governed by either a system of treaties, or a range of statutes.

New Zealand

The New Zealand Human Rights Commission (NZ HRC) was established in 1993 pursuant to the Human Rights Act 1993. It sets out a process to deal with complaints of unlawful discrimination occurring on a number of grounds, including race, ethnic or national origin, religious belief and political opinion. Unlawful discrimination includes indirect discrimination, which “…occurs when an action or policy that appears to treat everyone in the same way actually has a discriminatory effect on a person or group on one of the grounds of the
Act” (NZ HRC, 1993: website). The ‘areas of life’ explicitly covered by the legislation include government or public sector activities, provision of goods and services, and provision of land, housing and accommodation.

However, there do not appear to have been many, if any, complaints about the provision of housing and related issues on the ground of race, and there is no indication of the process being utilised to any degree in relation to public housing. The case notes index listed on the HRC website identifies a small number of complaints about housing, though few are on the ground of race and none appear to have been made by Maori people.

As with Australia, the use of human rights remedies does not appear to be indicative of the problems experienced by Indigenous people in relation to housing. An extensive report on the status of Maori women was completed in September 2001 by the New Zealand Ministry of Women’s Affairs (NZ MWA) (2001). This found that disparities in access to housing were strongly related to ethnicity, and that Maori people were more likely than non-Maori people to live in rental housing, temporary housing, housing with no heating or with wood burning hot water systems, and/or overcrowded housing. Maori women face particular housing difficulties that are “long standing, serious and persistent” (NZ MWA, 2001: 110), and which are more acute if they have children and are low income earners. They are also disproportionately reliant on rental housing and appear to face significant discrimination in access to rental housing. The NZ MWA (2001) report notes that the little research on discrimination in the rental market suggests that Maori women in rental housing feel vulnerable to discrimination as well as sexual harassment and intimidation by landlords. Furthermore, overcrowding is an issue in that:

The values of aroha and manaakitanga (hospitality) mean that whanau members may be accommodated for varying periods of time without question. While this practice can help to address some housing needs, it can create crowding, and generate a need for housing design to take account of larger families (NZ MWA, 2001: 107).

For many Maori women, housing costs place a major burden on household income. Lack of affordable and safe housing in good physical condition may result in negative impacts on health and wellbeing for household members. The housing choices and opportunities of Maori women are primarily affected by:

- the age structure and size of the Maori population.
- a trend towards one parent families.
- increasing Maori movement to rural areas.
- rising housing costs in relation to income.
- declining home ownership.
- increasing dilapidation of housing stock especially in rural areas.

Recommendations from the NZ MWA (2001) report included measures to encourage access to affordable and quality rental accommodation, and develop housing solutions in partnership with Maori women. Thus, “…public rental housing providers should work in partnership with Maori women on building design, siting and standards of rental accommodation” (NZ MWA, 2001: 6).

Canada

The Canadian Human Rights Commission (CHRC) operates a complaints based process in conjunction with the provincial Human Rights Commission. The Canadian human rights agencies specify race or colour, national or ethnic origin excepting British Columbia and Alberta, and religion as grounds of discrimination. The CHRC Act (1977: section 5,6) identifies the “provision of goods, services, facilities or accommodation customarily available to the general public”, and

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2 The search for statistical data on human rights complaints was limited to the NZ HRC (1993).
3 Go to: www.hrc.co.nz.
the “provision of commercial premises or residential accommodation “ as areas subject to the anti-discrimination objectives of the legislation.

As with other jurisdictions, the legislation does not appear to be widely used in relation to allegations of race discrimination in access to public and private rental accommodation. For example, in 2003, 195 (12%) complaints were made under sections 5 and 6, while for all areas a total of 146 were on the ground of race, 141 on the ground of national or ethnic origin, and 59 on the ground of colour, which when combined account for 26% of all complaints (CHRC, 2003). In the CHRC Annual Report (2003), this data is unfortunately not available in cross-tabulated form so it is not possible to determine the number of complaints made by Aboriginal Canadians in relation to rental housing. Thus, this data may not provide an adequate gauge of race discrimination levels in the Canadian rental housing market. Indeed the federal Canada Mortgage and Housing Corporation (CMHC) (2002: website), noted that, “…practices viewed as discriminatory have altered and expanded…”, suggesting that “some aspects of housing are increasingly being viewed as discriminatory.” These include:

The Canadian Human Rights Act Review Panel’s recommendation that a), the federal Indian Act and the First Nations Land Management Act (which deny women and their children access to reserve housing after separation or divorce) no longer be exempted from Human Rights legislation (CMHC, 2002, website).

Although there has been little systematic research on housing discrimination in Canada, the CMHC (2002: website) believes there is sufficient evidence to suggest that “…housing discrimination has been, and continues to be, a problem for some racial minority groups and women”, suggesting a “systematic, rigorous program that measures the extent of discriminatory actions.” Such research would aim to show widespread perceptions of race discrimination in the provision of rental accommodation in places such as Toronto, where “…landlords have long discriminated against visible minorities based on their race and low income, in blatant violation of Ontario’s human-rights code” (Philp, 2000, website). The linkages between poor socio-economic status, race and access to housing means that most ethnic minorities in Canada, including urban dwelling Aboriginal people, are likely to experience discrimination. In Toronto, the 1996 Census found that nearly half (47.7%) of Aboriginal residents were living below the unofficial poverty line, spending 56.2% of income on food, clothing and shelter, compared to 11% of families with British heritage (Philp, 2000, website).

Almost half of all Canadian Aboriginal people live in metropolitan areas. Many Canadians find this surprising, and is a reality that has not been reflected in policy development. The Royal Commission on Aboriginal Peoples (RCAP 1993: website) states that:

This information and policy vacuum can be traced, at least in part, to long-standing ideas about where Aboriginal people ‘belong’. Canadians and their governments seem to believe that Aboriginal people were not meant for city life - or that if they come to the city, they should live like ‘ordinary Canadians’. But culture is not something Aboriginal people discard at the city limits. The cultures in which people are raised and given their identity reside deep within them and shape every aspect of their being - wherever they happen to be living.

Many Canadian Aboriginal people move to the cities for economic and legal reasons. Although repealed in 1985, a provision of the Indian Act discriminated directly against Aboriginal women, forcing them to re-locate to cities. This stated that:

...a woman’s identity as a First Nations person came to depend on the status of her husband.

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4 It is important to note, the same measure was used to estimate that recent African immigrants were substantially worse off, including Ghanaians at 87.3%, Ethiopians at 69.7%, and Somalis at 62.7%.
Even if she spoke her Aboriginal language, practised the traditions of her nation, and raised her children in the ways of her people, she ceased to be ‘Indian’ - in the eyes of the government - the moment she married a non-Indian. ... Women and children who lost Indian status lost all the rights that went with it (RCAP, 1993: website).

Whilst women and children who lost Indian status also lost any accompanying rights, men were not similarly penalised. Amendments to the Act in 1985, known as Bill C-31, allowed for the reinstatement of those who had lost Indian status under old provisions and allowed Indian status for their children. Though, this has not entirely resolved the issues. For example, Bill C-31 allowed bands to determine who may become a band member and live on reserve land. However, those who regain or acquire status under the provision do not automatically receive band membership. The RCAP (1993: website) commented that “...access to subsidised housing on reserves is hotly contested in some places. Bill C-31 women and children may suffer materially as well as psychologically from exclusion enforced by bad decisions.”

Summary

Indigenous access to appropriate and affordable housing is a comparable problem for Australia, New Zealand and Canada. Within Australia, the utilisation of human rights legislation by Aboriginal people to lay complaints of race discrimination in accessing public housing and related services has been very low, with the exception of Western Australia. The following section aims to expand upon the past/present state of Aboriginal housing in Western Australia, currently provided by Homeswest.
SECTION THREE
History of Housing

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The Tenants Advice Service Submission/Response
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The Pilbara Community Legal Service Submission
  - Relevant Experiences

The Gordon Inquiry

The Equal Opportunity Commission Internal Analysis 2002
Introduction

This chapter explores the steady evolution of policies and practices in Western Australia in relation to the provision of public housing for Aboriginal people. Since 1946, two main government departments and two main documents have profoundly influenced the development and provision of public housing in Western Australia. These departments are the Department of Native Welfare (DNW), which operated from 1954 to 1972, and the State Housing Commission (SHC), which changed its name to Homeswest in 1984. These documents are the Commonwealth State Housing Agreement (CSHA) (1945) and the original State Housing Act 1946, which marked the commencement of significant State government involvement in the provision of public housing and the commencement of Commonwealth tied grants for the construction of housing stock. In short, since 1945, there have been broad policy phases in relation to Aboriginal housing; since 1980, there have been some major Aboriginal housing practices; in 1996, there was a review of these housing policies and practices; and throughout this time period a number of critical issues arose pertaining to the provision of public housing for Aboriginal people. The varying influences of these founding documents within the policy phases, the major practices, the review outcomes, and the critical issues will be discussed below.

Policy Phases

Since 1946, two government departments have been chiefly responsible for the provision of housing to Aboriginal people. These are the DNW, which operated from 1954 to 1972, and the SHC, which changed its name to Homeswest in 1984. During this period, housing policies were documented in various publications. Of primary importance were the Annual Reports from the DNW (1955, 1967a), the Furnell Royal Commission into Aboriginal Affairs (1974) and the Annual Reports from Homeswest (1988, 1994, 1995). The involvement of these departments and publications in differing policy phases relating to public housing for Aboriginal people, namely segregation, transitional, ‘social mix’ and mainstream,¹ will be discussed below.

Segregation

The period from colonisation in 1829 until immediately following World War II in 1945 constituted a policy vacuum regarding issues of Aboriginal housing. The main exception was the Aborigines Act 1905 (AA), which set out a comprehensive system of segregation and state control of all people defined as ‘Aboriginal.’ This system covered all aspects of life, for example, employment, freedom of movement, personal and family life. The AA remained unchanged until the 1944 amendments, which introduced extremely limited citizenship rights according to rigorous eligibility requirements, limited access to Commonwealth pensions and a rudimentary system of state ‘accommodation’ (these arrangements could not possibly be called housing).

From its establishment in 1954 until 1972, the DNW was responsible for implementing policies pertaining to Aboriginal affairs in Western Australia. Such policies were mainly oriented towards the segregation of Aboriginal people on ‘four kinds of reserves.’ The DNW (1967b: 22-23) described that:

¹ With the exception of ‘Transitional Housing’, the titles for these policy phases are not official terminology, and have been selected as they aptly describe the broad policy directions in public housing. Thus, they are not akin to broader Commonwealth and state policy terms on Aboriginal affairs, for instance ‘assimilation’, ‘self determination’ or the current ‘practical reconciliation’.
Cultural reserves contain cemeteries, sacred areas, rock and cave paintings and ochre deposits. Sanctuary reserves are big tracts of land in isolated country where Aborigines can be left alone, if they so desire, to continue their traditional existence. Camping reserves are smaller areas near towns where Aboriginal families are accommodated in simple dwellings served by communal facilities. Institutional reserves are those on which mission or government institutions operate.

In 1955, the DNW spent 7,158 pounds on improving and remodelling camping reserves to include simple shelters and standard ablution blocks. The DNW (1955: 9) noted that:

Although some natives live either permanently or for long periods on reserves, this Department has no intention of promoting their permanent segregation by providing cottages or other living accommodation for them on camping reserves. Natives requiring such accommodation may apply for a house to the State Housing Commission....

By 1967, the DNW expressed optimism at the increased financial resources that were likely to become available following the assumed commitment of Commonwealth powers to legislate regarding Aboriginal people in Western Australia. The DNW (1967a: 7) asserted that:

The new concurrent Commonwealth-State legislative powers will apply to 22,483 Aborigines and part-Aborigines in Western Australia. These people have experienced a surge of interest and hope following the Referendum and their most universal belief is that their future is brighter than ever it has been before.

However, the machinery established under the AA did not undergo substantial change until the repeal of the Native Welfare Act in 1972.

Transitional

In 1953, a new system of housing for Aboriginal people was unveiled, namely ‘transitional housing’ (Bell, 1989). By this time, housing had become one of the biggest departmental budgeting items. The state government perceived this as providing a practical response to the recently adopted assimilation policy, under which a ‘single Australian community’ would be formed through Aboriginal people acquiring over time a standard and manner of living similar to other Australians. The DNW (1967b: 22) explained that along “…with education and hygiene, better housing is one of the fundamentals of assimilation.” Transitional housing involved a three stage progression for Aboriginal people, namely primary transitional, standard transitional, and conventional.

Primary transitional was intended to be an introduction for Aboriginal people to more advanced housing and involved basic accommodation on reserves. This involved the setting aside of unofficial areas on the outskirts of towns for reserves. Such places were populous and confusing for children who were required to live on them. Little (2000: 171) recalls his childhood experience of moving onto a reserve:

There were plenty of people with their families living on the reserve, and I thought as a child that it was an Aboriginal town. I believed it to be great but scary at first, mainly because of the cultural differences. ... On the reserve were many people from many places, like Wiluna in the east toward the desert and Jigalong to the north. Each had their own language, which we could neither understand nor speak.

Tilbrook (1977: 8) described the Moora Native Reserve as ‘an extremely depressing sight’, and stated that:

It was built in the middle of a stock run, on land which understandably no one else wanted at the time. It is situated on a hill side, with no protection from the prevailing winter winds and few trees to provide shade in summer. The road leading to it is gravel and mud. The soil is typically red clay, which in winter turns to red slush. It is located 3.2 kilometres out of Moora town, with no public transport into the town...
The buildings are exceptionally dilapidated and create a run down and depressing atmosphere. The overall impression of the reserve is dreary, barren, windswept, cold and drab in winter. In summer it is dusty, dry and hot. A communal amenities block comprising unheated showers and washing troughs, and toilets, stands on one side.

Schapper (1970: 40-41) also critiqued transitional housing and noted a long term generational effect of such housing:

All are utterly inadequate for hygienic family living ... the communal facilities are often unusable because of their misuse and inadequate supervision, [contributing to an] extreme dependent poverty ... not the poverty of merely being without adequate income. It is a way-of-life poverty. Aborigines are born into it, reared in it, and remain in it.

Standard transitional was intended to be the next stage and involved the provision of rudimentary houses with ablation facilities located on the outskirts of regional towns. This was intended to assist Aboriginal people in making the transition to ‘civilised’ life. Conventional was intended to be the final stage and involved a “…normal conventional home on an ordinary townsite lot and indistinguishable from other homes in the community” (DNW, 1967b: 26).

Advancement from traditional to standard to conventional was dependent upon the satisfactory management of the housing. The DNW (1967a: 9-10) expanded upon this progression and stated that “One of the adjustments Aborigines have to make is to learn to cope with such previously unexperienced commitments as rent, furnishing, light and water costs and a basic need in this respect is a secure economic status.” Tilbrook (1977: 10) described the transitional housing approach as ‘a series of individual family tests’, and that:

The odds against passing this test are made as high as possible by making the reserve type of housing the most difficult to cope with because of the lack of basic human facilities and the indignities of communal toilets and shower facilities ... Far from being any encouragement to raise living standards, reserve and transitional housing militate against this by the depressing and inconvenient nature of the accommodation they afford. As well they encourage anti-government and anti-society reactions against the system which imposes this type of accommodation, and this sort of test.

However, overall Schapper (1970: 41-42) critiqued the state of transitional housing and asserted that:

The location, design, construction, size, fittings, amenities, and furnishings of the great majority of dwellings in which Aborigines in Western Australia live are far below minimal standards of the State Housing Commission, are not conducive to healthy and hygienic living, and are utterly inadequate as the physical micro-environment within which parents could ... rear their children to become motivated to achieve success at school and work, and from which children could learn to live in and manage a conventional home ... For as long as these reserves exist they are a demonstration, to Aborigines and local communities alike, of the current social inferiority of these Aborigines.

Furthermore, Read (2000: ix) commented that “A cottage inhabited by an Aboriginal family was less a shelter than an instrument of management, education and control.” Little (2000, p. 170-171) also commented on his memories of housing and his family’s chronic difficulties in acquiring quality housing:

I’d often ask myself ‘Why are we not allowed to be close to the shops and live in nice warm houses in winter?’ It was a mystery to me. It later became clear that there was no specific housing for Aboriginals in town unless they were employed with the railways or the local Shire council.

According to the 1966 Census \(^2\), fewer than 1,000

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\(^2\) This was the final Census taken before the 1967 Referendum that resulted in the formal inclusion of Aboriginal people in future census counts.
Aboriginal people lived in the Perth metropolitan area, and 100 to 200 lived in farm accommodation. Of the other 12,000 Aboriginal people, just over one-third lived in large regional areas and the remainder lived in other regional areas. Approximately 2,000 Aboriginal people lived on DNW administered reserves adjoining towns, which were described as akin to ‘rural black slum ghettos’ (Schapper, 1970), whilst about 1,900 lived on reserves in other regional areas, which were categorised by the Census as ‘native.’ The table below displays the breakdown of the various forms of housing according to the region (DNW, 1967a).

This table shows that by 1967, DNW statistics demonstrated that 773 homes of various sorts had been provided to Aboriginal people. The vast majority of homes were categorised as primary transitional (487 or about 63%) and a very small proportion had progressed to conventional (35 or about 5%). Notably, in 1967 a very small proportion of Aboriginal housing was located in the metropolitan area, with the bulk located in the Kimberley (144 or about 19%) or Southwest (251 or about 32%).

Over the following 20 years, dramatic changes occurred in the provision of public housing to Aboriginal people. Whilst in 1967 almost no Aboriginal people are recorded as living in public housing in the metropolitan area, by the 1980s it had become the most populous Aboriginal centre in Western Australia. In addition, Read (2000: ix) noted that “It was not until ... the entry of the Commonwealth government after the 1967 referendum that Aboriginal housing assumes its more recognisable form of providing shelter, a hearth, a refuge of affection and an armour of security.” Nonetheless, the DNW (1967: 40-43) continued to express optimism and enthusiasm for its concept of transitional housing as the way forward, and commented that:

The demand for the houses has been strong and was evident only after the first of them was built and occupied, thus indicating that the desire for better housing was always there but remained latent until the house to be built was shown ... It seems that the better class of housing has had its effect on the attitude of the whole Aboriginal community, not just on the occupants of the houses. The hopes and aspirations of adults and more particularly the children, are buoyed by the appearance in the towns of so many of these houses and are reflected in their efforts to qualify for them.

Aboriginal Housing by Type

<table>
<thead>
<tr>
<th>Division</th>
<th>Primary (communal)</th>
<th>Standard (self-contained)</th>
<th>Conventional</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Northern (Kimberley)</td>
<td>95</td>
<td>47</td>
<td>2</td>
<td>144</td>
</tr>
<tr>
<td>North-West (Pilbara, Gascoyne)</td>
<td>67</td>
<td>29</td>
<td>2</td>
<td>98</td>
</tr>
<tr>
<td>North Central (Midwest)</td>
<td>46</td>
<td>43</td>
<td>8</td>
<td>97</td>
</tr>
<tr>
<td>Eastern (Goldfields, Central)</td>
<td>70</td>
<td>12</td>
<td>3</td>
<td>85</td>
</tr>
<tr>
<td>Central (Metrop., Wheatbelt)</td>
<td>53</td>
<td>33</td>
<td>12</td>
<td>98</td>
</tr>
<tr>
<td>Southern (Southwest)</td>
<td>156</td>
<td>87</td>
<td>8</td>
<td>251</td>
</tr>
<tr>
<td>Total</td>
<td>487</td>
<td>251</td>
<td>35</td>
<td>773</td>
</tr>
</tbody>
</table>

The current names of land divisions are given in brackets.

3 In 1967, the Perth metropolitan area was recorded as having 4 primary transitional, 4 standard transitional and 10 conventional houses for Aboriginal people.
Although these policies of ‘transitional housing’ were energetically pursued, despite criticism, throughout the 1950s and 1960s, according to the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) (1991), by the early 1970s the Western Australian government had mostly concluded that the policy was a failure. The SHC came to the conclusion that the policy was not achieving its objectives of assisting Aboriginal people into good quality housing, and Bell (1989: 36) recorded that DNW also began to argue that the transitional housing programs had, ‘...served their intended purpose as a training medium.’ However, it appeared that responsibility for the failure of transitional housing was perceived to lie firmly with Aboriginal people, many of whom were viewed as ‘not sufficiently civilised’ to live in conventional housing. The RCIADIC (1991) suggested that the state government neglected to see that the failure of transitional housing may have been partly due to the lack of involvement and inclusion of the perceptions and ideas of Aboriginal people in decision making; and partly due to the limited number of conventional houses provided in Western Australia (there were 329 by 1971), which was sufficient to house about 5% of the Aboriginal population. Nevertheless, from about 1972, the transitional housing approach appeared to have been progressively abandoned in favour of housing policies aimed at moving Aboriginal people into the community.

‘Social Mix’

Following the closure of the DNW in 1972, the new Department for Community Welfare (DCW) assumed responsibility for Aboriginal reserves, and aimed to close them and move residents into towns. Although this occurred over the next few years, old style ‘town reserves’ with their rudimentary shelters remained on the outskirts of some places (for example, Moora). Following this, the State Housing Commission (SHC), established by the original State Housing Act 1946, focused on the provision of low cost rental housing. This was accompanied by the CSHA, which originally focussed assistance through the construction of new dwellings for specific groups and from 1973 focussed assistance on the provision of public housing to increasingly specified groups of low income earners.

In his submission to the Furnell Royal Commission (1974), Mr Robert Bruce MacKenzie, the General Manager of the SHC, focussed on the provision of public housing to ‘urban Aborigines’ with substantial white community contact in the southern part of Western Australia. The main objective was described as ‘facilitating integration,’ which was founded on policies of patience and tolerance, and ‘...on the principle that in the early years of transfer from depressed and depraved circumstances the job was one of salvation - not damnation’ (Furnell, 1974: 232). In achieving this, the SHC, which changed its name to Homeswest in 1984, pursued ‘social mix’ (‘salt and pepper’ or ‘scatteration’) policies, which aimed at the ‘sprinkling’ of Aboriginal families within the metropolitan area and large regional centres. This approach rested upon an understanding of ‘saturation point,’ which was described as an official limit on the number of Aboriginal households in a particular area and the inability to house further Aboriginal families in a particular area following the attainment of ‘saturation point’ (RCIADIC, 1991).

Specifically, integration was to be achieved by the dispersion, ‘...throughout estates on what has been termed colloquially a ‘pepper and salt’ scatteration basis; ideally in any one street say two Aboriginal houses situated at diagonal ends’ (Furnell, 1974: 222). This policy was applied in various ways depending upon location. A ‘loose interpretation’ enabled Aboriginal families to be accommodated adjacent to one another, rather than remain unhoused while accommodation lay vacant. In some areas Aboriginal families were housed near one another, and in other areas where the population was densely Aboriginal housing was ‘clustered’. However:

To make allowance for the robust living standards of some Aboriginal families... the conventional interior is being modified to the extent that the internal wall lining is of fluted metal with paint finish. This is being introduced as it is more easily cleaned and the cost of maintenance is reduced as compared with the
standard plaster-board or asbestos lining. Although there has been some criticism of the Commission in this respect the modification, which is in no way contrary to Model Building by-laws, is being implemented so as to allow conversion to fully conventional specification as domestic standards of the tenants move closer to those of the White community in which they are living” (Furnell, 1974: 222).

This type and style of housing for Aboriginal people remained the core directive of the SHC until the new Housing Act 1980 (HA), which instigated considerable expansion in the provision of public housing for Aboriginal people in Western Australia.

Mainstream

From 1984, the CSHA sought to increase the level of public rental housing by replacing tied grants with specific programs aimed at assisting identified groups, for example, housing for Aboriginal people, housing for pensioners, crisis accommodation, and mortgage and rental assistance. In turn, Homeswest (1988,1994,1995) enunciated significant policy changes and a shift in focus, from being primarily concerned with the provision of low cost housing to being subject to overall state government requirements. This involved its services becoming cost efficient and largely paying their own way. The formal policies of Homeswest reflect these developments, which by 1996 had become a codified and coherent set of documents that were unlikely to infringe any relevant anti-discrimination provisions of the Equal Opportunity Act 1984 (EOA). In line with policy development, institutional arrangements for the delivery of public housing also expanded steadily. Homeswest increasingly emphasised their role in land development, land re-development and home ownership. Thus, Homeswest developed a more business oriented character and operated according to more businesslike principles, and less a government funded provider of welfare housing. Regardless, amongst the significant developments in its image and breadth of functions, Homeswest has retained its traditional role as a provider of low cost public housing in Western Australia.

Throughout the 1990s, the ‘social mix’ policies appeared to have progressively disappeared from the Homeswest lexicon, and were replaced by current policies that emphasise a ‘one size fits all’ approach. In this sense, current Homeswest policies regarding the provision of housing are characterised by an even and objective application to all tenants regardless of differentiating characteristics, for example, race, gender or age. Homeswest requirements are commonly summed up in three points: the payment of rent, living in harmony with neighbours and maintenance of the property to an acceptable standard. Thus, Aboriginal households are subject to the same policies as other tenants:

"...[and] are expected to maintain accepted standards of domestic hygiene, social behaviour and credit worthiness and to these ends assistance is given by officers of the Commission with the co-operation of the Community Health Services, the Department for Community Welfare and the latter Department’s Home-maker Service” (Furnell, 1974: 222-223).

However, as a business, it is occasionally necessary for Homeswest to evict a tenant who has failed to implement the set out requirements. For an Aboriginal tenant:

"...eviction proceedings are taken only when all avenues of assistance have been offered and declined. Consultation with the Department for Community Welfare is taken before eviction. Lists of new Aboriginal tenants and tenants facing Notice to Quit are forwarded to the Department for Community Welfare, the Community Health Services, the Aboriginal Board of Management and the Aboriginal Advancement Council, enlisting the co-operation of these agencies in making the tenancy a successful one" (Furnell, 1974: 226-227).

Since the 1970s, the substance of Aboriginal housing policies has in fact changed very little. Aboriginal tenants are still required to pay the rent, maintain their accommodation and live...
harmoniously with non-Aboriginal neighbours. In addition, eviction remains viewed as a measure of last resort for Homeswest, and special support measures are still called upon to forestall eviction.

**Major Practices**

In recent times, three main bodies have been responsible for the practical application of legislation regarding the provision of housing for Aboriginal people in Western Australia. These are Homeswest, the Aboriginal Housing Board (AHB) and the Aboriginal Housing Directorate (AHD). These bodies have been involved in three major practices relating to Aboriginal housing, namely provision and funding, standards and programs, and staffing, as will be explored below.

**Provision and Funding**

In the 1987/1988 financial year, 12.234 million dollars was received for Aboriginal housing. The bulk of this stemmed from the Commonwealth government under the CSHA provisions for rental housing. Aboriginal people were ‘free to apply’ to Homeswest for housing or assistance and also benefit from the AHB administered programs. By 1992, 85% of AHB tenants received a rental subsidy.

The AHB was established as a non-statutory advisory body within Homeswest in 1978, and was ordered to administer tied grants to Aboriginal housing in Western Australia made under the 1978 CSHA for Aboriginal housing. Initially, the AHB consisted of 11 members selected by Western Australian Aboriginal consultative committees, and intended to receive advice on regional and local housing priorities from 25 housing committees. The AHB met on a quarterly basis to discuss housing issues, budget allocations, and the current state of the capital works program and budget. In 1995, the AHB underwent restructuring through the appointment of four Aboriginal and Torres Strait Islander Commission (ATSIC) members, the ATSIC State Advisory Committee Chair and five community representatives. Homeswest (1995:21) asserted that:

> “These formal links with ATSIC enable integrated planning and co-ordination of service delivery. A primary objective of the State-Commonwealth Aboriginal Housing Bilateral Agreement is the pooling of all identified housing and infrastructure funds into one program determined by the Board.”

In 1994, the AHD was established to oversee the channelling of housing funds, better implement the directions determined by the AHB and become a mainstream housing directorate within Homeswest. The AHD comprised 22 staff. In this sense, the AHD, “…has the broad role of ensuring Aboriginal input into mainstream programs and monitoring access and equity for Aboriginal people” (Homeswest, 1995: 21). The AHD also employed three customer service officers who aimed to provide tenancy support, liaison and policy review, aimed to reduce the number of anti-social evictions by Homeswest, and aimed to deal with problem tenancies related to rental arrears, tenant liability, sundry debts and water consumption. In 1998, the AHD was renamed the Aboriginal Housing and Infrastructure Unit (AHIU).

In 1988, 2,224 rental properties were administered by the AHB, and about a further 2,500 Homeswest properties had Aboriginal tenants. In 1992, the number of AHB administered rental properties had increased to 2,460, including 1,101 in regional areas, 730 in the Perth metropolitan area and 629 in the northwest. During 1992, Homeswest received 2,625 applications and found housing for 693 in Homeswest properties and for 441 in AHB properties, leaving 924 applicants awaiting housing. By 1994, a total of 698 applications, including 247 from the metropolitan area, were received for Aboriginal housing. Although this was lower than the previous year; “Homeswest did not record how many Aboriginal people were placed in its own properties” (Homeswest, 1994: 35).

In 1994, Homeswest revealed an increasing emphasis on cost efficiency, particularly in relation to rental operations. Whilst Homeswest reported an operating profit of 13.3 million dollars, the rental operations reported a loss of 31.4 million dollars. Homeswest (1994)
commented that this deficit was largely the result of community service and social welfare tendencies limiting the amount of rent that can be charged. Homeswest introduced a number of initiatives to lessen the deficit and concurrently improve efficiency regarding rental housing. In particular, a review of its operation methods led to various developments, for example, a revised system for charging property damage to tenants, a continuous check of the waiting list, changes to transfer policy and a system for simplifying allocations. The evolving priorities of Homeswest included:

- construction.
- land operations.
- rental operations for low to moderate income earners.
- private rental assistance.
- home loan operations for those at the lower end of the market.

Standards and Programs

The HA expanded the objectives of the SHC legislation (1946) to include:

- the putting into effect of Commonwealth agreements and arrangements.
- the improvement of existing housing conditions.
- the provision of housing and land for housing.
- the development and re-development of land for housing.
- the provision of assistance enabling persons to obtain or improve their accommodation.

In subsequent years, Homeswest reports (1988) reflected this expansion and change, and specifically included:

- entering into joint ventures with private business, the non-profit sector and local government.
- building homes that cannot be identified as state housing.
- helping people into home ownership through a variety of schemes.
- buying and developing land for first home buyers.

- assisting low income earners in the private rental market.

Homeswest (1995) recorded an increased emphasis on the development of Aboriginal housing programs relating to remote and urban housing, and home ownership. Homeswest (1995: 20) noted that, “Aboriginal people have specific housing needs which include the need for appropriate accommodation, the need for an improved standard of housing and the need to reduce dependence on rental housing.” Three sub-programs were identified, namely an Urban Program, a Remote Program and a Management Support Program, which all aimed to assist Aboriginal tenants in meeting rental obligations. In 1996, the Aboriginal Home Ownership Scheme (AHOS) was implemented and was based on ‘Real Start’ shared equity conditions. This involved borrowing on a minimum of $1,000 deposit against a portion of the property, not less than 70%, with residual equity owned by Homeswest, and can be purchased by the customer. This was provided in conjunction with the ‘Right to Buy’ scheme for Aboriginal tenants. A budget of six million dollars was allocated to the scheme for the 1995/1996 financial year, during which 215 applications were reported and 53 approvals given.

The AHOS became a major initiative for the Western Australian government. Homeswest (1995: 8) reported that:

“Home loans require fewer administrative resources, and avoid such operating costs as rates and maintenance.”

Thus, Homeswest underwent a ‘fundamental philosophical shift,’ from its traditional role as predominantly a rental agency to one encouraging home ownership amongst its clientele. In 1995, Homeswest reported that they had 38,000 rental clients and 17,000 mortgage clients.
Staffing

In 1994, Homeswest launched an Aboriginal recruitment strategy and aimed to increase the number of Aboriginal staff by 10% over a three year period. In the Midland office, five new Aboriginal Accommodation Managers were appointed. In doing this, Homeswest intended to improve the service provided to Aboriginal people. This recruitment initiative was accompanied by an ‘update and relaunch’ of cross-cultural awareness courses, which were aimed at raising staff awareness and understanding of Aboriginal culture.

In addition, ‘customer focussed service’ was brought to the forefront through the introduction of a customer service charter and an expansion in the number of local service branches to 32. Improved and expanded services also brought an emphasis on principles of mutual obligation, which stated that whilst Homeswest endeavours to provide improved service, tenants are required to meet certain conditions in relation to paying rent on time and maintaining property.

In particular, the Job Task Manual for Applications Officers and Allocations Officers (DHW, undated) and the Job Task Manual for Customer Service Officers (DHW, undated) aim to provide training modules that are designed to develop the competent skills and knowledge needed for the performance of official and customer related duties within Homeswest. The modules within these manuals are inherently practical in the sense that they focus upon on-the-job training and endeavour to produce independently operating trainees. For example, the Job Task Manual for Customer Service Officers (undated) provides training modules such as:

1. ‘Receiving and loading a rental application.’
   This includes dealing with the provision of proof of identity (POI), which entails an exception for Aboriginal and Torres Strait Islander applicants in that it is acceptable to provide a reference from a recognised Aboriginal organisation.

2. ‘Priority and emergency interviews.’ This sets out procedures for such interviews and a reminder to officers that they are to remain objective and unemotional in priority and emergency situations, which are often the result of crisis situations.

3. ‘Working with Aboriginal people.’ This emphasises the diverse cultures of Aboriginal people depending upon location in Australia, identifies a number of issues to be mindful of when attending to Aboriginal people (for example, eye contact, shaking hands, use of jargon or closed sentences, body language and showing respect), includes a reminder that Aboriginal people may request an Aboriginal officer to simply increase level of comfort when discussing personal matters, and states that in the event of an unsuccessful approach refer the client to an officer from the AHD.

Homeswest Policy

In 1996, there was a major review of Homeswest policy. This led to the consolidation of policy in two comprehensive volumes, namely the Homeswest Rental Policy Manual and the Homeswest Maintenance Policy. These are regularly updated, and have been recently reviewed and are available online. The majority of policies are directed at all Homeswest tenants, for example, eligibility, waiting list, allocations, priority assistance, emergency housing, rent to income, transfer, tenancy management, maintenance, tenant liability, family and domestic violence, discretionary decision making. There are very few policies that specifically identify Aboriginal issues, for example eligibility and cultural diversity. Aspects of these policies will be outlined below.

Eligibility Policy

The Eligibility Policy (EP) (Department of Housing and Works (DHW), 2004: website) for public housing is governed by a set of principles

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4 Go to: www.dhw.wa.gov.au.
presented within the CSHA. This states that public housing is to be provided to those unable to obtain adequate and appropriate housing in the private sector regardless of age, gender, marital status, race, religion, disability or life situation. Eligibility is primarily limited by the financial situation of an applicant in relation to level of income, value of assets and number of dependant children.

The EP (DHW, 2004: website) states that:

*Homeswest reserves the right to refuse assistance, or place conditions on further assistance, to any applicant with substantiated breaches of the tenancy agreement or the Residential Tenancies Act. This applies to both wait turn and priority assistance.*

These breaches include many different things, for example, debt, poor property standards and antisocial behaviour. However, even if an applicant meets the eligibility criteria housing may be refused if a person cohabitating with the applicant is found to be in breach. The EP (DHW, 2004: website) states that:

*Applicants, partners and co-applicants must conform to Homeswest’s eligibility criteria and all household members must conform to eligibility relating to a debt to Homeswest and home finance schemes administered by the Department of Housing and Works.*

With regards to POI, the EP states that “...applicants for Homeswest assistance are responsible for establishing their identity and that of any dependents in order to qualify for assistance” (DHW, 2004: website). Whilst this aspect of policy is inclusive of all applicants, it acknowledges that some Aboriginal people may have difficulty providing POI documents, and thus, permits a “…reference from a recognised Aboriginal and Torres Strait Islander organisation, confirming identity” (DHW, 2004: website).

**Waiting List Management Policy**

The Waiting List Management Policy (DHW 2004, website) contains a number of principles that influence the provision of housing to Aboriginal people. This policy broadly maintains that applicants are generally housed according to their application date unless an urgent housing need is demonstrated; requires applicants to nominate a preferred housing zone or town; and expects applicants to specify the number of people that will reside on the property. Housing is then basically allocated on a turn-reached basis.

**Allocations Policy**

The Allocations Policy (AP) (DHW, 2004: website) is linked to eligibility and waiting list. The AP states that an applicant must be eligible in relation to all criteria before a property offer is extended, and that if a substantial breach is found “...he/she may be required to wait longer than usual for assistance while the debt is repaid or a suitable property is located” (DHW, 2004: website). The AP also states that properties are allocated to eligible applicants according to turn-reached on the waiting list provided that the size and type of housing is appropriate to the needs of the applicant and cohabitants. For example, an applicant will only be allocated a property where bedroom number matches family size. Applicants will be made one offer of accommodation “…consistent with their choices as stated on the application form, in the zone or country town of their choice, unless they provide a valid reason for refusal” (DHW, 2004: website). Reasonable grounds for the refusal of an offer include:

- Location. For example, that the property is too far from essential amenities, public transport, employment or family; “…if there is a demonstrated need for support…”; too close to “...people/persons who could be troublesome to the applicant...”; or “…by being a minority group in the immediate area, if there is the potential for harassment” (DHW, 2004: website).
- Accommodation type.
- Changed circumstances.
- Real estate lease.

**Priority Assistance Policy**

The Priority Assistance Policy (PAP) (DHW, 2004: website) governs access to housing in urgent circumstances. The PAP is linked to eligibility,
domestic violence, debt recovery and discretionary decision making. The PAP states that applicants must meet all eligibility criteria and must also establish that they have an urgent housing need. Thus, applicants for priority housing must satisfy the same eligibility requirements as applicants for a general application; although, this policy allows applicants with an urgent housing need to “...by-pass the wait turn process and... be offered accommodation as soon as possible, after approval has been granted, depending on the applicant’s special needs” (DHW, 2004: website). The PAP explains that applicants must be prepared to compromise in their choice of housing, which may mean satisfactory accommodation outside their zone of choice, and that if an applicant declines an offer without a ‘valid reason’ they will be removed from the priority list.

The PAP explains that “…priority assistance is not crisis accommodation”, and such applicants “…will be assisted with emergency accommodation if available” (DHW, 2004: website). The PAP also explains that being located in crisis or emergency accommodation does not give an applicant automatic precedence over other priority applicants. It is necessary for a person to be removed from the crisis situation and given the opportunity to look for other long term housing options. These may include renting privately with bond and/or rental assistance, taking legal action to retain a joint ownership property, or moving into shared accommodation with a relative or friend (DHW, 2004: website).

Emergency Housing Policy

The Emergency Housing Policy (EHP) (DHW, 2004: website) supplements the PAP. The EHP enables the provision of housing on a fixed term lease. This form of housing is for people who have no immediate housing option other than public rental housing, and is a short term option that allows the person to resolve their situation and make alternate arrangements.

Rent to Income Policy

The Rent to Income Policy (RIP) assessment is defined as “…the calculation of the rent for a tenant as a percentage of gross household assessable income of all household members. Housing assistance is provided in the form of a subsidy” (DHW, 2004, website). The RIP preamble states that:

“Under the Commonwealth State Housing Agreement, where a tenant does not have sufficient financial capacity to pay the full market rent, the level of subsidy is to be set according to the following factors:
- the level of income, including income from assets of the tenant and other household members;
- the number of dependent children in the tenant’s household and the receipt of Family Payments from Centrelink;
- Tenants with similar capacity to pay, pay similar rent; and
- Poverty traps are minimised.
The level of subsidy is calculated so that no household need pay more than 25% of gross assessable income in rent” (DHW, 2004: website).

Transfer Policy

The Transfer Policy (TP) (DHW, 2004: website) recognises that situations may arise that cause the tenant to request a relocation, and allows the movement of a tenant from an allocated property to an alternate accommodation. The TP explains that qualification for a transfer is dependent upon the standard eligibility criteria. Thus, the tenant must have no substantial breaches of tenancy or the Residential Tenancy Act (for example, rent arrears, debt, complaints of antisocial behaviour and unacceptable property standards) for a period of a year. In addition, unless the situation is of ‘extreme urgency,’ whereby the tenant will be relocated on a priority basis, the TP sets out three categories of transfers. These include eligibility transfer, special transfer and cross transfer. The TP also states that Homeswest may request that tenants transfer when they require the property for redevelopment.
Tenancy Management Policy

The Tenancy Management Policy (DHW, 2004: website) involves the use of routine inspections and property condition reports. As part of the tenancy agreement with Homeswest, tenants are required to maintain the property to an appropriate standard. Inspections and property condition reports are conducted and utilised by Homeswest to account for the condition of the property at the commencement of the lease, during the tenancy and prior to the tenant vacating. A comparison of findings enables Homeswest to ascertain the amount of maintenance required to return the property to a re-tenantable condition and to ascertain the amount of liability to be charged the tenant depending upon the maintenance required.

Maintenance Policy

The Maintenance Policy (DHW, 2004: website) delineates four main programs. The first is day-to-day maintenance, which is conducted at the request of tenants on a needs basis and by the Accommodation Manager as required upon inspections. The second is vacated maintenance, which is conducted after the tenant leaves the property. The third is planned maintenance, which is conducted on an annual basis and “is the process of identifying maintenance requirements in key high cost categories through ongoing survey of properties. These categories are separate from day-to-day maintenance” (DHW, 2004: website). The fourth is programmed maintenance, which is conducted on a needs basis and includes “...external painting and the associated minor repairs to the property. This form of maintenance is designed for the long term protection of the Homeswest assets” (DHW, 2004: website).

Tenant Liability Policy

The Tenant Liability Policy (DHW, 2004: website) defines liability as the costs incurred by the tenant for damage to the premises caused by misuse, neglect or wilful damage and for the removal of rubbish. Within this definition there are two types of tenant liability, namely occupied and vacated.

Family and Domestic Violence Policy

The Family and Domestic Violence Policy (FDVP) (DHW, 2004: website) provides guidelines for responding to difficulties experienced by victims of domestic or family violence. Homeswest recognises that:

Domestic Violence is a whole of society issue and Homeswest recognises its role and responsibility as an active participant in an active and co-ordinated response. Homeswest acknowledges that victims are most at risk following a separation from the perpetrator and that stalking is also a major problem, which is experienced to various degrees of vengeance. Homeswest further recognises that the needs of children should be a guiding factor in any decision-making. It is also acknowledged that the UN Declaration on the Rights of the Child (1989), Article 9 states that the safety of the child must be paramount in all circumstances. The objective of the Homeswest family and domestic violence policy is to define and outline assistance in this area (DHW, 2004: website).

The FDVP defines domestic violence as “...behaviour which results in physical, sexual and/or psychological damage, forced isolation, economic deprivation, or other behaviour which causes the victim to live in fear” (DHW, 2004: website). The FDVP recognises the invaluable and integral contribution of women’s refuge services and other supported accommodation services in advising applicants of their entitlements, and in assisting and supporting applicants to meet tenancy responsibilities under very difficult circumstances. The FDVP acknowledges that domestic violence is a main factor when considering applications for priority housing assistance and priority transfers.

Cultural Diversity Policy

The Cultural Diversity Policy (CDP) (DHW, 2004: website) recognises that cultural and religious requirements may affect the housing needs of some groups, for example, Aboriginal people and those born overseas. The CDP states that “...one
of the major requirements of these groups is for larger accommodation, to house extended family”, and that Homeswest is “…prepared to utilise innovative approaches to the housing of extended families, such as the allocation of adjoining duplex or medium density accommodation and the provision of ‘granny flat’ accommodation” (DHW, 2004: website).

In addition, the CDP assures that “…any Aboriginal customer will be serviced by an Aboriginal employee where one is employed in the office concerned, on request”, and that “…any Aboriginal tenant wishing to transfer due to cultural or religious considerations associated with a death in the tenancy is able to use this as an acceptable reason to transfer on a priority basis” (DHW, 2004: website).

**Discretionary Decision Making Policy**

The Discretionary Decision Making Policy (DDMP) (DHW, 2004: website) recognises that:

>...there are a number of situations in the management of public housing where an applicant or tenant’s circumstances fall outside existing policy and guidelines and a decision made solely within current policy could result in inequitable treatment of a customer.

The DDMP states that discretionary decision making powers are reserved for a number of defined officers. In applying this, discretionary decision making “...must be clearly documented as having been made using discretion, the reasons why existing policy was not applicable and the signature and position of the officer having made the decision” (DHW, 2004: website). The DDMP also states that if a “...particular non standard situation is being experienced with increasing frequency, Homeswest will develop policy and guidelines to deal with the situation” (DHW, 2004: website). If applicants or customers are dissatisfied with decisions they can refer to the Homeswest Appeals Mechanism (HAM).

**A Critical Issue**

During the development and review of policies and practices regarding the provision of public housing in Western Australia one main area of criticism emerged. This relates to the discriminatory effects of Homeswest policies, and the resulting impact of this upon the Aboriginal population.

**Discriminatory Practices**

A common theme throughout the history of Aboriginal housing regards the “...intervention by non-Indigenous people in the lives and living environments of Indigenous people in order to effect some change” (Saunders, 2000: 239). According to Saunders (2000), housing and living environments constitutes one area where non-Aboriginal people see the greatest potential for change; and thus, comprises the direction of their effort. Indeed, actively doing something about Aboriginal housing appears to be congruent with a symbolic of the national self, whereby “The symbol of neglect, the humpy, is to be replaced by the symbol of assistance, the newly-built house” (Saunders, 2000: 239). However, for Aboriginal people ‘improving’ housing and living environments has not necessarily been their highest priority. Rather, land has been a major focus of Aboriginal political activism and the symbolic centre of the quest for Aboriginal recognition. Nevertheless, in recent times Homeswest have been consistently accused of engaging in discriminatory practices due to their chosen method of policy implementation in particular relation to the provision of housing for Aboriginal people. These accusations have stemmed from advocates and constitute a large proportion of complaints to the EOC, and have often been concerned with type of housing, housing allocation, maintenance and evictions. Homeswest have continuously denied their engagement in unfair or discriminatory practices regarding the content of these accusations and others.
**Type of Housing**

An historical analysis of state policies and implementation regarding Aboriginal affairs illustrates that allegations of discrimination have continuously been made in relation to Aboriginal housing. The AA laid the foundation of legal separatism, whereby Aboriginal people could be forcibly removed from towns and placed on reserves. The conditions of these reserves were largely unnoticed by the majority of non-Aboriginal people, and were only brought to light by the 1974 Royal Commission. They reported that the conditions were harmful, and that they “…certainly do not motivate a person to improve their life circumstances, but have the effect of breaking most men’s spirits to the point where they are resigned to their conditions” (Beresford, 2002: 41). In Western Australia, allegations of discrimination in housing have deep and continuous roots. The House of Representatives Standing Committee on Aboriginal Affairs (HORSCAA) (1975) found that the SHC was deferring the housing of Aboriginal people on reserves by slowing the building rate of houses and applied an inflexible attitude towards eligibility criteria due to the community reaction against Aboriginal housing. In 1992, HORSCAA found “…strong evidence of discrimination and lack of cultural sensitivity within Homeswest” (as cited in Beresford, 2002: 42).

Although the provision of housing for Aboriginal people has been largely in accordance with non-discriminatory policies, there are numerous suggestions that the practices of Homeswest have not led to a decline in less favourable treatment. More cogently, anti-Aboriginal prejudice in various communities continues to affect the aspiration of many Aboriginal people to acquire quality housing. For example, Little (2000: 174) commented that in Geraldton Aboriginal people face “…prejudice and discrimination and simply not enough accommodation available for specific groups, such as single parents, youth and the unemployed.” According to Saunders (2000), these attitudes and practices may lead to feelings of antipathy and a sense of lack of ownership amongst Aboriginal people. For example, the houses are not ‘our’ houses, rather “…they are seen as houses which someone else produced, someone else owns, someone else ought to maintain and which Indigenous people just occupy and are required to pay the rent for” (Saunders, 2000: 245). However, accommodation difficulties are not necessarily resolved by buying a home. Little (2000) described how he purchased a three bedroom house in Geraldton with the assistance of the AHB. This house has been ‘for sale’ for three years, and “…it is common knowledge that real estate agents advise prospective buyers on the areas where it is best to buy, where ‘too many Aboriginals live’, where the ‘problem spots’ are and which are the nicer areas” (Little, 2000: 175).

The topic of public housing has generated divergent viewpoints between policy makers, housing providers and Aboriginal recipients. Saunders (2000) suggested that part of this divergence may relate to the distinction between a ‘house’ as a noun as opposed to ‘housing’. From this perspective, “…housing … is very much a multi-faceted ongoing process of marshalling resources in order to sustain and develop living environments over time. It is not a ‘thing’ or a one-time event” (Saunders, 2000: 245). Aboriginal housing has been viewed as a problem of supply and that simply building more houses will address the problem. However, this approach treats housing, “…as a thing which once provided solves the problem. The reality is more complex than this and the construction of the policy issue ought to be more sophisticated. The provision of a house may resolve one problem or issue for a household, but it will almost always be the beginning of some new ones” (Saunders, 2000: 245).

**Allocation of Housing**

Walker (1990) criticised the approach of Homeswest in the allocation of apartment-style housing to Aboriginal people. He suggested that there was evidence of ‘stereotypical views’ in Homeswest that maintained the unsuitability of Aboriginal people to such accommodation, and suggested that such policies may amount to direct discrimination as defined by the Equal
Opportunity Act 1984 (EOA). Homeswest (1992) referred to ‘tenant types’, whereby some tenant groups are better suited to flats than others. For example, some, “Australian families are unused to apartment style accommodation”, some “…ethnic families adapt readily and find support from living in a group of apartments’, and some, “…Aboriginal families have had serious difficulties living in flats, exacerbated by extended families coming to visit” (Homeswest, 1992: 9-10).

Overall, Homeswest (1992) recorded that 45% of stock in the metropolitan area was ‘medium density accommodation,’ for example, bed sitters, apartments or townhouses, which it described as of ‘limited acceptability.’ The allocation of this was influenced to some extent by past policies and practices, including:

- the suitability assessment of applicants for apartment allocation.
- the aspect of transfer policy that allowed tenants accepting apartments to maintain listings for alternate housing.
- the conditions restricting families with young children to ground or lower floor apartments.

These practices “…have now been brought to an end. This has occurred because of the combined impact of a new focus on principles of equity of access to accommodation, the introduction of the EOA (1984) and the Residential Tenancies Act (1987)” (Homeswest, 1992: p. 2). In addition, the assessment of applicants for suitability, “…became impossible when the accommodation manager concept was introduced and one officer was required to undertake all the management aspects associated with a round of 350 to 400 tenancies” (Homeswest, 1992: 2).

**Maintenance**

Many Aboriginal people allocated housing have encountered difficulties regarding maintenance, as exemplified by Little (2000: 174):

> I have rented from Homeswest, but experienced numerous unsatisfactory maintenance services, which Homeswest was supposed to provide under a tenant’s agreement. Like many Aboriginal people vacating Homeswest housing premises, I too experienced the brunt of an enormous ‘vacating maintenance’ account. Suspect work claims would be submitted by contractors, which on many occasions would be outrageous or seemed false. Unlike many others I protested profusely, which eventuated in a substantial reduction in the account.

Saunders (2000) noted a widespread objection amongst the Aboriginal community and public housing tenants to paying rent for accommodation that is on Aboriginal land and is not adequately maintained as promised. Many perceived this relationship as an unwanted form of social control and supervision that simply continues past notions and actions of displacement and dispossession. Saunders (2000: 243-244) stated that “whatever the source of this antipathy to rent, it has not been acknowledged by non-Indigenous policy makers. The tendency over recent years has been to try to promote the idea that rent must be paid, rather than critically examining non-Indigenous expectations.” These expectations include active and quality maintenance.

**Evictions**

The current approach of Homeswest (1997: 6) to rental provision states that:

Homeswest expects tenants to do three things:
- pay the rent;
- keep reasonable standards;
- live in harmony with the neighbours.

When tenants fail to meet these expectations Homeswest must look compassionately at the situation and endeavour to find a solution. While difficult decisions are sometimes required, prevention is better than cure. During the year Homeswest boosted funding for community support programs that help tenants manage their homes and expanded direct deduction schemes to prevent people falling behind with the rent”.

Beresford (2002) described the increasing number of complaints by Aboriginal people to the Equal Opportunity Commission (EOC) alleging discrimination in the provision of public housing during the 1990s. Beresford (2002: 40)
commented that “...the conflict between Homeswest and a number of its Aboriginal clients provides important insights into the broader failure of social policy for Aboriginal people and the limitations of current anti-discrimination legislation as a means for them to pursue justice.” In the early 1990s, the number of evictions under section 64 of the RTA increased dramatically, which occurred partly to reduce agency debt and partly to improve client responsibility pursuant to housing criteria.

According to McGlade, H & Purdy J, (1998) statistical evidence showed that Aboriginal tenants who accounted for 18% of Homeswest tenants received more than a third of all eviction notices and constituted more than half of those who were evicted. Beresford (2002) also highlighted that figures on eviction show that Aboriginal tenants suffer a grossly disproportionate number of evictions. In 1996, a Working Party was established to address the problem of evictions and develop practical initiatives for the AHD. These included:

- intervention and support for tenants stemming from customer service officers, the Urban Programs Manager, and the Director for Aboriginal Housing.
- education and newsletters.
- policy reviews.
- regular joint meetings with key agencies.
- the organisation of Aboriginal housing forums in various locations throughout Western Australia.
- community consultations.
- establishment of the Tenants Advice Service (TAS) to provide Aboriginal tenants and applicants with advice and support on housing alternatives, rights and responsibilities.

Summary

This chapter has identified that the CSHA and the original State Housing Act 1946 had a profound influence upon the development and implementation of housing policy relating to Aboriginal people in Western Australia following World War II. This fuelled a series of changes in public and government attitudes regarding the provision of housing. In particular, there was increasing recognition that most Aboriginal people resided outside of towns on settlements, missions and stations that were characterised by poverty and squalor, and increasing recognition that this segregation and exclusion was harmful. From this arose the drive for transition and the assimilation of Aboriginal people within the metropolitan and regional community through the provision of public housing. This led to a differing movement aimed at the facilitation of integration by scattering Aboriginal people amongst the community through standardised housing procedures. Finally a sense of state-determination influenced the arrangement of public housing policies and practices, and led to an emphasis on land development, re-developement and home ownership. These latter notions of housing were the primary responsibility of the AHB, AHD and Homeswest. Since 1945, the construction and review of numerous policies influenced the composition of these housing realities. In 1996, policy pertaining to the operation of Homeswest was reviewed and consolidated in two comprehensive volumes. However, in recent times the practices of Homeswest, as grounded upon these volumes of policy, have become an increasing subject of criticism. Some have argued that Homeswest practices do not always correspond to policy details, particularly in relation to Aboriginal people, and that this reality comprises a form of discrimination. Previous literature contending this notion will be detailed in the following chapter.
chapter eight:
Literature Review

Introduction
This chapter presents an overview of the literature regarding Aboriginal housing in Western Australia. Since 1990, there have been a number of reports and investigations pertaining to the provision of public housing by Homeswest for Aboriginal people. These include The Walker Report (1990), The Tripartite Working Group Report (1995), EOC Internal Review (1997), The Equal Opportunity Commission (EOC) Analysis (2000), The EOC Occasional Paper (2001), The House of Representatives Standing Committee on Aboriginal and Torres Strait Islanders Affairs (HORSCATSIA) Report (2001), The Tenants Advice Service (TAS) submission/response (2001/2003), The Pilbara Community Legal Service (PCLS) submission (2001) submission, The Gordon Inquiry (2002) and the EOC Internal Analysis (2002). This literature addresses a range of issues, including the history of housing for Aboriginal people, the nature of policy related to housing provision, and the inherent social concerns and alleged discriminatory practices in access to public housing for Aboriginal people. The content of these will be explored below and will primarily demonstrate that access to appropriate and affordable housing for Aboriginal people in regional and metropolitan areas has been a pressing matter for government and Aboriginal organisations for many years.

The Walker Report
Although there is now an extensive range of literature on Aboriginal access to public housing in Western Australia, the Walker Report (Walker, 1990) was one of the earliest documents. Notably, within this report Walker focussed on possible direct or indirect discrimination by Homeswest as defined by the Equal Opportunity Act 1984 (EOA).

Even though Homeswest policies and practices have undergone much change since the Walker Report, it remains worth revisiting in some detail to assess the status of its recommendations.

Founding Principles and Key Issues
The Walker Report was undertaken pursuant to the EOA (1984: section 80), which instructs to “…identify and assess the existence or otherwise of direct and indirect discrimination against Aboriginal people and certain other people in Homeswest policies and practices.” Direct discrimination occurs “…when there is a specifically directed policy, practice of action which treats one group less favourably than another”, indirect discrimination occurs “…when a policy or practice results in discrimination against a particular group of persons although it appeared non-discriminatory” (EOA, 1984: section 80).\(^1\)

First, Walker (1990) noted that according to the Housing Act (1980: section 5,28) the conditions of eligibility for housing are to be solely based on income criteria, and that Homeswest may let or lease any house or land held by it to ‘any eligible person.’ Thus, the legal validity of a decision to lease or not lease a property based upon reasons other than income criteria is questionable. Walker (1990: 11) asserts that “…if an applicant meets the determined ‘income criteria’, he or she is eligible and must be housed.”

Second, Walker (1990: 14) found that the Homeswest policy circulars (numbering about 600 at the time) had accumulated over a 15 year period and had “…simply been placed in chronological order in files within each Region.” There was no cross-referencing system and rarely any indication of whether one policy had been superseded by another. Essentially, it appeared that the issuing of policy circulars was largely responsive to situations as they arose. This

\(^1\) See also section 36 of the EOA.
resulted in “...no clear, easily accessible and coherent set of policies...”, and led to “...great inconsistency in decision-making between Regional offices, between Branch offices and Regional offices, and even within the same office” (Walker, 1990: 15). Also, written policy circulars did not appear to reflect actual practices due to, for example, the large measure of discretion applied in many policy circulars and the difficulties in locating and cross-referencing the large volume of issued policy circulars.

Third, Walker commented that the availability of a separate Aboriginal housing stock (housing available only to Aboriginal people) was a ‘vexing issue’ as it did not appear to improve the allocation of housing to Aboriginal people. In fact, as Walker (1990: 32) stated:

“...according to the observations of Aboriginal people, welfare workers, and even a majority of Homeswest staff, the opposite is the case: it usually takes longer for an Aboriginal applicant to be housed than for a similar non-Aboriginal applicant.”

Walker argued that this situation may be the result of the ‘social mix’ policy, the discretionary powers of staff relating to allocations, or the view that Aboriginal people have their own stream of housing and should not have equal access to mainstream housing. These key issues (eligibility, written policy and housing stock) will be examined below under the founding principles of direct and indirect discrimination.

Direct Discrimination
Walker found that there was an overarching practice of taking into consideration the Aboriginality of a person when deciding whether to allocate a property to an Aboriginal applicant. Walker (1990: 18) stated that:

*This occurs even when the Aboriginal applicant has no prior history and nothing adverse is known or alleged against him or her. Even in such cases, the Aboriginal person is treated differently, and less favourably, than another person.*

Walker specifically highlighted the reality of this practice in relation to applicants for apartments. He noted the stereotypical view that Aboriginal people are ‘not suited to apartment accommodation’, and the ‘social mix’ aspect as defined in the past ‘Allocations to Aboriginal Applicants’ policy.

A common defence by Homeswest staff was that an applicants’ Aboriginality was only a factor when there was a previous history of tenancy problems. A further common defence was that the decision to withhold certain properties was based upon a concern for local harmony, where Aboriginal tenants may be treated badly by neighbours and that this would lead to tenancy failure.

Walker (1990: 21) contended that, “To extents that vary somewhat from office to office, the practice is always to make use of the information that a given applicant is Aboriginal, in deciding whether or not to allocate the next available property to that applicant.” In particular, Walker noted that in offices rigorously applying the ‘social mix’ aspect, the procedure for a property that became available entailed firstly posing the question as to whether it should be allocated to an Aboriginal or non-Aboriginal applicant. If the previous property tenant was Aboriginal it was more likely to again be allocated to an Aboriginal applicant. Thus, the printout of eligible applicants would be examined and the next Aboriginal applicant offered the property. Walker (1990: 22) commented that “In this way, the status quo as to the proportion and spread of Aboriginal tenants is maintained.” In some areas there is a ‘quite explicit’ ratio of Aboriginal to non-Aboriginal tenants, whilst in other areas there is a ‘fluid’ ratio depending upon whether there are problems or complaints about existing Aboriginal tenants.

Walker (1990: 23) concluded that this ‘social mix’ aspect

...clearly offends against Section 47 of the Act, in that it has the effect of according to Aboriginal people a lower order of precedence in the list of applicants. The discrimination occurs through Homeswest treating an
Aboriginal applicant, on the ground of race, less favourably than in the same circumstances it would treat a non-Aboriginal person ... Accordingly, the policy is unlawful.”

Indirect Discrimination

Walker identified two main areas of indirect discrimination pursuant to the EOA (1984: section 36/2). For instance:

1. Applications for Emergency Housing may be excluded from eligibility due to the applicant having a current Homeswest debt, the applicant experiencing hardship that has been allegedly self-created or self-contributed, or the applicant having an alleged previous history of anti-social behaviour. These exclusions set conditions that a substantially higher proportion of Aboriginal people than non-Aboriginal people are unable to comply with and that are unreasonable in having regard for the circumstances created through, for example, poverty, unemployment, or ill-health.

2. Homeswest required that an applicant may be listed but not housed unless either 100% of rental arrears or 50% of tenant liability is paid. Anecdotal information and general impressions gained from Homeswest staff and welfare agencies suggested that Aboriginal applicants are more likely to have accrued or accrue liabilities for rental arrears or other tenancy matters. Walker asserted that such a reality constitutes discrimination under the EOA.

Even though Walker found no evidence of discrimination regarding the Homeswest evictions policy, he recommended that the procedures utilised during this process should be reviewed and impetus given to making them quicker, independent of Homeswest, and fairer for tenants. However, there is no record of any recommendations in the Walker Report being implemented by Homeswest.

The Tripartite Working Group

On May 22 1995, the EOC met with a coalition of Aboriginal agencies and community groups. It appeared they agreed to establish a Tripartite Working Group, which would presumably comprise a coalition of Aboriginal organisations, Homeswest and the EOC (chaired by the Commissioner for the EOC). The proposed objectives of the group included:

- examining the nature of problems arising from interactions between Homeswest and Aboriginal people.
- seeking ways to improve the relationship between Homeswest and Aboriginal people requiring housing.
- seeking ways to improve communications and co-operation between government agencies and Aboriginal community groups with responsibilities or an interest in the area of Aboriginal housing.
- identifying means to be adopted when disputes arise between Homeswest and Aboriginal tenants.

Homeswest later proposed that the objectives should include a reference to the obligations of the tenant to “…pay their rent and other due debts, and look after their property both internally and externally and live harmoniously with their neighbours” (Joyce, 1996: 2).

On November 07 1996, the first and only meeting of the Tripartite Working Group was held, and involved a discussion of Homeswest conditions of tenancy retention. Whilst there was a resolution to discuss ‘social mix/social behaviour’ aspects at the next meeting, this was cancelled at the instigation of the coalition of Aboriginal organisations and was never reconvened. It has been suggested that the Tripartite Working Group was more an ideal than an actuality.

EOC Internal Review

In 1997 the EOC reviewed the Annual Reports of the Aboriginal and Torres Strait Islander Commission (ATSIC) and the TAS, and materials from Homeswest. Key findings of this review were
drawn from published and anecdotal information. These findings included that:

- 2.3% of the Homeswest budget is for Aboriginal housing even though 15% of Homeswest tenants are Aboriginal.
- more information was required about Homeswest before an accurate picture of resource allocation could be defined.
- the Supported Housing Assistance Program (SHAP) gives managers ‘excessive discretion.’
- Aboriginal tenants figure disproportionately in evictions (about 29%) and termination notices (about 36%).
- allegedly rental arrears are seven times higher and maintenance costs significantly higher for Aboriginal Housing Board (AHB) properties than for Homeswest properties, mainly due to overcrowding.
- there is potential for the discriminatory application of discretionary decision making powers for bankruptcy debts.
- the involvement of occupational therapy assessment is ‘possibly inadequate’.
- indirect discrimination is most likely when individual officers have discretionary decision making powers.
- ‘cultural issues’ (for example, standards of behaviour and household management) are considered significant in Homeswest management of housing rentals to Aboriginal people.
- an inconsistent application of the Residential Tenancies Act 1987 (RTA) may lead to ‘an element of unlawful discrimination’ and review of this is recommended.

It was concluded that “…whilst the content of Homeswest’s policies and procedures is not discriminatory, there is potential for discrimination to occur in their application. This is especially so where individual managers have discretionary powers.” The review noted that the EOC and Homeswest had been working together to identify and eliminate discriminatory housing policies and practices.

The Equal Opportunity Commission Analysis

This internal report (EOC, 2000) examined complaints to the Commissioner for the EOC by some Homeswest tenants alleging differential treatment in priority housing transfers. This report also briefly addressed previous complaints pursuant to the EOA. These points of interest raised a number of issues about Homeswest, including:

- the process for Aboriginal people to get approval for priority housing.
- the time taken to house Aboriginal people once they were approved.
- the age and standard of housing allocated to Aboriginal people.
- the suburbs in which Aboriginal people were housed.
- the lack of access for Aboriginal people to mainstream housing and restriction to Aboriginal housing stock, which acts to limit the choices available.

Data Collection

This report was based on an investigation of Homeswest files held in the Homeswest Mirrabooka office. Homeswest was unable to provide readily accurate information on the length of time taken for Aboriginal and non-Aboriginal people to be housed from the priority list. Homeswest agreed to permit EOC officers to access files and obtain this information. The file investigation constituted two main categories:

1. Files of people currently on the priority list but not yet housed, including information regarding reasons for being placed on the list, the process for obtaining priority listing, dates and locations of offers, and reasons for the rejection of offers, so as to determine the respective waiting periods for Aboriginal and non-Aboriginal people.

2. A sample of tenant files from July 1997 to June 1999 to collate similar information, including reasons for priority listing, those seeking housing as opposed to those seeking transfers, suburbs requested, and offers made, so as to determine similar issues.
In addition, Homeswest agreed to provide details of the age of houses allocated to Aboriginal people and whether these were Aboriginal or mainstream housing stock. In sum, 295 files were assessed. Of these, 163 related to people not yet housed (32 were Aboriginal and 132 were non-Aboriginal), and 132 related to people housed between July 1997 and June 1999 (where 62 were Aboriginal Homeswest tenants) (EOC, 2000: 5).

Main Findings

This report presented a number of key findings regarding transfers, supporting documentation, allocation of housing, location of housing, age of housing and appeals.

In situations where a priority list transfer suited the tenant and Homeswest, there was little evidence of a difference in the time taken for transfer between Aboriginal and non-Aboriginal people, and little evidence of a difference in the time taken for approval between Aboriginal and non-Aboriginal tenants. However, in situations where a priority list transfer suited the tenant only, there was considerable difference in the time taken for approval between Aboriginal and non-Aboriginal tenants, with the former averaging 19 weeks and the latter six weeks. This difference was particularly marked for medical priority list transfers, with Aboriginal people averaging 31 weeks and non-Aboriginal people averaging six weeks; and also for threats of violence (for example, family violence, witness protection or threats from people outside the family), with Aboriginal people averaging 12 weeks and non-Aboriginal people averaging three weeks.

These average time differences were increasingly confounding considering Aboriginal people appeared to provide more supporting documentation in applications for priority listing, including medical support letters from GPs and hospitals; and considering Aboriginal and non-Aboriginal applicants appeared equally compliant in completing the required Homeswest medical information form. Interestingly, Homeswest appeared less likely to refer an Aboriginal applicant seeking priority transfer for medical reasons to an occupational therapist.

Nevertheless, there was little evidence that the time taken to allocate a house once placed on the priority list was substantially different between Aboriginal and non-Aboriginal applicants. Also, Aboriginal and non-Aboriginal applicants were equally likely to receive offers of housing that were rejected prior to being allocated a suitable house. A small sample of files (too small to gain a reliable outcome) hinted that there may be a difference in the time taken to allocate housing between Aboriginal and non-Aboriginal tenants in situations where violence was the priority listing reason.

Although Aboriginal applicants appeared less likely to be allocated housing in requested areas, the report specified that ‘few people’ are allocated housing in requested areas. Notably, a higher proportion of Aboriginal applicants were allocated housing in Balga, Girrawheen and Nollamara, which were described by the report as ‘Aboriginal suburbs.’

Houses allocated to Aboriginal applicants appeared to be considerably older than those allocated to non-Aboriginal applicants. The report noted that this situation was not the result of differences in the age of Aboriginal housing stock and mainstream, but rather that mainstream houses allocated to Aboriginal applicants tended to be older than those allocated to non-Aboriginal applicants.

Interestingly, Aboriginal applicants were more likely to have lodged an appeal before being placed on the priority list.

The Equal Opportunity Commission Occasional Paper

In 2001, the Commissioner for the EOC published an Occasional Paper exploring the participation of Aboriginal complainants in the complaints process. The research methodology included a literature review, the distribution of a questionnaire to existing and previous complainants, the conduct of ‘semi-structured’ interviews with Aboriginal complainants, and an analysis of complaints. In particular, the questionnaire results were telling in terms of revealing the circumstances of the respondent
population and in terms of exposing problems with the EOA complaints procedure. For example:

- 63% reported that they were in poor health.
- 26% said they were homeless.
- 5% could not produce documents in support of their complaint.
- 16% didn’t realise their complaints had lapsed.
- 7% had abandoned their complaints.
- 26% said the complaints process was too long.
- 21% said the complaints process was too stressful.
- 16% said the complaints process was too hard.
- 5% had lost confidence and became depressed due to difficulties with the complaints process.
- 10% said their complaint did not seem to be progressing and that the EOC was unhelpful.

Four recommendations resulted from this investigation. They suggested:

1. Legislative changes to the EOA allowing the Commissioner for the EOC to investigate matters that appear discriminatory, within the scope of the EOA, without receiving a complaint.
2. Conciliation may be a culturally inappropriate mode of complaint resolution and may thus reinforce existing inequalities; and that there needed to be greater support and face-to-face contact with complainants during the complaints process and the distribution of publications assisting Aboriginal organisations.
3. Required close and continuing liaison with Aboriginal organisations to explain the EOC complaints process.
4. There were obvious difficulties with the written format of complaints and the condition expecting documentary supporting evidence, required under the EOA.

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**The House of Representatives Standing Committee Report**

**Public and Private Committee Housing**

A report by the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (HORSCATSIA) (2001) stated that nationally:

- 31% of Aboriginal compared with 71% of non-Aboriginal households in non-remote areas either own or are purchasing their own homes.
- 58% of Aboriginal compared with 27% of non-Aboriginal households rent their homes.
- 28% of Aboriginal rentals are public housing and 47% private, compared with 18% public and 76% private for non-Aboriginal rentals.

There are also geographic disparities between housing types available to Aboriginal people. The 1996 Census shows that:

...29% of Indigenous households in urban areas rent public housing while only 6.5% of Indigenous households in remote areas do so. At the same time, only 2% of Indigenous households living in urban areas rent Indigenous specific community housing, but 25% of Indigenous households in remote locations do so (HORSCATSIA, 2001: 128).

Therefore, access to public housing is a key element in meeting Aboriginal housing needs.

HORSCATSIA noted that home ownership remained beyond the reach of most Aboriginal people, certainly compared with rates of home ownership by the whole Australian population, and commented that:

...with 33% of Indigenous households living in the low cost, income sensitive housing tenures of public and community rental, compared to 5.5% of non Indigenous households, it is unrealistic to expect Indigenous home purchase and ownership rates to approach those of non Indigenous households without targeted assistance (HORSCATSIA, 2001: 129).
Thus, the majority of Aboriginal households are dependent on private or public rental housing. However, with regards to private rental housing, not only is the national supply of low cost appropriate private rental shrinking, but Aboriginal access may be limited by two types of discrimination (HORSCATIA, 2001). They are:

- direct discrimination, whereby Aboriginal tenants are denied available rental housing due to their race.
- indirect discrimination, through the application of measures, such as private rental histories and other onerous requirements, with which Aboriginal tenants are unable to comply.

This leaves public rental accommodation as the only option for most Aboriginal people living in metropolitan areas. One consequence is that Aboriginal people come to comprise a disproportionate number of the ‘primary homeless.’

For example, 50% of the national total, 89% in the Northern Territory, 54% in Western Australia and 38% in Queensland (Goldie, 2001: website).

Barriers to Public Housing

HORSCATIA (2001) identified a series of ‘barriers’ to public housing, including affordability, suitability of housing stock, overcrowding and visitors.

In terms of affordability, the cost of housing is a major cause of poverty in metropolitan areas. In Western Australia, 22% of metropolitan Aboriginal households are in poverty before housing costs are taken into account, and 41% are in poverty following this. Thus, “...despite public housing rents being capped at 25% of household gross assessable income, it is still high enough to tip many Indigenous households into poverty” (HORSCATIA, 2001: 138).

In terms of the suitability of housing stock, Aboriginal people tend to need larger houses as they often have larger families. On average there are 3.7 members per family compared with 2.7 for the whole population. Aboriginal households also often accommodate extended family members. However, most public housing is of older stock and of three bedroom design, and as such, Aboriginal families may face delays in acquiring suitable housing and be forced to stay with other family members in the interim.

In terms of overcrowding, HORSCATSIA heard evidence that about 18% of Aboriginal families in public housing may be living in overcrowded conditions. This has an impact on maintenance costs and may result in evictions, which may lead to severe consequences and commence a cycle. As stated, Aboriginal families may “…as a consequence be barred from accessing other public housing. Evicted tenants tend to move in with relatives and friends, resulting in overcrowding and possibly the next eviction” (HORSCATIA, 2001, 140).

In terms of visitors, rather than the tenants visitors are often the cause of tenancy failure. HORSCATSIA (2001: 141) was informed that:

> If you have got non-Aboriginal people either side of you, you have got a high visitation rate of relatives who come to town with a high population pressure on that particular house and you are unfamiliar with the suburban expectations of behaviour, hours, noise and so on, it seems to me that you are leading people into a formula that really sets them up to fail.

The Tenants Advice Service Submission/Response

Homeswest and the TAS have maintained a critical dialogue over a number of years. The TAS (2001) contributed a submission to a Commonwealth Inquiry exploring the housing needs of metropolitan and regional Aboriginal and Torres Strait Islander people. Homeswest (2003) responded to this submission and the TAS (2003) then responded to Homeswest. This dialogue has raised a number of critical issues regarding the perceptions of Homeswest and the perceptions of the Aboriginal people or advocates alleging discriminatory practice against Homeswest in the supply and management of public housing.

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2 The ‘primary homeless’ category is made up of people ‘sleeping rough’, for example, those without any conventional accommodation.
Critical Issues

Within this dialogue five main issues relating to the provision of public housing by Homeswest to Aboriginal and non-Aboriginal people are discussed, including access, eligibility, evictions, debt and policy.

Homeswest cited a passage from the EOC report (1999) regarding the Mirrabooka priority listing, as discussed above, which stated that there is ‘little difference’ in the experience of Aboriginal and non-Aboriginal people in accessing public housing. This finding supported a contention by Homeswest that its policies and practices do not discriminate on the ground of race. However, the TAS (2003) asserted that a closer look at the investigation indicated that Aboriginal people often experienced ‘far longer waiting times’ in accessing public housing, particularly for transfers, and have to handle ‘far more rigorous processes’ compared to non-Aboriginal people.

According to the TAS (2003: 21), the EOC report provided a statistical foundation for their concern that the “…discriminatory outcomes of Ministry practices for Indigenous tenants and applicants, and the changes subsequently implemented by the Ministry similarly acknowledged the need for urgent reform.”

Homeswest (2003) stated that the eligibility criteria utilised to assess the suitability of an applicant is applied equally to all with a poor tenancy history or Homeswest debt, and does not discriminate against Aboriginal people. However, the TAS (2003) stipulated that this only appeared to demonstrate that Homeswest did not understand the notion of indirect discrimination, which involves the application of the same rules to all, but the unfavourable and unreasonable affect of those rules upon a particular group of people.

Homeswest commented that a tenancy can only be terminated and eviction undertaken if there is a breach of the RTA. In such a case the tenant is issued a Notice of Breach and allotted 14 days to respond to the breach or rectify the breach. The TAS (2003: 5) argued that even a superficial examination of Homeswest data regarding evictions suggested a, “…grossly disproportionate impact of existing Ministry policies and procedures on Indigenous tenants.” The TAS presented data indicating that:

- 22% of all Homeswest tenancies involve Aboriginal people.
- 42.6% of all termination notices were issued to Aboriginal tenants.
- 44% of all court orders were issued to Aboriginal tenants.
- 42.5% of all bailiff evictions were issued to Aboriginal tenants.
- 44% of all restored tenancies involved Aboriginal people.

Whilst the TAS (2003: 10) does not dispute the right of Homeswest to terminate a tenancy based on a breach of the RTA, it is concerned that Homeswest chooses conduct similar to other housing provider businesses even though it “…[receives] millions of dollars per year under the terms of the Commonwealth State Housing Agreement [CSHA].” Homeswest also asserted that ‘no tenant’ will be evicted without referral to a financial counsellor, the SHAP or the Aboriginal Tenancy Support Service (ATSS). However, the TAS pointed out that many tenants receive a breach or termination notice and immediately vacate the premise as they are unaware of their entitlement to occupy until the eviction application is determined by a court.

Homeswest (2003) asserted the recognition and practice of cultural sensitivity in the management of Aboriginal tenancy, but commented upon the difficulty due to the disproportionately higher (about seven times higher) debt or rental arrears that Aboriginal tenants accrue compared to non-Aboriginal tenants. The TAS (2003) contested this statement and pointed out that this recognition, but difficulty, hardly demonstrates supposed ‘more favourable treatment’ and in fact may demonstrate the reverse.

Homeswest commented that it introduced policy providing options and incentives for applicants with a poor tenancy history to re-access public housing. As such, this policy ensures the continuing viability of the public housing system. However, the TAS (2003) recorded that this notion
of viability is simply concerned with having a public housing system that operates at a profit and corresponds quite comfortably with previous policy aimed at debt recovery, including the recovery of tenant liability debt accumulated on houses assigned for demolition under the redevelopment scheme. In addition, although Homeswest completed a major review of its policies in 1997, the TAS (2003) commented that the positive aspects of policy change have now been lost due to the lack of training conducted and education provided for Homeswest staff following the review.

The TAS concluded that there are outstanding issues between Homeswest, as the main provider of public housing, and those alleging that its policies and practices amount to discrimination against Aboriginal people, the main group requiring access to public housing. As the TAS (2001: 11-12) stated:

*Indirect racism is a symptom of embedded and institutionalised practices which may not only appear neutral but also may be applied in a neutral manner. The statistical evidence that apparently neutral conduct disproportionately impacts on a particular group is a warning sign that such conduct needs to be re-examined to ameliorate disproportionately adverse outcomes.*

**Pilbara Community Legal Service Submission**

The PCLS submission (2001) was an attachment to the TAS submission (2001). It is significant in that it provided a rare insight and perspective into issues of discrimination in the provision of public housing in a regional area (the Pilbara), as opposed to the metropolitan area. The majority of the PCLS clients reside in a community known as Tjalka Warra or ‘12 mile,’ which is about 16 kilometres from Port Hedland, and are awaiting the allocation of Homeswest housing in town, which is largely the only option for Aboriginal people in that area. The PCLS submission discussed six main matters relevant to the experiences of their clients, including waiting list, priority listing, standard of housing, maintenance and tenant liability.

**Relevant Experiences**

An applicant may lose their position on the waiting list for Homeswest housing if they do not respond to correspondence. The PCLS stated that this is often difficult for many Aboriginal people due to high mobility, and low literacy and numeracy skills.

The PCLS commented that some Aboriginal people on priority listing will accept a house that is poorly maintained due to their desperate situation and need for alternate housing. In addition, if priority housing offers are rejected due to personal safety or for cultural reasons the applicant may lose their status on the list. However, in doing so many priority housed Aboriginal people will acquire further debt through tenant liability, which they will be charged for at the conclusion of tenancy.

At times, the standard of housing designated is the result of the utilisation of the descriptor ‘Fund 6.’ When this descriptor is utilised the housing designated is of ‘much poorer standard’ and often earmarked for demolition. There is also little or no recognition of the suitability of housing design for the applicant at hand. The PCLS contested that Homeswest have simply created segments of housing that are only occupied by Aboriginal people, and that the application of this does not account for difference in need or freedom of choice and simply treats Aboriginal people as a homogeneous entity.

According to the PCLS, the age of properties and their long history of use contributed to maintenance problems for tenants. The main problems included plumbing blockages due to old pipes and the nature of the soil, particle board cupboards in poor condition, ceiling fans hanging from electrical wiring, bathrooms with no floor drains, kitchen sink tiles missing or falling off due to the lack of grout, no smoke alarms, windows jammed into warped frames, and no boundary fencing. In addition, the calcareous nature of water within the region often led to a build up of salt around tap fittings, faucets and cisterns, which tended to cause slow leakages, excess water use and exorbitant water bills. The intense heat within the region made it hard for tenants to maintain a garden and control water usage. These
factors often added to the existing budgetary problems for the tenant. Furthermore, the PCLS asserted that usually maintenance is carried out on a reactive basis and that non-essential maintenance is only undertaken if the tenant is up-to-date with rent payment. However, the maintenance that is attended to by contractors is rarely checked and often the same problem will resurface.

The PCLS stipulated that substantial tenant liability may be incurred due to property condition reports rarely taking into account the substandard condition of many properties at the time of letting. Also, often properties are vacated due to a crisis situation and inspections are rarely carried out with the tenant in attendance. Many tenants do not question their level of recorded Homeswest debt, even though an additional debt may suddenly emerge from within the Homeswest system from a previous tenancy (some debts were reportedly over six years old) and even though there have been instances where debt levels were found to be mistaken. The application of cultural sensitivities and the recognition of widespread poor literacy and numeracy amongst Aboriginal people are often not considered in these matters.

Unfortunately, many people who have a Homeswest debt or have not maintained a debt-free account for 12 months will be categorised as having a ‘poor tenancy history’ and may be barred from accessing Homeswest public housing.

The Gordon Inquiry

Although the Gordon Inquiry (Gordon, Hallahan and Henry, 2002) did not examine the subject of discrimination in access to government services, it did collect submissions from the Department of Housing and Works (DHW) and make recommendations regarding improved service delivery to Aboriginal people.

This Inquiry acknowledged the important role of adequate housing in reducing pressure on families, and hence, in reducing family violence and child abuse; and also identified ‘significant waiting times’ for Aboriginal families wanting to access housing. This Inquiry (Gordon, Hallahan and Henry, 2002: xxiv) saw a need for crisis accommodation and a “…better integration of crisis and longer term housing across all government and non-government agencies.”

This Inquiry found allegations of discrimination in access to private rental accommodation, leading to a distinct reliance by Aboriginal people on public rental housing. The DHW informed the Inquiry that about 18% of its tenants are Aboriginal and “…that only a small proportion of its Aboriginal tenants place heavy demands upon the system. The majority of Aboriginal tenants of DHW have intervention-free occupancy and enjoy successful tenancies” (Gordon, Hallahan and Henry, 2002: 174). In addition, the DHW informed the Inquiry that it strongly supports home purchase programs as a means of reducing Aboriginal reliance on rental accommodation.

The Equal Opportunity Commission Internal Analysis

In 2002 the EOC conducted an internal analysis of complaints and enquiries received over a period of two years from Aboriginal people alleging discrimination by Homeswest. Of these complaints, 94% derived from metropolitan Homeswest regions, including 29% from Cannington, 26% from Mirrabooka, 10% from Fremantle and 5.1% from Armadale. In terms of the outcomes of these complaints, 35% lapsed, 19% were conciliated and 20% remained unresolved. In conclusion, the analysis recorded that:

- there were 196 complaints lodged by Aboriginal people compared to only three by non-Aboriginal people.
- 90% of complainants were women.
- 51% of complaints were on the grounds of race and impairment, 32% on the ground of race and 10% were unidentified.
- 42% of complainants were identified as homeless, including ’sleeping rough’ without a roof over their heads, in crisis accommodation or staying with friends, or in insecure accommodation (for example, boarding houses, caravans or rooming houses).

Many Aboriginal people commented that they
were homeless as a result of race discrimination in the allocation of priority housing assistance. Many Aboriginal people met the criteria for priority housing assistance (for example, having a medical condition caused by their existing housing, having a medical condition where treatment was unavailable in their housing area, being the victim of domestic violence or child abuse, endeavouring to take a child out of care, or racial harassment) though remained inappropriately housed.

This report recognised that those applying for priority housing assistance with poor tenancy history (related to debt, property standards or anti-social behaviour) have their applications referred to a Homeswest manager under the Discretionary Decision Making Policy (DHW, 2004: Website), which states that:

*There are a number of situations in the management of public housing where the applicant or tenant’s circumstances fall outside existing policy and guidelines and a decision made solely within current policy could result in inequitable treatment of the customer. When such non standard situations arise, Homeswest reserves the right to use discretion to make a decision regarding a customer, which may vary, modify or fall outside existing policy and guidelines.*

When utilising discretionary decision making powers it is required that:

*“...any decision made using discretion by a Homeswest officer, must be clearly documented as having been made using discretion, the reasons why existing policy was not applicable and the signature and position of the officer having made that decision” (DHW, 2004: Website).*

Some Aboriginal complainants were advised that they did not qualify for priority housing assistance as they had other viable housing options, which were commonly expressed as living with other family members. However, such advice may lead to overcrowding and an inadvertent contravention of Homeswest policies.

In regards to overcrowding, Homeswest policies can seem contradictory and inconsistent. They state that:

- although overcrowding is an issue, “...where there is anti social behaviour and/or problems associated with local authority by-laws”, Homeswest will not interfere if the correct rent is paid and there are no other problems (DHW, 2004: Website).
- although the Tenancy Agreement provides a maximum and minimum number of occupants, “...whether Homeswest takes action [over breaches] will depend upon circumstances” (DHW, 2004: Website).
- if a person not declared as an occupant on the Tenancy Agreement stays for more than 2 months he/she may be regarded as a resident for the purpose of calculating rental payments.

In sum, an applicant for priority housing will be eligible if Homeswest criteria are met (for example, no debt, good property standards and no history of anti-social behaviour). An applicant who does not meet these criteria is referred to an officer with discretionary decision making powers. Nevertheless, an analysis of complaints revealed that the major reasons for the rejection of priority housing assistance, a transfer or eviction suspension were a debt to Homeswest, poor tenancy history, the inability to contact the tenant as they are homeless or unable to be located, the assessed ability of the applicant to access the private rental market or the ability of the applicant to reside with family members.

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3 Officers holding discretionary authority are listed in the Discretionary Decision Making Policy (Homeswest, 2002: 2), and include the Minister, Board of Commissioners, Director General and General Manager, other defined manager level officers, and the Administration Officer.
On the 9th July 2002 the then Acting Commissioner of Equal Opportunity Ms Moira Rayner, wrote to Mr Greg Joyce Director General of the Department of Housing & Works in relation to the outcomes of anti-racism workshops conducted by EOC staff for DHW from June 2001 to May 2002. Correspondence from the Acting Commissioner for the EOC to the Managing Director of the DHW, summarised some of the key issues that emerged from the workshops. This correspondence stated that:

...a significant number of participants appeared to lack an understanding of the nature of racism, the purpose of anti-discrimination laws, the relevance or legitimacy of the experiences of Indigenous people and the justification of special programs ... There is a widespread perception among staff that they themselves are the victims of racism and injustice. The comments made in the questionnaires, in and after training sessions by some staff disclose attitudes and values that I am sure would be of concern to you. Your staff often have to handle both difficult situations and people. Their beliefs, state of knowledge and organisational norms of behaviour are likely to play a significant role when discretionary decisions have to be made, as well as in everyday working relationships and in the development and implementation of your policies and programs” (EOC, 2002: 8-9).

Likewise, the official letter identified some major issues that emerged from the workshops, which were brought to the attention of EOC staff outside the workshops and were expressed by EOC staff. These involved:

1. The inappropriate use of the term ‘Fund 6’ (denoting the Commonwealth Aboriginal Housing Program) to refer to Aboriginal clients, and which appeared to be widespread amongst Homeswest staff.
2. The ‘sensitive allocations’ policy simply appeared to be the previous ‘status quo’ policy under a new name.
3. Although there was low participation by Aboriginal Homeswest staff in the workshops, “...after every session Aboriginal staff discussed racism with EOC staff” and reported being “...emotional, distressed, feeling unsupported when subjected to racism in the organisation” (EOC, 2002: 7).
4. There was a widespread view that the only racism in Homeswest is communicated by Aboriginal tenants and directed at staff. Many staff frequently raised the subject of verbal abuse by Aboriginal tenants, which clearly stemmed from the perception that they are the victims of black racism.
5. There was a consistent view that Homeswest policies and practices were fair and uniformly applied, and measures to achieve ‘equality’ were “...unfair, discriminatory, apartheid, reverse discrimination, taking things too far” (EOC, 2002: 8).
6. There was an endemic view that staff cannot say anything critical of Aboriginal or culturally and linguistically diverse clients as they will be labelled racist.
7. Aboriginal people are seen as the “...problem - culturally deficient, deviant” (EOC, 2002: 8).
8. Racism is perceived as the other person’s problem and that Aboriginal people are overly sensitive and misinterpret harmless remarks.
9. There is a widespread view that Homeswest discriminates in favour of ‘pathologically unfit’ Aboriginal tenants and that this practice is unfair.

In October 2002 a Freedom of Information application was lodged which resulted in an edited version of these issues being released.

Summary

The above overview of literature primarily reveals that Homeswest has experienced continuous review and criticism stemming from advocates and various Aboriginal organisations in relation to the provision of public housing. Much of this criticism is directed at the performance of Homeswest pursuant to its obligations under the EOA, and is concerned with the alleged discriminatory nature of Homeswest policies and
practices. Although Homeswest has responded to each review and criticism by seeking to improve policy relevance and service delivery to Aboriginal people, it has generally experienced difficulty in effectively redeveloping policies and regenerating practices. The relationships between Homeswest, advocates and Aboriginal organisations also remain hampered due to apparent disagreement and frustration regarding the subject of discrimination, and specifically the existence of indirect discrimination. Homeswest continues to assert the non-discriminatory nature of its policies and practices in relation to the provision of public housing, arguing that they are applied fairly and evenly to all tenants. According to Homeswest (2003), the fact that there exists no successful complaint of discrimination against them is evidence that it does not discriminate on the ground of race in the provision of public housing to Aboriginal people.

4 The full report has not been released as it identifies individuals involved. However, in October 2002, a Freedom of Information application resulted in an edited version of the report being released.
## Section Four
### Statistical Analysis of Housing

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chapter nine:
The Geography

Overview
The proposition being tested in this section is that the Department of Housing and Works (DHW) housing stock is used to house those most in need within Western Australia. This section will specifically address the needs of the Aboriginal community, generally acknowledged as one of, if not the most, disadvantaged sub-groups within the wider community. This chapter provides details about the towns and suburbs/localities that are referred to throughout this section. The following chapter will identify the two main groups of interest, namely non-Aboriginal people residing in DHW rental properties and Aboriginal people residing in non-DHW rental properties. The final chapter will draw an analysis connecting together the four main indicators (overcrowding, housing affordability, children living in poverty and accessibility to services) and the two main groups of interest.

The Basis for Research
It has been argued that adequate housing is a fundamental right (Hartman, 1998; Sidoti, 1996). In addition, that this right is grounded in such international agreements as the 'International Declaration on Human Rights' (1948), to which Australia was one of the most ardent proponents.\(^1\) Article 25 (1) of the Declaration reads:

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, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

In the absence of the provision of these rights the signatories to these Conventions, the governments of the signatory States, have to accept responsibility to provide adequate responses.

An immediate question arises regarding what adequate means. This research does not attempt to definitively state an exact benchmark. Instead it will look at the relative differences between population groupings to examine the disparity between groups. From this it is evident there are substantial differences between the experiences of the Aboriginal population compared to the relevant non-Aboriginal grouping.

Interpreting the Results
Although the research addresses whether or not the provision of public housing adequately fulfils the government obligation to ensure there is adequate housing, it does not imply that this is not being attempted by relevant agencies. Before embarking on this research it was evident there would be discrepancies between need and allocation.

The use of eligibility criteria as a form of cut-off does not address the relative levels of inadequacy that exist. As with any benchmark there are always cases that could fit on either side of the benchmark without dramatic changes in circumstance. As the process stands, issues of relative inadequacy are not considered pre-requisites to obtaining tenancy in public housing. They are used in other processes that deal with issues of timing, with the common term used being ‘priority.’ It is assumed that priority should mean that at any given time those with the most urgent need are those who are most likely to be given access to public housing.

A further reason the actual allocation of housing may not match the demonstrated need is that the eligibility criteria are not used as a mechanism for terminating the use of public housing. Due to this,

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1 Chris Sidoti (2003) outlined the part played by Australia in pushing the declaration.
it is likely that some DHW tenants who initially needed adequate housing eventually become capable of providing their own adequate housing, but because they are not obliged to do so they remain DHW tenants. This section does not suggest this is wrong, but rather notes that such a practice means that some public housing is used by those not in urgent need of adequate housing. This could indicate that the real demand for adequate housing is not being met. The choice of response to this issue is with the provider of public housing. The impact of termination criteria has not been assessed within this section, and therefore this cannot comment on what an appropriate response may be.

The main premise of this section is that people who do not have adequate housing create an obligation for the State to respond. This requires that some form of judgement be made with regards to adequacy. For the purpose of this section, four indicators of housing, often used when making an assessment of adequacy, are modelled using data from the 2001 Census of Population and Housing. The four indicators are:

- Overcrowding
- Housing affordability
- Children living in poverty
- Accessibility to services

These categories do not claim to represent the full scale of issues that could be considered, but they do provide enough of a picture to see how there are substantial differences between the provision of public housing to Aboriginal and non-Aboriginal people. The indicators used should be interpreted as indicative items. They do not try to define specific criteria for assessing need, but rather provide an overall picture of various needs. Each of the four indicators will be described in more detail later.

This section endeavours to address the causes of need, and demonstrate that need is not equally shared and that some sections of the community experience greater need than others.

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2 See Australian Bureau of Statistics (ABS) Australian Standard Geographical Classification about ‘Statistical Divisions’ and ‘Localities’.
The figure above shows the boundaries of the Perth metropolitan area that will be considered throughout this chapter.
The figure above shows the rural communities within Western Australia that will be considered throughout this chapter. Generally, each black dot represents an urban centre with a population of 200 plus.
chapter ten: The Mechanics

Identification of Aboriginal and Rental Households

In addition to the four indicators, two other census variables are used to cross tabulate these concepts. An assessment can then be made of the relative impact these issues have on Aboriginal families in both DHW rental properties and other types of rental properties.

This section uses the definition of Aboriginal housing as any dwelling that contains a person who has been identified as Aboriginal. Tenure type has been broken into ‘rental’ and ‘other dwellings’ and the rental market has been subdivided into ‘DHW,’ which is referred to as Rented: State/Territory Housing Authority in Census data, and ‘Other Rental.’

Statistical Measures

Percentages

Throughout this section the emphasis is on the use of percentage figures. ‘Not stated’ responses have not been included in the calculations. This is done partly to alleviate the need to explicitly deal with dwellings where there was no response to a particular question. This method assumes that those who did not answer the question would have given answers in similar proportions to those people who did answer the question. In the end this is an academic question, as the data unequivocally shows the differences highlighted would not be altered to an extent that warrants the extra effort required, that is assuming a more practical approach could be taken.

Throughout this chapter, unless explicitly stated, it is assumed that the total population under consideration is always relevant to the group under scrutiny. That is, if Aboriginal non-DHW rental households with unaffordable housing are being described it will be as a percentage of all Aboriginal non-DHW rental households. In this way the percentages can always be seen in comparison with another group, such as the non-Aboriginal DHW tenants. This means that histograms can be used to make direct comparisons.

Histograms

The vertical axis of each histogram is the percentage of localities exhibiting characteristics of the particular indicator being examined, and the horizontal axis is the degree of disadvantage of the particular indicator.

Median Value

This refers to the value below which 50% of cases fall. For example, in the histogram on overcrowding in rural Western Australia for DHW Aboriginal tenants the median was 33.3%. This means that half the localities had more than 33.3% overcrowding.

Cluster Range

On Perth metropolitan maps, this breaks the degree of disadvantage for each particular indicator into five groups.

Rural Dot Maps

Within these, the size of the circle indicates the degree of disadvantage. For example, the larger the circle the greater the disadvantage, the smaller the circle the less the disadvantage.

Index of Disadvantage

As outlined, the four indicators under scrutiny are connected to different aspects relating to need. This complexity can make it hard to combine the varying aspects into one picture. For this purpose a basic model was created which creates an ‘Index of Disadvantage.’ The index is scaled from 0 to 100, with 100 meaning that the suburb or locality is in the most disadvantaged cluster range for each indicator. The two groups that are of major interest are non-Aboriginal people who
live in DHW properties and Aboriginal people who live in non-DHW rental properties.

Homeswest is often seen as the public housing provider of last resort. As such it would be expected that people most in need would not use non-DHW housing, for example private rental housing and other non-government housing, if they had access to DHW housing properties.

The overall conclusion of this chapter is that DHW housing plays a significant role in the provision of housing to those in need. However, it is not the housing provider for a significant proportion of the Aboriginal population who are looking for rental properties, and these households display significantly greater degrees of need than non-Aboriginal tenants housed by DHW.

3 The index of disadvantage was created using the same techniques that were used in the maps. That is, the use of clustering to identify natural breaks in the data, which were then ordered. Since there is obviously some conceptual overlap between ‘housing affordability’ and ‘children in poverty’, these two shared the combined weighting of 34% while the other two models were each given 33%. ‘Children in poverty’ was weighted slightly stronger than housing affordability on the basis that it was the more rare event and as such measured a more acute aspect of need. It was given 19% while ‘housing affordability’ was given 15%. The model used a relatively straightforward manner of combining the results from each indicator. The cluster number, in ascending order of disadvantage, that is 1 for the least disadvantaged and 6 for the most disadvantaged, was inverted so that the log of these numbers could be used in the weighted addition. Applying the log function was used to take into account the way in which the rate of disadvantage seems to fit the log scale better than a straight-line fit. There is also a conceptual issue of exactly what an increase in overcrowding from 20% means in comparison with one from 40%. This is a subjective judgement and adds to the caution with which these results should be interpreted. The scores were then added together using the weightings above. The final score was inverted, using the exponential, to make it fit the original scale. It was then rescaled to 0 to 5 and multiplied by 20 to give a scaling of between 1 and 100. Only suburbs or localities that had at least one variable have been included in the final model. This means some suburbs or localities are not included. While it may be assumed these were not disadvantaged, there is the possibility that the size of the population was too small for the data to survive the randomisation process performed by the ABS when extracting the data.
In rural Western Australia, Indigenous households renting non-DHW properties appear to experience a greater rate of overall disadvantage (median value of 34.8%), compared to non-Aboriginal households renting DHW properties (median value of 24.5%).

In the Perth metropolitan area, Aboriginal households renting non-DHW properties appear to experience a greater overall rate of disadvantage (median value of 37.1%), compared to non-Aboriginal households renting DHW properties (median value of 30.3%).

Overall, in Western Australia Aboriginal people living in non-DHW housing appear to experience higher levels of disadvantage than do non-Aboriginal DHW tenants. It is evident that for non-Aboriginal DHW rental properties, the Index of Disadvantage is heavily influenced by the Access to Services indicator, as both display a high level of similarity. This will be examined in detail later in this chapter. Most of the areas of disadvantage are towards the centre of the Perth metropolitan area.

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4 The $r^2$ statistic for this is 0.58, which suggests that 58% of the variations in this pattern can be explained by changes in the data for the comparable map showing those households who were without a motor vehicle on Census Night. Given that the weightings for this indicator were 33%, it further suggests it is the main factor at play by quite a degree.
As shown in the figure above, throughout the Perth metropolitan region, Aboriginal people living in non-DHW rental properties display a significant degree of need. The widespread distribution of suburbs exhibiting high levels of disadvantage are shaded in dark blue. In addition, there are above average levels of Aboriginal housing. The suburbs with a higher than average proportion of Aboriginal households are outlined in blue.
In the metropolitan area, the above average levels of DHW housing suburbs with a higher than average proportion of DHW properties are outlined in blue.
The distribution of need is spread throughout Western Australia for Aboriginal households living in non-DHW rental properties.
Aboriginal Index of Disadvantage in the Southwest of Western Australia
Non-Aboriginal people in need are being supported in DHW properties in the larger localities throughout Western Australia.
Non-Aboriginal Index of Disadvantage in the Southwest of Western Australia
Overcrowding

There is generally no accepted definition of overcrowding used in Australia (ABS, 2001a). This paper has chosen to use a definition that was capable of producing data at both a suburb and a locality level. The definition of overcrowding used is dwellings with more than five people and less than three bedrooms as a percentage of all dwellings. For this reason the indicator needed to be broad enough to be used for small population sizes, while still being representative of overcrowding.

Overcrowding is often associated with the risk of infectious disease (ABS, 2001a; Department of Health and Aged Care (DHAC), 1999; Taylor, 1999). Some of these are thought of as third world diseases that had been eradicated from contemporary western countries (DHAC, 1999), as well as respiratory conditions and intestinal worms (DHAC, 1999), and rheumatic heart disease (DHAC and Australian Institute of Health and Welfare (AIHW), 1998). Overcrowding also exacerbates other health conditions (DHAC, 1999). For example, diabetes, which is already a significant health issue for Aboriginal people (ABS, 2001a). It has also been associated with family breakdown caused by cramped living conditions (Arthur, 1999; Papunya Regional Council, 2001); with crime (Carcach and Muscat, 2000); family violence and property damage leading to debt, eviction and child abuse (Gordon, Hallahan and Henry, 2002; 186,195; Stanley, Kovacs, Tomison and Cripps, 2002).

However, it is important to note that the connection between overcrowding and health issues is not understood. Some work suggests it is the interdependence of a number of factors that may explain the differences (Waters, 2001). For the purposes of this report it is not important to identify the causal pathway, but that the relationship exists and is therefore an indicator of need. The work by Waters is therefore not necessarily an impediment to this viewpoint.

**Rural Western Australia**

Aboriginal people living in rural DHW housing appear to experience a significantly higher rate of overcrowding (median value of 33%), compared to non-Aboriginal people (median value of 7.5%). The same can be said for Aboriginal people in non-DHW housing (median value of 30%), compared to non-Aboriginal people (median value of 4.7%).
Aboriginal people living in metropolitan DHW housing appear to experience a significantly higher rate of overcrowding (median value of 25%), compared to non-Aboriginal people (median value of 4.3%). The same can be said for Aboriginal people in non-DHW housing (median value of 23.1%), compared to non-Aboriginal people (median value of 2.6%).

Overall, Aboriginal households in Western Australia experience a significantly higher level of overcrowding than do non-Aboriginal households. Also, Aboriginal people in non-DHW rental properties appear to exhibit higher levels of overcrowding than do non-Aboriginal people in DHW housing.
From analysing the figure above, there are a significant number of suburbs that are above the 1 in 4 rate, as shaded on dark blue. The eastern part of the metropolitan appears to have higher rates of overcrowding, which is in line with the general socio-economic disadvantage that the region exhibits.
The figure above shows that the level of overcrowding for non-Aboriginal people is usually limited to less than 11% of dwellings, as shaded in grey. In the southern part of the metropolitan there appears to be some pockets of significant levels of overcrowding. As with the Aboriginal population, the eastern part of the metropolitan exhibits higher rates of overcrowding, although there are notable exceptions near Fremantle and Rockingham.
Aboriginal other rental dwellings with overcrowding issues as a percentage of Aboriginal other rental dwellings in Western Australia

Household overcrowding is an issue throughout the State for Aboriginal people.
Aboriginal other rental dwellings with overcrowding issues as a percentage of Aboriginal dwellings in the South West of Western Australia
The high rate in Greenbushes is due to small population numbers, and may not be reliable.
Non-Aboriginal Southwest of Western Australia DHW Rentals

Non-Aboriginal DHW dwellings with overcrowding issues as a percentage of Non-Aboriginal DHW dwellings in the South West of Western Australia
Housing Affordability

There is considerable research on the issue of housing affordability. In some ways this topic is tied up with the issue of poverty and will be more fully canvassed in the next section on Children Living in Poverty. However, since that topic uses housing affordability as an indicator of poverty some comment is required. One of the main components in literature on housing affordability and poverty is the use of income. While there are other ways of looking at this issue, it still appears as if there is some use in using the traditional method of comparing housing costs with income in an attempt to measure affordability.

Literature on this topic suggests that housing costs include more than just the rent or mortgage payments. Since rent often includes services that are not included with mortgage payments, for example maintenance costs, the cut-off points used in the census data for rental payments (35% of income) are slightly higher than for mortgage payments (30% of income).

As a concept housing affordability does not appear to be well defined and it is often assumed that the issue is self-explanatory. People who find their housing costs are high are said to be in ‘housing stress’ (Affordable Housing National Research Consortium (AHNRC), 2001). There is a suggestion that housing costs crowd out the ability to purchase the essentials in life, and at one extreme the argument is housing or food (Hartman, 1998; Landt and Bray, 1997). Hartman suggests it is in the company of other housing issues such as overcrowding and the physical condition of the housing, that affordability starts to take on its role of disadvantage. There is the suggestion that affordable housing, or lack thereof, may be a contributing factor for crime (Weatherburn, Lind and Ku, 1997) or in reducing recidivism, if provided in conjunction with the correct treatment programs (Finn, 1999).

As with the other indicators chosen for this research, this indicator is seen as being one of the building blocks for adequate housing. Thus, the definition for housing affordability used in this research is dwellings where mortgage payments are greater than 30% or rental payments are greater than 35% of the household income as a percentage of dwellings being rented or purchased.

Rural Western Australia

In rural Western Australia, levels of housing affordability for DHW tenants appear to be relatively similar for Aboriginal people (median value of 14.2%) and non-Aboriginal people (median value of 13.1%). The same can be said for Aboriginal people (median value of 18.6%) and non-Aboriginal people (median value of 18.3%) in non-DHW housing.
The level of housing affordability for metropolitan Aboriginal tenants varies significantly between those living in DHW housing (median value of 20.4%) and those living in non-DHW housing (median value of 37.5%). A similar situation can be seen when looking at housing affordability for non-Aboriginal DHW tenants (median value of 9.5%) and non-DHW tenants (median value of 26.6%).

Overall, the metropolitan appears to exhibit more variation in terms of affordability for Aboriginal households and DHW appears to promote affordability.
Aboriginal households typically have levels of unaffordable housing at rates of more than 1 in 5, as shown by areas with blue shading. There is some suggestion that Aboriginal people are also opting to pay significant amounts of their income to ensure the environment they live in is the best they can afford. However, the high costs seem to be distributed across a larger number of suburbs.
Non-Aboriginal households typically have levels of unaffordable housing at rates of less than 1 in 5, as shown by areas with grey shading. The eastern part of the metropolitan does not exhibit the high levels of unaffordable housing that can be found in areas closer to the CBD and in the western part. This suggests that these households may be making a choice, or have the option, to sustain the impost in exchange for the ability to live where they wish.
Aboriginal Western Australia Other Rentals With Affordability Issues

Aboriginal other rental dwellings with affordability issues as a percentage of Aboriginal other rental dwellings

There are issues of high housing costs for Aboriginal people throughout the State, excluding areas of low Aboriginal population, for example the southern part of the Wheatbelt.
Aboriginal other rental dwellings with affordability issues as a percentage of Aboriginal other rental dwellings in the South West of Western Australia
Non-Aboriginal Western Australia DHW Rentals

Non-Aboriginal dwellings with affordability issues as a percentage of DHW dwellings in Western Australia

The four locations of Kondinin, Lancelin, Quairading and Hopetoun (100%) all have four or less dwellings, which suggests the population data is too small to be statistically significant.
Non-Aboriginal Southwest of Western Australia DHW Rentals

Non-Aboriginal DHW dwellings with affordability issues as a percentage of Non-Aboriginal dwellings in the South West of Western Australia
Children Living in Poverty

As noted in the section on Housing Affordability, there is something of an overlap between these topics. A topic such as this is bound to be subject to much discussion as there is no generally accepted definition of poverty. The definition used for poverty in this section is dwellings considered unaffordable that have children aged less than 15 as a percentage of all dwellings being rented or purchased.

Peter Saunders (1998) wrote a short history of the discourse of poverty in Australia, and in essence he suggests there is a need for more than one approach. This has influenced a choice of indicator that is a hybrid of the suggested ways forward. The indicator firstly uses a component of income stemming from the traditional approach. It uses the housing affordability concept previously discussed to define the condition in which the poverty is experienced. That is, the idea of children growing up in conditions where the family finds it difficult to deal with the financial impost of a basic need, that of housing. This is much newer way of thinking about poverty and the multi-dimensional facets of poverty.

Our community places much importance on children. This is evident in the current efforts at both the Federal (Community Affairs References Committee, 2004; Family and Community Services (FaCS), 2004) and State (Investing in our Children, 2004) level to provide cohesive policies for children, and comments within the community (Harding and Szukalska, 1998; Tomison, 2002; Western Australian Council of Social Services (WACOSS), 2003). It seems appropriate to include this facet within the suite of indicators. A common theme in this debate is how poverty in childhood affects not just the environment in which children grow up in, but how it can detrimentally shape their whole life.

The indicator can be criticised because the housing affordability component fails to distinguish between those who choose to pay a substantial proportion of their income towards housing cost and those for whom there is no choice. The research in this chapter would suggest that this probably results in an understatement of the disadvantage suffered by Aboriginal households. The data seems to suggest this criticism is probably not significant, however it is at the core of public debate about poverty and choice.

Rural Western Australia

In rural Western Australia, a median value of 1.8% of all non-rental dwellings experience poverty. The poverty experienced by Aboriginal people in DHW housing (median value of 10.8%) appears markedly higher compared to non-Aboriginal people in DHW housing (median value of 3.2%). Therefore, Aboriginal children are over three times more likely to experience poverty than non-Aboriginal children.
Perth Metropolitan

In the metropolitan a median value of 3% of non-rental dwellings experience poverty. The poverty experienced by Aboriginal people in DHW housing is again markedly higher (median value of 16.7%) compared to non-Aboriginal people living in DHW housing (median value of 2.6%). Therefore, Aboriginal children are over six times more likely to experience poverty than non-Aboriginal children.

Overall, these figures indicate that Aboriginal children living in the metropolitan area appear to be worse off than children living in the rural area.
Aboriginal other rental dwellings with children in poverty as a percentage of Aboriginal other rental dwellings

Aboriginal non-DHW rental households appear to experience greater rates of poor living conditions for children. The distribution appears to mirror the general distribution of the Aboriginal population.
Non-Aboriginal DHW dwellings with children in poverty as a percentage of Non-Aboriginal DHW dwellings

Typically, less than 1 in 10 non-Aboriginal households with children have significant rental or mortgage payments, as shown by areas with grey shading. They are also more likely to be in the economically disadvantaged eastern suburbs, suggesting this is an area of need.
Aboriginal other rental dwellings with children in poverty as a percentage of Aboriginal other rental dwellings

Generally, the incidence of children living in unaffordable housing is evenly distributed throughout the State.
Aboriginal Southwest of Western Australia Other Rentals

Aboriginal other rental dwellings with children in poverty as a percentage of Aboriginal other rental dwellings in the South West
Non-Aboriginal Western Australia DHW Rentals

Non-Aboriginal DHW dwellings with children in poverty as a percentage of Non-Aboriginal DHW dwellings

Non-Aboriginal areas in Greenbushes and Cervantes comprise very small population numbers (three at each location), which may be affected by the randomisation process.
Non-Aboriginal Southwest of Western Australia DHW Rentals

Non-Aboriginal DHW dwellings with children in poverty as a percentage of Non-Aboriginal DHW dwellings in the South West
Access to Services

It has been suggested that ‘accessibility’ is a difficult concept to measure (Access to Social Services by the Poor and Disadvantaged in Asia and the Pacific: Major Trends and Issues, 2000; 23). This concept is multi-faceted, like the others referenced, and can be measured in a variety of ways. The definition of accessibility used for this research is dwellings without access to a motor vehicle on Census night as a percentage of all dwellings.

The Census variable that has been chosen to represent this aspect of need is access to a motor vehicle. Unlike a geographical definition such as the remoteness indicators 5 that are used within Australia, this indicator is capable of being applied at a dwelling level. In the context of geographical or locational disadvantage, this data can be put next to some of the major infrastructure that exists to suggest this disadvantage exacerbates the issues facing families in need.

This topic is important within the debate about access to fundamental services such as health (Arksey, Jackson, Wallace, Baldwin, Golder, Newbronner and Hare, 2003; Brabyn and Skelly, 2001; Jablensky, McGrath, Hermann, Castle, Gureje, Morgan and Korten, 1999; Webb, 1998). It forms part of the suite of barriers, which are more fully discussed by Arksey et al (2003), which impact upon the health and wellbeing of Aboriginal and other disadvantaged sub-groups within the general community. Access to services also plays a part in the response to issues of self-harm, (Ketteringham, 2000), substance abuse (Ministerial Council on Drug Strategy, 1998; Murphy, 2000), crime reduction (Caracach and Muscat, 2000; Royal Commission into Aboriginal Deaths in Custody (RCIADIC), 1991), and domestic violence (The Women’s Services Network, 2000).

Generally, access to services appears to improve social cohesion (Kearns and Forrest, 2000), which is one of the basic building blocks of a society that values its constituents.

In rural Western Australia, a significantly higher percentage of Aboriginal people living in DHW housing (median value of 42.9%), non-Aboriginal people living in DHW housing (median value of 30.9%), and Aboriginal people living in non-DHW housing (median value of 39%) did not have access to a vehicle on Census night, compared to non-Aboriginal people living in non-DHW housing (median value of 10.5%).

5 These include the remoteness classifications seen in ABS ARIA (ABS, 2001b) and ASGC (ABS, 2003).
In the metropolitan a significantly higher percentage of Aboriginal people living in DHW housing (median value of 44.4%), non-Aboriginal people living in DHW housing (median value of 36%), and Aboriginal people living in non-DHW housing (median value of 37.5%), did not have access to a vehicle on Census night, compared to non-Aboriginal people living in non-DHW housing (median value of 9.6%).

Overall, throughout the State significantly more non-Aboriginal tenants in non-DHW housing had access to a vehicle on Census Night than did all Aboriginal and non-Aboriginal DHW tenants. From a government perspective, it can be argued that some of these barriers may be nullified by the provision of mobile services (Access to Social Services by the Poor and Disadvantaged in Asia and the Pacific: Major Trends and Issues, 2000; NRHA, 2002) or by the use of services such as ‘telehealth’ that use technology to provide services away from base. However, in looking at the amenity of Perth suburbs Newman, Thorpe, Greive and Armstrong (2003) would suggest that the use of existing health infrastructure to deliver such outreach services would not significantly impact upon those households most at need.
Amenity by Aboriginal suburbs with a higher than average proportion of Aboriginal households

In addition to the Census data, Newman et al (2003) undertook a more thorough investigation of the locational advantage of DHW housing. The figure above shows the average amenity scores given to each suburb. Not unexpectedly this report shows the further housing is from the central part of Perth, the lower the amenity of the suburb. In broad terms this suggests that the lower the amenity score the more requirement there is for a motor vehicle to access.

In particular, areas with a higher than average proportion of Aboriginal households are outlined in yellow, and as the figure shows these areas tend to have the lower amenity scores.

The amenity scores were based on a large range of data that included schools, TAFE and University campuses, shops, crime, health facilities, public open space, sports facilities, entertainment/cultural facilities, libraries, family and community centres, employment, public transport and property values. This methodology used by Newman et al (2003) needs to be understood to fully appreciate the relevance of the amenity indicator within the context of disadvantage. However, it does provide a shortcut to the conclusion that some areas in the metropolitan area are more advantaged in terms of service provision compared to other areas.
Aboriginal dwellings as a percentage of all dwellings throughout Western Australia plus the TransWA passenger transport network

The figure above shows the location of Aboriginal housing within the context of the TransWA passenger transport network. As can be seen the network has regular routes as far north as Kalbarri (coast) and Meekatharra (inland), and as far east as Kalgoorlie (inland) and Esperance (coast). This leaves the majority of the Aboriginal population without access to a localised public transport system. Generally, in the south west of Western Australia there is at least weekly bus services. However, some towns like Gnowangerup are serviced less regularly than other towns directly on routes to major centres like Kalgoorlie, Geraldton, Bunbury and Albany.
Aboriginal other rental dwellings with access issues as a percentage of Aboriginal dwellings

The figure above shows a small number of areas where access to a motor vehicle would appear to be a significant hardship and that alternatives by way of public transport would be difficult for Aboriginal people.
Non-Aboriginal Perth Metropolitan DHW Rentals

Notably, when analysing the figure above many of the areas of high need are those in the higher brackets when looking at the amenity of the area. This suggests that the lack of motor vehicle is less of an impediment than would normally be expected.
Aboriginal other rental dwellings with access issues as a percentage of Aboriginal other rental dwellings

There are significant issues relating to access in the Kimberley. Although the issues do not appear as severe in rural localities, it is evident that access issues are significant throughout the State.
Aboriginal other rental dwellings with access issues as a percentage of Aboriginal other rental dwellings in the South West
Non-Aboriginal Western Australia DHW Rentals

Unlike the Aboriginal population, access to a motor vehicle is more likely in the Southwest of the State. This is in keeping with the distribution of the total population.
Non-Aboriginal Southwest of Western Australia DHW Rentals

Non-Aboriginal DHW dwellings with access issues as a percentage of Non-Aboriginal DHW dwellings in the South West
Outcome - Where do Aboriginal people live and where is the DHW housing stock?

These maps show that Aboriginal people seem to be concentrated in certain parts of Perth, while DHW housing is more widely distributed. When comparing the two maps it is significant that the areas of greatest discrepancy appear to be in the fringes of the metropolitan region. This is reflected in the map that shows the areas of bright blue have at least the same number of dwellings with Aboriginal people as there are DHW houses. In some cases DHW housing stock is only sufficient to house a proportion of the Aboriginal people living in the suburb. The use of these fringe areas by Aboriginal people is generally known, and the data reflects this reality.

Location of Aboriginal People and DHW Housing

Perth Metropolitan - DHW Housing
Aboriginal dwellings as a percentage of all dwellings in the Perth metropolitan area
Perth Metropolitan - Aboriginal People and DHW Housing Ratio

Ratio of Aboriginal dwellings rate to DHW dwellings rate in the Perth metropolitan area
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chapter twelve:
Methodology

Introduction
In response to the issues raised in the consultations regarding the Terms of Reference, the Inquiry received submissions from Aboriginal people residing in Homeswest housing throughout metropolitan and regional Western Australia and representative organisations involved in the provision of housing to Aboriginal people. These included; Homeswest, The Tenants Advice Service (TAS), the Pilbara Community Legal Service (PCLS), the Karawara Community Project (KCP), the Carnarvon Medical Service Aboriginal Corporation (CMSAC), the Aboriginal Legal Service (ALS). In receiving submissions, Equal Opportunity Commission (EOC) officers were assisted by various others from government and non-government agencies, Aboriginal elders and Aboriginal advocates and community workers, in conducting consultations in many localities within the metropolitan area and regional areas. This chapter outlines the methods and processes applied in the collection of data.

The Means
The Department of Housing and Works (DHW) and the Tenants Advice Service (TAS) received and accepted an invitation by the Acting Commissioner to brief EOC officers separately on the policies, practices, programs, training, guidelines, directions, decision making, reviews and appeals processes involved in the provision of public housing by Homeswest in Western Australia.

In determining the methodology, the aim was to maximise consultation opportunities for Aboriginal and non-Aboriginal people who wished to make a submission throughout Western Australia, as well as for service providers involved in the provision of public housing, and the community in general. Material and submissions were gathered in seven primary ways:

1. Reference Group
2. Consultation Paper
3. Written submissions from government, non-government organisations and individuals
4. Consultation forums were held in metropolitan and regional centres where oral and video submissions were received from individuals, groups of individuals and community organisations
5. Historical analysis and literature review
6. Collection and analysis of relevant research material
7. Material provided by government and non-government agencies and by individuals

Consultation Paper
To assist people with the preparation of written and oral submissions a Consultation Paper was prepared as a reference guide, as well as two Submission Forms pertinent to individuals (see appendix C) and organisations (see appendix D).

Submissions
In order to obtain the experiential stories regarding Homeswest housing and services, people were offered three recording options:
- tape recording
- video taping
- verbatim note taking

48 See Executive Background of this report for an understanding of the formation and particularities of the Reference Group.
49 See Section Three of this report for an examination of housing history and exploration of relevant literature.
These options and the consent requirements and level of confidentiality were explained to those who wished to make submissions prior to recording. During submissions, participants generally told their story with little interruption. At times, open-ended questioning was utilised to clarify points made or to obtain more detailed information regarding an aspect of the submission. However six issues were frequently raised during submissions taking. These concerned:

- the length of tenancy (previous or current)
- the number of people occupying the tenancy, including reasons for overcrowding where apparent
- whether and how tenants had been consulted about maintenance
- the experiential perceptions of Homeswest and its officers
- the experiential dealings with Homeswest in respect to its processes

Notably, an interpreter for the Injibandi/Ngaluma language groups, nominated by the group ‘Women for Stronger Communities,’ accompanied all house visits in the towns of Wickham and Roebourne.

Confidentiality

The confidentiality of submissions to the Inquiry was explained to participants. The following elements constituted the explanation:

1. Options for recording submissions were fully explained in conjunction with the consent form. (see appendix E)
2. The consent form provided three choices in relation to the level of confidentiality required by the participating individual or organisation.
3. Each part of the consent form was fully explained and the implications of consenting to particular parts discussed prior to the EOC officers obtaining written and signed consent from each individual or organisation.
4. Individuals or organisations who requested to make their submission by video recording were required to sign a video recording consent form (see appendix F). Some of the video submission footage was compiled to form a Video Report. Those people who appeared in the final version of the Video report were contacted and their consent was confirmed.

5. The Reference Group and all researchers external to the EOC who had access to the submitted material were required to sign a confidentiality agreement.

6. The Commissioner and assisting officers are bound by section 167 of the EOA, which prohibits the disclosure of personal information. This states that the Commissioner will not publicly identify the parties involved in a complaint except where a complainant has given written consent and where the Commissioner is satisfied that such identification is circumstantially appropriate, necessary for the Inquiry and does not contravene the confidentiality requirements of the EOA or any other statutory, legal or equitable duty of confidentiality.

Thus, the request of individuals and organisations for the confidentiality of their submission has been strictly adhered to. Names and other identifying details are not disclosed in order to protect the privacy of the participants and their families. Although identifying information has been removed, there has been an effort made to provide the reader with some information regarding the submission. This information may include the participant’s gender, submission date, submission type, regional or metropolitan locality, and the participant position (tenant, prospective tenant, advocate or organisation).

The Process

There is widespread agreement within literature that research in an Aboriginal context needs to be undertaken in a culturally appropriate manner, and that the method of recording of a story needs to be determined in collaboration with the contributing Aboriginal person.
Guidelines

The EOC officers were mindful of and followed a series of guidelines during the conduct of the Inquiry and collection of submissions. They sought to:

- Minimise the stress of the Inquiry on participants;
- Ensure that information shared is in a language that participants understand;
- Use interpreters where necessary;
- Acknowledge the traditional custodians and Elders;
- Not claim expertise on Aboriginal issues;
- Discuss the benefits of contributing to the Inquiry;
- Provide the participants with an overview of the events leading to the Inquiry (why) and of the hoped for outcomes (what) (for example, the elimination of discrimination and the improvement of housing and services);
- Through discussion identify guidelines that are acceptable to both the investigators and community members, and adhere to them;
- Be responsive to the needs of participants;
- Involve all Aboriginal participants in identifying needs, solutions and options;
- Identify a schedule that corresponds with the time frame of the community and allow for deviation due to unforeseen circumstance (for example, a funeral);
- Acquire informed consent by detailing the aspects and implications of various consent options;
- Identify and record the differing views of participants;
- Ensure that participants have the opportunity to amend, change or add to their story.

In particular, the EOC officers worked with identifiable Aboriginal organisations and networks in order to maximise opportunities for those who wished to make submissions to do so. For example, officers from the Department of Indigenous Affairs (DIA), in conjunction with region specific Aboriginal organisations, assisted in locating Aboriginal people who wished to participate. They also assisted with the co-ordination of individual and group consultations, publicity, venues and transport.

In addition, much care has been taken when utilising the written, oral and video recorded information to remain faithful to the language of the person who made the submission.

Number of Participants

Importantly, due to limited time and resources, it is recognised that it was not possible to take a submission from every person who may have wanted to contribute. In addition, it is recognised that other people may not have been comfortable with the options available for providing submissions and chose not to participate on this basis. Nevertheless, the EOC officers involved in the gathering of submissions were overwhelmed by the number of people who wished to show their homes to them and who were willing to tell their story with apparent openness.

Written Submissions

The Inquiry received a total of 50 written submissions from individuals and groups, where a group refers to a collection of individuals making a submission (not necessarily representing an organisation). Of these, 45 were from the metropolitan area and five from regional areas. In addition, 45 or 90% were contributed by women compared to five or 10% contributed by men. The Inquiry received a total of 18 written submissions from organisations. Of these, 14 were based in the metropolitan area and four were based in regional areas.

Oral Submissions

The Inquiry received a total of 526 individual and individual/group oral submissions. Of these, about 85% were contributed by women compared to about 15% contributed by men. The Inquiry received no oral submissions from organisations.
Summary

In short, the Terms of Reference required the EOC Commissioner to:

...investigate, research and make enquiries relating to DHW Policies, programs, practices, guidelines, directions, training, decisions and or decision making, review and appeal process that may directly or indirectly discriminate against Aboriginal persons in Western Australia in the provision of accommodation and/or services, because of their race’ or any other ground of unlawful discrimination or harassment as defined under the Equal Opportunity Act 1984 (EOC, 2002: 2).

The Inquiry sought to achieve this end through the gathering of submissions in consultation with Aboriginal individuals and organisations. The following chapter outlines the main themes which emerged in relation to the practice of Homeswest policies and programs.
chapter thirteen:
Lived Experiences

Introduction

This chapter identifies the major issues and themes that emerged from the written, oral and video submissions from Aboriginal and non-Aboriginal individuals, Aboriginal housing and community organisations, government agencies, and former/current Homeswest staff, gathered throughout metropolitan and regional Western Australia. Whilst this chapter discusses the practice of Homeswest policies and programs, it is not intended to be a comprehensive analysis of these. This chapter aims specifically to give voice to the lived experiences of Aboriginal people and advocates regarding the provision of public housing by Homeswest throughout Western Australia. This chapter also aims to reconcile that the requirements expressed in Homeswest policy do not always correspond with the experiences of Homeswest tenants in their day to day dealings with Homeswest. These perceptions and lived experiences are shrouded by a sense of disadvantage and discrimination in relation to all aspects of public housing access and residence.

Awareness of Policy

Homeswest policy has differing impacts upon individuals and families within society, and particularly influences the social and economic circumstances of those seeking access to and those living in, public housing. However, this effect cannot be attributed to the existence of policy alone. For policy to have an effect, there needs to be an awareness of policy, which involves being informed and mindful. This awareness needs to occur not only among policy makers, but also among Homeswest officers who are guided by policy in decision making, advocates and organisations who assist Homeswest clients, and prospective and current clients of Homeswest services who seek assistance. A lack of awareness of a particular policy or aspects of a policy can seriously impact on the lives of the people for whom it was designed to assist.

This Inquiry consulted various organisations and individuals who made written submissions regarding their awareness of Homeswest policies.\(^\text{50}\) The response to this was mixed, with awareness ranging from good to virtually non-existent. For example, the Carnarvon Medical Service Aboriginal Corporation (CMSAC) seemed to have a good awareness of Homeswest policy (written submission 31, April 10 2003: 2), whilst the Aboriginal Legal Service (ALS) seemed to have little awareness of Homeswest policy and stated that "...the content and to what extent they are adhered to is unknown" (written submission 29, May 30 2003: 2). In addition, the Tenants Advice Service (TAS) contended that even within Homeswest itself proper awareness of policy was lacking. They inferred that Homeswest did not regularly train staff in policy or adequately convey to officers in the regions additions and/or changes to policy. TAS stated that a "lack of awareness of the content of Homeswest policy extends throughout the organisation to management level" (written submission 44, May 30 2003: 98).

Further written submissions indicated that there was a limited awareness of specific Homeswest policies. For example, the Karawara Community Project (KCP) referred to the Homeswest Insurance Policy that excuses damage by minors, and commented that "This is a little known fact that needs further explanation to tenants" (written submission 39, May 14 2003: 8). Although an awareness of the Family and Domestic Violence Policy (FDVP) was apparent in the metropolitan

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\(^\text{50}\) The written submission form for organisations and individuals asked the participants: "Are you aware that the Department of Housing and Works has policies in relation to eligibility for housing, priority housing, domestic violence, rent payment, tenant liability, maintenance and repairs, inspections, anti-social behaviour and evictions?"
area, one Kimberley organisation advised that no clients had accessed their services for assistance under this policy, even though domestic and family violence was said to be prevalent in the Kimberley region (confidential written submission 40, May 30 2003: 4). Similarly, an advocate in the Pilbara region had no knowledge of this policy and could not receive advice from the local Homeswest office in Karratha as they appeared to be unaware of aspects of this policy. Thus, it was necessary for them to acquire details from the Head Office in Perth (confidential oral submission 137, female, advocate, Pilbara).

Two related issues that may directly contribute to the level of awareness of Homeswest policy also became evident in submissions. These issues are accessibility and understanding.

Accessibility

The notion of accessibility refers to policy that is easy to retrieve and use, and is openly available in various forms to cater for the many needs of diverse users. Whilst Homeswest policy can be currently accessed on the DHW internet website \(^{51}\) and hard copies may be available at some Homeswest offices, some organisations found these difficult to access. For example, the Jacaranda Community Centre (JCC) indicated their difficulties in accessing Homeswest policy. They stated that "...there are no hard copy manuals now...", and that internet access may not be possible if the website is not working or if there is no computer available, "I've asked for a hard copy during an appeal but they didn't have a computer in the appeals room" (written submission 38: 1). In addition, the JCC asserted that changes to policy were particularly problematic as Homeswest did not notify them of policy changes, and that often the policy located on the website was outdated.

A further organisation in the Kimberley claimed they could not access the Regional Recoveries Manual, specifically containing policy regarding evictions, and stated that this "Is only available to Homeswest officers and not the general public" (confidential written submission 40, May 20 2003: 12). Accordingly, this made it difficult for them to comment on the actual implementation of some policy. This particular manual is an example of a task manual, which guides the work of Homeswest officers in the application of policy, and is not generally available for public perusal or scrutiny.

Understanding

In addition to accessibility, an awareness of Homeswest policy requires a level of understanding. The notion of understanding involves comprehending what is meant by policy and translating that knowledge into how policy may be applied to varying people in differing situations. A number of organisations highlighted the difficulties they had in acquiring clear understanding. For example, the CMSAC highlighted the problems they have in obtaining an understanding of policy and stated that, "...suffice to say, I am articulate and tertiary educated and I experience relations with Homeswest as complex and tiresome" (written submission 31, April 10 2003: 39). In addition, a number of advocates expressed they felt under resourced to assist all of those in need. It was indicated that a significant amount of time and effort is required to assist applicants and tenants in navigating policy, in developing an understanding of policy, and in meeting policy requirements. An advocate asserted that:

> My organisation is affected on a daily basis by clients who have become unwell in their living situations, particularly with infectious diseases and depression and by clients needing support letters, help in understanding and completing paperwork and advocacy. A lot of this is beyond the scope of the CMSAC core business. Nonetheless, it is undertaken because of the frequency with which it presents and lack of alternative referral agents (written submission 39, April 10 2003: 7).

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\(^{51}\) Go to: www.dhw.wa.gov.au
Literacy

A major influence upon the level of awareness of Homeswest policy is the level of literacy of individuals. One confidential submission suggested that access to Homeswest policy is especially difficult for Aboriginal people:

\[\text{Access to Homeswest policy is extremely difficult for many Aboriginal people. Although people can view the policy manuals at the Homeswest office, many people are afraid to access policies in this way, and often they are illiterate. The Homeswest policies can be complicated to many people and they may not be able to interpret and apply the policies (confidential written submission 40, May 30 2003: 2).}\]

In relation to the issues surrounding understanding Homeswest policy, lower literacy levels among some Aboriginal Homeswest tenants was seen as impacting on their ability to properly comprehend and manage correspondence from Homeswest. The Anglican Social Responsibilities Commission (ASRC) in Perth particularly acknowledged the effect of historical factors upon Aboriginal education and literacy levels:

\[\text{There is little recognition of the fact that, due to historical factors, the level of literacy among Aboriginal people is generally low. A letter may only be partially understood or even totally misconstrued. Along with that goes a degree of humiliation at having to ask a Homeswest Officer to read and explain the letter’s content. Complexity in forms can also create difficulties and uncertainties for clients (written submission 43, May 15 2003: 7).}\]

The impact of literacy difficulties is compounded for some by the need for aid or assistance, which allegedly enables access and understanding, but may lead to discomfort, fear, humiliation or frustration. In submissions, some Aboriginal people confirmed the difficulty they had in understanding Homeswest letters and forms. An Aboriginal woman from the metropolitan area stated that “When they send letters it’s ok. But I can’t understand the statement they send” (written submission 12, February 28, 2003: 7). Another woman from the metropolitan area commented:

\[\text{I give nearly all my money to Homeswest. They take so much and I can’t even tell how much they’re taking, I’ve got no idea how to read these statements they send me. My advocate has to keep an eye on it for me or else they rip me off (written submission 10, February 18 2003: 3).}\]

A further Aboriginal woman commented:

\[\text{I have real trouble reading Homeswest letters. I can’t read well and the typing is so small. They need to explain things properly in them letters especially to people with disabilities like me. They know I can’t read well - I’ve told them and SHAP. I can’t understand the statements they send. One minute you’re in front then behind. I get upset and confused (written submission 7, February 3, 2003: 8).}\]

A female speaker at a Bunbury group hearing stated that:

\[\text{After a while it gets to the stage where it just goes in the bin. Once they see Housing and Works on it, Bang. Because usually when you get things in the mail it’s usually, you’ve done something wrong or you owe them money. And Noongars just get so frustrated. And the words that they use are bigger than you know. They’ve never heard of them in layman’s terms and putting them in basic terms like ‘you owe $20 or whatever it is, to Homeswest because of the last lot of rent’. So wordings do make it}\]
very difficult, and half the time they don’t even want to….they should be face to face (confidential oral submission 123, female, group, Southwest).

The TAS submission questioned the level of assistance being offered to Aboriginal clients to understand policies, forms and letters. They stated that it was commonplace for Aboriginal clients to be handed forms at Homeswest counters and sent away without advice, assistance, or referral to help in completion (written submission 44, May 30 2003: 16). This is illustrated in a submission from an Aboriginal woman:

There was a young person that went in there and asked how they apply. Forms were just tossed across the thing and they said, ‘Go fill it in and bring it back.’ There was nothing to say, ‘This is what you need to do, when you bring the form back you need to bring the letter from Centrelink, your bank statements, this is the information we need’ (confidential oral submission 214, female, tenant, Southwest).

The submission from Homeswest acknowledged that Aboriginal people have a significantly lower level of education (written submission 35, May 29 2003: 8). According to many submissions received, there appears to be a lack of assistance offered to Aboriginal applicants at the counter regarding the completion of forms and applications. It is suggested that officers dealing with clients need to be become more aware of this issue when engaging with clients.

An organisation in the Kimberley highlighted the possible impact that language barriers have on understanding. They advised that many Aboriginal people from this region speak their traditional language and also Kriol, and it is often extremely difficult for them to understand the technical and complex language used in Homeswest letters and notices, for example those involving a breach or eviction:

With the whole process, there’s no real credibility in the process, especially for Aboriginal people because when you think about Aboriginal people, the majority of these people they’re exploiting are illiterate in English, there’s no real support agencies and even if there is, there’s one person who’s trying to deal with hundreds, literally hundreds…..The thing is, English is a second language to a lot of people so they’re not going to take notice of a piece of paper…and on top of it if they did do it in language, they might not know how to read. That’s another problem (confidential written submission 40, May 30 2003: 9).

An Aboriginal woman confirmed this, “They said I owe them money but I don’t know what this debt is about. I don’t know how they work it out. I don’t owe them any money. I can’t read and write so I can’t make sense of the statements they send me” (written submission 27, January 30, 2003: 7).

The issues surrounding the accessibility and understanding of Homeswest systems, policies, procedures and levels of assistance, is often accompanied by communication difficulties. This may result from the inability of a client to speak or process English or the inability of a housing officer to recognise or communicate appropriately with a client. Due to these difficulties, in reality, Aboriginal tenants may have more difficulty accessing housing than non-Aboriginal tenants who may be better equipped to navigate the system. Thus, the concept of awareness and related notions impact upon Homeswest practice, and may result in Homeswest policy not being equitably effective for all.

Eligibility

Eligibility for public housing is governed by a set of principles detailed in the Commonwealth State Housing Agreement (CSHA) (Department of Housing and Works (DHW), 2004: website). This states that public housing is to be provided to those unable to obtain adequate and appropriate housing in the private sector regardless of age, gender, marital status, race, religion, disability or life situation. Eligibility is primarily determined by
the financial situation of the applicant in relation to level of income, value of assets and number of dependant children.

The Eligibility Policy (EP) (DHW, 2004: website) states that:

*Homeswest reserves the right to refuse assistance, or place conditions on further assistance, to any applicant with substantiated breaches of the tenancy agreement or the Residential Tenancies Act. This applies to both wait turn and priority assistance.*

These breaches may include many things, such as, debt, “poor property standards” and “antisocial behaviour”. However, even if an applicant meets the eligibility criteria housing may be refused if a person cohabitating with that applicant is found to be in breach. The EP (DHW, 2004: website) states that:

*Applicants, partners and co-applicants must conform to Homeswest’s eligibility criteria and all household members must conform to eligibility relating to a debt to Homeswest and home finance schemes administered by the Department of Housing and Works.*

As pointed out by the ALS, any breach can preclude tenants from meeting the eligibility criteria and reduce their ability to access public housing. In many cases public housing is the only option for Aboriginal people:

*The problem with many Aboriginal people with a ‘tarnished history’ with DHW is they are left with few options to access any accommodation. Although some Aboriginal people do occupy private rental accommodation there is a significant amount of discrimination and public housing is the fallback position and last resort (written submission 29, May 30 2003: 4).*

Debt

According to data generated by Homeswest and detailed in their written submission, it may be concluded that some Aboriginal people, more than non-Aboriginal people are more likely to be considered by Homeswest as having a poor tenancy history and debt (written submission 35, May 29 2003: 12). Therefore, some Aboriginal people, more than non-Aboriginal people, find it difficult to access public housing or have restrictions placed on the housing assistance provided.

Several organisations that made submissions were specifically concerned with the requirement that an applicant with a Homeswest debt enter an arrangement to repay by making an application to participate in the Debt Discount Scheme (DDS). The concern centres around the potential adverse effect this aspect of policy may have on Aboriginal applicants, who were more likely to carry higher debt than other groups of people.

Whilst it seems reasonable to require a person to enter arrangements to repay a debt, it is important to understand that participation in the DDS does not necessarily guarantee benefit in terms of public housing assistance at the time of need. In effect, if an applicant has a Homeswest debt and agrees to enter into the DDS they may be registered on the wait turn list, but will only be eligible for housing on a wait turn basis when 50% of the debt is repaid. For some people it may take years to achieve partial repayment and in the meantime many may find themselves homeless. The problem is compounded if disability is also an issue.

An Aboriginal woman from the metropolitan area commented on the experience of a family member and an Aboriginal man,

*My niece has seven kids; she’s on a disability pension. She can’t have surgery because she hasn’t got a home. She has a debt and she’s been paying for it. They said if she paid half they’d house her. She paid it off but they still won’t house her. [and] One guy was in a wheelchair in a four bedroom home, living alone.*
They wouldn’t move him until he paid his debt (written submission 12, February 28, 2003: 1).

As stated in the Debt Discount Policy (DDP) (DHW, 2004: website):

*Participants in the Debt Discount Scheme will have their application for assistance registered with the date of commencement of participation in the scheme and will receive the benefit of this date when the fifty percent of the debt has been repaid [and] ... A registered application accrues time on the waiting list, but only becomes active after a debt has been repaid.*

Whether this measure to withhold public housing assistance until people repay at least 50% of the debt incurred from a previous tenancy is reasonable, is a debatable issue.

In support of this process Homeswest states that:

*The community expects that the Department will manage its resources efficiently and as such the Department cannot allow tenants to accumulate large debts from previous assistance without making some effort to repay the debt before obtaining further tax-payer funded housing. Indeed, a point often missed by the welfare sector is that if former tenants do not repay outstanding debts, there is less money available for the Department to assist future tenants (written submission 35, May 29 2003: 25).*

Contrastingly, the TAS comment on the conflict between meeting the housing needs of Aboriginal people and the economic objectives of the organisation:

*One of the things we thought of is that Homeswest get people to sign up on Centrepay forms. Why don’t they do the debt discount at the same time? I would be so simple to do them both at once. People don’t know they can get debt discount. People can’t be expected to know about it - they rely on Homeswest* (written submission 12, February 28, 2003: 2).

In addition, there is some debate about whether the preclusion of a prospective tenant from public housing assistance based on prior debt is contrary to the Residential Tenancies Act 1987 (RTA). The Inquiry heard from many Aboriginal people who had substantial debts (for example, through tenant liability) and who disputed either the amount of the debt incurred and/or the reason for debt yet were advised they were ineligible for housing assistance. Many of those people also advised that they had not formally disputed the debt through the Homeswest Appeals Mechanism (HAM).

According to data provided by Homeswest, out of 1,580 applicants participating in the DDS, 803 are Aboriginal applicants (written submission 35, May 29 2003, p. 26). However, a number of Aboriginal tenants were unaware of the DDS, with many claiming that Homeswest staff had not informed them about the DDS. An Aboriginal woman advised, "I was not put on Debt Discount Scheme nor told about it - so I paid off $1200 myself and now I am told I owe $78 and cannot be on the Debt Discount" (confidential oral submission 195, female, tenant, Great Southern). The JCC confirmed that many tenants who were repaying debts were unaware of the DDS. They stated, "I see a lot of people who are paying off debts, who have been in to sign up for direct debit but who haven’t been told about the Debt Discount Scheme" (written submission 38, 2003: 5). Other tenancy support workers also stated that many Aboriginal tenants they assisted who were paying off large debts had no knowledge of the scheme. They suggested that anyone repaying a debt and who qualified for the scheme be automatically linked to the scheme. An Aboriginal woman agreed and stated:

*One of the things we thought of is that Homeswest get people to sign up on Centrepay forms. Why don’t they do the debt discount at the same time? I would be so simple to do them both at once. People don’t know they can get debt discount. People can’t be expected to know about it - they rely on Homeswest* (written submission 12, February 28, 2003: 2).

In addition, there is some debate about whether the preclusion of a prospective tenant from public housing assistance based on prior debt is contrary to the Residential Tenancies Act 1987 (RTA). The
TAS claim that section 27 of the RTA prohibits the demand for payment other than rent or bond, and states that:

*A person shall not require or receive from a tenant or prospective tenant any monetary consideration for or in relation to entering into, renewing, extending or continuing a residential tenancy agreement other than rent and a security bond.*

The TAS also referred to two decisions of the ACT Administrative Appeals Tribunal (AAT) 52 (submission 44, May 30 2003: 14). Through these it was determined that to demand debt repayment prior to the commencement of a new tenancy contravenes section 15 of the RTA.

**Age**

Regarding the Eligibility Policy (EP) (DHW, 2004: website), in addition to the issues surrounding the arrangement of debt repayment, the Inquiry received submissions from organisations and individuals highlighting concerns regarding the required age of applicants. Clause 16 of the EP states that applicants must be at least 18 years of age before they can be allocated a property; although they may apply for inclusion on the waiting list at 17 years of age. This seems to pose some difficulties for young Aboriginal people.

Many Aboriginal mothers who were less than 18 years of age spoke of their desire to live independently in terms of housing arrangements. Although they still required the support of their families, they expressed a need to raise their children in their own homes. These young women commented that part of the difficulty of living at home concerned the impact that circumstances, for instance overcrowded conditions, had upon their relationships with parents and other family members.

It is important to understand that the age eligibility requirement may affect a greater proportion of young Aboriginal women than non-Aboriginal women. According to statistics, Aboriginal women represent 24.6% of mothers aged less than 20 years, whereas non-Aboriginal women represent 4.8% of mothers less than 20 years (Australian Bureau of Statistics (ABS), 2003: 123).

The Welfare Rights and Advocacy Service (WRAS) also raised concerns about the age requirement:

>To access housing a person must also be 17 years of age to apply for a Homeswest property. There are Aboriginal mothers who are younger than this age. There is no legal requirement for a person to be of a set age to apply for a tenancy. The imposition of an arbitrary age qualification denies that there are Aboriginal families (both single and married) with young children who are below this age limit who need to be housed (written submission 46, May 30 2003: 10).

An Aboriginal mother said:

>My daughter is 17 and she wants to get her own place. Centrelink won’t provide income support unless she moves out. But Homeswest won’t give her a place until she’s 18. So she had to move out of home to get an income and applied again. But Homeswest still say she’s too young (written submission 11, February 14, 2003: 2).

However, the age requirement issue was not confined to young Aboriginal woman. An advocate for young homeless people between 15 and 21 years of age commented on the problems some Aboriginal youth face due to the restrictions regarding access to public housing:

>The biggest problem is they don’t have accommodation. They’re living in overcrowded houses, families, dysfunctional families, people are drinking coming home at all hours of the night and these kids are expected to get up and go to work the next day. They’re staying with their families and then you get this breakdown. You start off with overcrowding, then you get health issues, educational issues, where kids

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52 AT99/88 Sonia Jones V Commissioner for Housing and AT99/94 Andrew Britten V Commissioner for Housing.
cant come home and do their homework. You get all of these issues that lead to unemployment and all the rest of the social issues (confidential oral submission 145, male, advocate, Pilbara).

Although the Eligibility Policy stipulates an age requirement, Homeswest do offer a provision for the housing of applicants between 16 and 18 years of age at the discretion of management under the Discretionary Decision Making Policy (DDMP) (DHW, 2004: website). In considering this, management are required to assess the applicants needs, homelessness, support letters from doctors, community or government agencies, the applicant’s income and the support available. However, some submissions assert that in reality it seems that discretionary decisions preclude certain circumstances and are not always used to benefit an applicant. The WRAC stated that "Discretion is not always used, particularly in the application of written policies and practices. Often issues of feuding, large extended families and familial responsibility are not considered as special circumstances" (written submission 46, May 30 2003: 10).

The TAS highlighted that Homeswest officers can often face dilemmas in decision making, particularly in circumstances where the economic objectives of the organisation conflict with meeting the housing needs of disadvantaged groups. In such circumstances, the TAS asserted that discretionary decisions never favour the existing or potential tenant:

In making a discretionary decision the officer must balance Homeswest objectives against the needs of the tenant however, no guidelines are provided in relation to the types of issues that should be taken into account. Homeswest has consistently refused to provide guidelines for discretionary decision making to its officers. Homeswest justification is that it would limit the use of discretion. However it is the experience of people who work with tenants that discretion is rarely applied in favour of the tenant (written submission 44, May 30 2003: 100).

Waiting List

The Homeswest Waiting List Management Policy (WLMP) (DHW, 2004: website) contains a number of principles that influence the provision of housing to Aboriginal people. Under the WLMP, applicants are generally housed according to their application date unless an urgent housing need is demonstrated. In addition, applicants are required to nominate a preferred housing zone or town and specify the number of people that will occupy the property. Housing is then allocated on a turn reached basis. The Homeswest corporate objective is to assist people in regional areas within 12 months and people in the metropolitan area within 18 months (written submission 35, May 29 2003: 17). However, these waiting times vary between zones, towns and housing types.

It is difficult to ascertain whether the waiting list accurately reflects the number of people who actually require public housing assistance. A government officer from the Midwest region commented that many people may not appear on the list for various reasons, for example difficulty in understanding the application form, prior debt and a shortage of available houses:

The waiting list is a piece of rubbish as far as I’m concerned. There are a lot of people that don’t sign up and there are reasons for them not wanting to sign up. It’s a compounding of not understanding the paperwork; going out of the house ending up with tenancy liability and not being able to get on the waiting list until they have paid, or can’t get a house until they’ve been paid. So they don’t sign up. In [undisclosed location] there’s 18 houses for four hundred people. Now there isn’t enough houses but that’s not recognised, that’s not acknowledged, that’s not dealt with. So they don’t sign up. So the waiting list to me doesn’t reflect a true picture of what is out there (confidential oral submission 145, male, advocate, Pilbara).
Thus it is likely that the number of people in need of public housing assistance is far greater than the numbers on the wait list. A particular difficulty is that Homeswest refer to the wait list when determining where to build and buy. This may mean that some people with a great need for assistance are not having those needs met. An advocate from the metropolitan area stated:

*It is obvious that the waiting times are in fact meaningless because they depend on the turnover of properties. Properties are scarce and we find that people are waiting well over the average of estimated times. We repeat- the wait times are meaningless (written submission 14, March 25, 2003: 10).*

**Wait Times**

It was widely reported by Aboriginal people that they wait too long for housing assistance. Whether Aboriginal people wait longer for housing than non-Aboriginal people is difficult to ascertain, as Homeswest does not routinely collect the comparative data. Although Homeswest does provide some wait time data on their website, the accuracy and reliability of this has been questioned by the TAS. They claim that the information provided is inaccurate because it does not distinguish between those on the wait turn list and those who have applied for assistance on another basis, for example a priority basis. Regardless, the TAS contended that in their experience many Aboriginal applicants believe they have to wait longer than non-Aboriginal applicants for property allocation. In part, this may be related to the shortage of larger homes that can accommodate larger families (written submission 44, May 30 2003: 86). This point was supported by the JCC who stated, “Most of my clients who are waiting for housing need 4 or 5 or 6 bedroom houses, very few need 3 or less bedrooms. This accounts for a lot of the delays my clients experience” (written submission 38, June 02, 2003).

Homeswest acknowledges that often Aboriginal families are larger in size and confirms that in recent years additional resources have been allocated to build or buy larger accommodation. Over 2000/2001, 131 larger properties with four, five or six bedrooms were constructed, including 21 specifically for Aboriginal people. Over 2001/2002 163 larger properties were built, including 19 specifically for Aboriginal people. Over 2002/2003, a further 166 larger properties will be constructed, of which 19 will be for Aboriginal people (written submission 35, May 29 2003: 18). It appears that this building program has yet to meet the needs of larger Aboriginal families.

A number of submissions by Aboriginal people from varying regions confirmed the need for larger homes, and also discussed the matter of waiting time. A single mother with six children living in a three bedroom house with 10 people stated, “I have been on the waiting list for four years and Homeswest have told me to wait another two years” (confidential oral submission 216, female, prospective tenant, Midwest). A father further asserted:

*My partner went to Homeswest, we had one young child and my partner was pregnant. I put in an application for priority but they declined it and did not even file the medical support I showed them. We have been on wait turn for nearly a year and nothing has been offered to us. We feel this is bloody unfair (written submission 20, February 28 2003: 4).*

An Aboriginal woman in the metropolitan area spoke of the effect wait times had on her niece:

*My niece came down from Broome - her little boy is deaf and dumb and he has to go to a special school. They’ve been waiting more than five months for a home. They have letters from doctors and everything. Surely Homeswest could help them (written submission 12, February 28 2003: 1).*

**Tenancy History**

As mentioned earlier, Homeswest statistics show that a greater proportion of Aboriginal people than non-Aboriginal people are considered by Homeswest to have a poor tenancy history. For instance, Aboriginal people are overrepresented in
the proportion of people evicted from tenancies, the proportion of people whom Homeswest are taking action against for poor property standards and the proportion of people with debt and rent arrears (written submission 35, May 29 2003: 12). People who are considered as having poor tenancy history may experience longer wait times. For example, for people who have accrued debt and are required to repay 50% of that debt before being housed, it is perhaps reasonable to assume that the length of their wait will be affected.

Redevelopment
An additional factor contributing to potentially longer wait times is said to be development, including property refurbishment, selling and rebuilding. A Homeswest officer commented on the rate of selling and lack of comparative rebuilding:

_They don’t have enough housing and redevelopment has taken a lot of stuff, which I was thinking the list is getting bigger and bigger. Like you get a lot of homeless people who have been housed previously in these properties, but because we don’t have the single storey town houses any more, the double storey town houses any more, there’s none of them properties to get them in off the street quickly, you know in which I think redevelopment has slowed them right down on the waiting lists (confidential oral submission 191, Homeswest Officer, undisclosed location)._  

This officer also advised that she felt this disjuncture between selling and rebuilding had slowed the waiting list:

_They’ve cut down so much of the housing. They’ve really cut it down, which a lot of it is getting sold off, and the building process is not quick enough to, you know, for people to get housed. There’s not enough properties there. You’ve got to wait for them to come through (confidential oral submission 191, Homeswest Officer, undisclosed location)._  

Notification
A further concern in relation to waiting list management regards formal notification and response. Part of the WLMP states that applicants are required to notify Homeswest of any change of circumstances whilst waiting for housing. In addition, Homeswest annually contacts the applicants in writing to check the application details.

A difficulty arises if the applicant does not respond to this written review form, as this can lead to the withdrawal of the application. The requirement to respond to this form may be difficult for those that are unable to receive mail due to homelessness; for those who are moving between family members or friends and have no fixed address; or for those who are able to receive mail but unable to understand the content or requirement in the letter or review form. A respondent from the JCC commented upon the withdrawal of applications:

_If clients don’t respond to a letter from Homeswest they get taken off the waiting list. Homeless people will sometimes actually put down their relatives address to make sure they get their mail, but they still get taken off the waiting list (written submission 38, June 3, 2003: 4)._  

A respondent from the CMSAC supported these difficulties stating that:

_On occasions I have been told applications could not be found or names had been removed from the waiting list because a client did not respond to a letter sent. That said letters are useless in situations of limited literacy. (written submission 31, April 16 2003: 4)._  

A homeless Aboriginal woman with three children, one of whom has a disability, commented on her experience of being removed from the waiting list:

_They sent forms which I didn’t get because I am homeless and moving around all the time. Then they say I have been taken off the list and must_
apply all over again and be at the bottom of the list. We have no home and so we are always going backwards. We have no future and I get mad enough to scream (written submission 9, March 27 2003: 4).

It appears that Homeswest have attempted to address this issue in policy. Section 6.2 of the WLMP states that Homeswest officers must enquire about any change of address on the Bond Assistance Scheme (BAS) before the rental application is withdrawn (DHW, 2004: website). However, applicants may not have applied or be eligible for the BAS, and also in the experience of the WRAS and their Aboriginal clients, officers did not always conduct this enquiry:

When clients are wait listed they are usually itinerant or frequently moving. Homeswest policy for remaining on wait and priority listings is that the client must notify Homeswest of their whereabouts at all times. Often the bond section has a more recent or new address for the client however these new contact details are not communicated between the various sections of the organisation. Clients are advised in writing that a house has become vacant for occupation or to check that there remains a need for public housing. If the client fails to respond to these notifications they are taken off the wait/priority listing and must reapply (written submission 46, May 30 2003: 8).

In addition, the requirement to maintain contact with Homeswest may at times conflict with Aboriginal cultural practices. This was raised by an advocate in the Pilbara region:

We had a guy, the guy was out at law, and nobody had bothered to find out where he was. They sent a letter; they didn’t get a response and just took him off the waiting list. Then when he came back he went and saw them. I mean we live in an area of transient people, they move around between here and Carnarvon (confidential oral submission 145, male, advocate, Pilbara).

Thus, a further complexity is that some Aboriginal people remain unaware that their application had been withdrawn and assume they are still waiting their turn for housing. An Aboriginal mother from Midland commented that her daughter was unaware she had been removed from the wait list and consequently waited five years for housing. She stated that, “They don’t give you the information to start with. It happened to my daughter in law….she thought she was on a waiting list. I was then told that because they moved out of the property in….she had to reapply” (confidential oral submission 11, female, tenant, Metropolitan, October 28 2003).

**Allocation**

The Homeswest Allocations Policy (AP) is linked to the waiting list turnover. That is, properties are allocated when an applicant’s turn is reached on the waiting list, provided that the size and type of accommodation is appropriate to the needs of the household and the applicant is still eligible for housing assistance at the time of allocation (DHW, 2004: website). There have been widespread concerns raised about the practice of this policy.

**Standards**

An advocate in regional Western Australia alleged that houses are not necessarily allocated to applicants as they reach their turn on the wait list. The advocate advised that in his experience, local Homeswest officers meet routinely on a specific day of the week and discuss available houses and tenants on the wait turn list. He claims that rather than matching the next person on the list to the appropriate property, irrespective of the applicant’s race, gender or other characteristic, officers make discretionary decisions about who should be allocated housing, based on their perceptions of prospective Aboriginal tenants.

They don’t follow the wait turn policy. That’s what makes me think that it’s not Greg Joyce’s fault. Policy seems to be sound in some areas, even though they have aimed it at the middle class white Australian society. They’re already discriminating against a lot of people. And I know they just don’t follow the waiting list policy. That’s why there’s so much
dissatisfaction. Because they try and estimate ‘who is going to be causing problems for us in the future?’ You’re dealing with people’s lives and families. It’s not just like picking people for a basketball team (confidential oral submission 57, male, advocate, undisclosed location).

A former Assistant Regional Manager who supported this claim stated that:

...Homeswest sometimes anticipate, and they shouldn’t, but they do. They say, ‘This family may be a problem we’ve been told, let’s not do too much and see how they go, give them their 3 months probation and then they’ll fix up the other things.’ ... But the next person might be Aboriginal but it may be the person from the community that you know is going to wreck it. So what are you going to do? Put them into a brand new property that cost you 160 thousand dollars? I don’t think so... You know you’d rather put them in to one of the older houses and see how they go. And yet time and time again I’ve been proved wrong, and that’s how you reward them. But if we got caught doing that... What you’re trying to do is give someone that you know will be excellent tenants that little bit more and then the other ones that have no idea how to live in an urban area that chance to prove themselves and then you can transfer them (confidential oral submission 208, male, Homeswest employee, undisclosed location).

These claims were supported by a number of Aboriginal people across regions who perceive that assessment for properties is influenced by their Aboriginality combined with assumptions about supposed living standards. An Aboriginal woman stated that “Homeswest treat Aboriginal people a lot different. Very different to non Aboriginal. The house they gave me and my mum in Midvale was on the demolition list” (written submission 10 February 18, 2003: 7).

There were widespread claims that Aboriginal people are consistently and deliberately offered ‘sub standard’ houses. One Aboriginal tenant stated that “The houses we get are substandard. Sometimes we get so fed up we go to the council. We always have to fight and fight. We always have to fight” (written submission 11, February 14 2003: 2).

Another woman said that “There are mainstream homes but the substandard ones are kept for the Noongars” (confidential oral submission 58, female, tenant, Great Southern). This point was reiterated by another tenant, “How come they’ve got set houses for Noongars and Wadjellas? The Noongar houses are so shabby. There is one house they offered to five people we know, who knocked it back. Poor girl took it, had no choice” (confidential oral submission 73, female, tenant, Great Southern).

Other people spoke of houses that are repeatedly ‘recycled’ from Aboriginal family to Aboriginal family. An Aboriginal woman described that “It’s like a circle where you go round and round and you know Noongar’s live there and you know Noongar’s always get those homes” (confidential oral submission 259, female, tenant, Great Southern). A further tenant commented, “I went on the list for Katanning and was offered the house that I grew up in. I have also been offered a house that my grandfather died in. They try and give you hand me down houses” (confidential oral submission 68, male, prospective tenant, Great Southern).

A Homeswest officer also advised that Allocations Officers would be subject to pressure from Accommodation Managers to allocate ‘good properties’ to ‘good tenants’:

With allocations, you know, you’re brought in there on the assumption that who’s next on the list next gets housing. But you do get a lot of pressure from the Accommodation Managers. They think the properties do belong to them, in

“...Well, being a Noongar man and being an Aboriginal person, what it is with the Homeswest houses is it’s just hand-me-downs all the time. They don’t put them in another area. They put them in one isolated area, and every house, if it’s owned by an Aboriginal, when they go out and the new tenants come in, it’s Aboriginal people to the one house, at all times” (confidential oral submission, male 81, tenant, Southwest).
which they will say, ‘I want a nice person for this property,’ in which you know that kind of rules out the next Aboriginal person on the list (confidential oral submission 191, Homeswest Officer, undisclosed location).

The same officer further advised, ‘We complained about the Accommodation Managers saying, ‘Only put good people in them.’ You know, ‘Be selective who you put in them’, when it’s not their properties’ (confidential oral submission 191, Homeswest Officer, undisclosed location). In addition, there appeared to be a tacit obligation to disclose the Aboriginality of neighbours to prospective tenants:

I tell them, ‘Next on the list no problems, they’re next on offer.’ But it’s like I don’t know. They think they own…it’s just like the properties are theirs. And then they want to keep their other neighbours happy. Like they do account for that - good neighbours. I’ve actually seen someone, a white person, get offered a property as long as they were happy to live next-door to an Aboriginal person (confidential oral submission 191, Homeswest officer, undisclosed location).

A Homeswest officer spoke of the practice of some staff labelling Aboriginal tenants as ‘Fund 6’ in the comments field of the computer system. ‘Fund 6’ refers to funding provided by the Commonwealth specifically for Aboriginal housing. It was expressed that this labelling then impacted on the Allocation Officer’s decision whether or not to allocate properties to Aboriginal or non-Aboriginal applicants, irrespective of whether they were next on the waiting list:

I also know in allocations...they have a spreadsheet in which are all the properties and then the comments, and I’ve noticed with other girls they have ‘fund 6 next door’, ‘Aboriginal family next door.’ So they’re kind of aware, before they’re housing, that there is an Aboriginal family known next door, which I don’t think is relevant, because were just looking at getting the houses occupied (confidential oral submission 191, Homeswest Officer, undisclosed location).

This practice of referring to Aboriginal customers as ‘Fund 6’ was also consistently and widely reported during the training workshops conducted by the EOC for Homeswest staff throughout the state. A Homeswest officer further illustrated the selective nature of allocation even in relation to emergency accommodation:

I know with my office they’re very selective with housing. It’s really hard for Indigenous people who are on priority who want to take an emergency accommodation to get it, if other Aboriginal families are on the same street living. They’re very hard with that, even though we’re told you’re not allowed to do that from the Manager. It still falls back to that. If they’re a ‘fund 6’ they won’t offer them an emergency house if there’s a family known on that street. And that’s our main problem at Homeswest, because it makes you wary not to even go and ask. But you will, but you always get refused (confidential oral submission 191, Homeswest Officer, undisclosed location).

In addition to the claim that properties are allocated utilising personal presumptions of prospective tenants, is the claim that Homeswest is engaging in practices of racial segregation with respect to the allocation of housing. A number of submissions mentioned particular metropolitan suburbs and areas of country towns where Aboriginal people are predominately allocated housing. Those areas included Katanning, Mandurah, Midland, Mt Barker, Laverton and Bunbury. Those areas were described by Aboriginal people as ‘ghettos’, ‘urban reserves’, ‘the Bronx’ and the ‘vegemite strip’, “See, they’ve got us in the ghettos. We’re all around the outskirts” (oral submission 192, group, tenants, Great Southern).

In the Mandurah region, Aboriginal people spoke of being predominately clustered in certain suburbs, which they referred to as ‘the Bronx’. This area consisted of the suburbs Coodanup and Greenfields. A number of participants from these areas advised that the practice of predominately allocating housing to Aboriginal people in these suburbs led to racism from members of the non-
Aboriginal community. Some non-Aboriginal people were said to be openly racist stating, “All ‘coons’ are in ‘Coondanup’” (confidential oral submission 81, male/female group, tenants, Southwest).

Some Aboriginal tenants advised that whilst they may specify their preference to reside outside of particular housing zones, Homeswest would not make an offer to them in their zone of choice. For example, in the Mandurah region Meadow Springs is said to be a relatively new suburb with some new Homeswest houses. Some tenants spoke of Homeswest’s reluctance to house Aboriginal people in that area. An Aboriginal grandmother advised of her experience:

I put in a transfer from here to Meadow Springs knowing that it was a nice area and things like that. I’m not a social person, I don’t drink, I don’t smoke or whatever, and I don’t have dogs in my house and things like that. I can guarantee you they wouldn’t put me there (confidential oral submission 83, female, tenant, Southwest).

This situation is similar in Perth, as illustrated by an advocacy organisation:

Trends indicate that Aboriginal people are being housed in specific areas such as Langford, Queens Park and Mirrabooka. Apart from issues of feuding and the reduced options to make life choices about areas of residence and life style there is concern that this practice creates ‘ghettos’ and segregates Aboriginal people from mainstream community participation. Housing in these areas is often substandard, poorly maintained and earmarked for future redevelopment. This has historically led to the creation of a ‘ghetto’ in the town (written submission 46, May 30 2003: 7).

Some Aboriginal people advised the EOC officers that locating Aboriginal people in specific suburbs or areas contributed to conflict between different families. A female tenant asserted, “A major problem is that they move all Aboriginal people next to each other which always ends up in families feuding, but not all Aboriginal people are antisocial” (confidential video submission 8, female, tenant, Metropolitan).

Historical Residue

Drawing on history an Aboriginal woman commented, “They think about those days when all of us Aboriginals were living on the reserves see, and they’re still sort of bringing that back, instead of letting it pass and going on to better things” (confidential oral submission 215, female, tenant, Southwest). An elderly Aboriginal woman commented:

I am an elderly lady and just want to live in a bit of comfort. I would have thought things would have improved from when I was a child but they haven’t. It’s like the houses on the reserves where there were two-bedroom shanties with no doors and you had to share a bathroom and toilet with other families. Year to year nothing has changed. I don’t want to be begging all the time. I’ve had enough of that (oral submission 13, female, tenant, Metropolitan).

It is understood that in the past a form of segregation was carried out in accord with Homeswest policy. This concerned ‘social mix’ and was commonly known as the ‘salt and pepper’ policy. A former Homeswest Accommodation Manager commented upon this:

One of the difficulties for Allocations Officers at the time was that they were under instruction... they had this unwritten policy that they used to refer to as the ‘salt and pepper’ policy. Now the ‘salt and pepper’ policy was about not having too many black people next to white people. And by black people they meant Aboriginal people... The salt and pepper policy was clearly about too many Aboriginal people being in an area, which was not desirable at the time. It was also about, they used to use this term regularly, ‘robust behaviour.’ And it was about we can’t have too many Aboriginal people amongst the non Aboriginal people because... they drink they have rellies over, they have extras staying with them for longer periods of time causing overcrowding, so mixing the components of overcrowding, unemployment in many cases, alcohol and then there would be these fights and robust
behaviour... These things were all discussed openly when you were trying to put someone into a home with the allocations officer (confidential oral submission 209 female, former Homeswest Officer, undisclosed location).

The practice of allocating housing on the basis of Aboriginality was consistently and widely reported during the workshops conducted by the EOC for Homeswest staff throughout the state as the ‘sensitive allocation policy.’ Whilst it appears that there is no formal ‘sensitive allocations policy,’ it was reported as a common practice. Arguably, this practice constitutes direct race discrimination and has no place in contemporary Australian society and should be abandoned. Despite the fact that there is no formal sensitive allocation policy, it was consistently raised in submissions by organisations, Aboriginal people, and former or current Homeswest officers that in practice this is still operating in some instances. Some Aboriginal people expressed a view that the bodies involved in this practice include local government, private residents and property developers:

I also think they work quite closely with local government and developers and the perception there is that Aboriginal people are destructive. So ok, how many houses are we going to allocate and are we going to allocate any to Aboriginal people? And I’m talking about new properties here (confidential oral submission 98, male, tenant, Great Southern).

In contrast to this allocation practice which can impact negatively on Aboriginal people, several Aboriginal people in the Great Southern and Southwest regions spoke of a past practice where a group of local representatives from various families would meet with Homeswest officers to discuss the allocation of housing. In their view this practice assisted in alleviating some of the difficulties associated with the allocation of housing as well as enabled Aboriginal people to become involved in the process:

In the old days, they used to have Aboriginal people sitting on a panel from each one of the families, and saying, ‘We’ve got houses coming up. These are the list of people. Can we look and say where can we put them, so that we all know. You as a community can distribute it so that everybody is not put in one spot.’ They’ve taken all that, sort of our own powers, and now they’re the controlling body, the government body, and if you want to appeal anything you’ve got to have a degree and you’ve got to have a lawyer (confidential submission 196, group, tenants, Southwest).

Family Size

A number of submissions highlighted that Homeswest officers do not take into consideration the extended nature and size of Aboriginal families or the cultural practices concerning family when allocating properties. One submission stated that "Homeswest does not take into account, when allocating housing, the extended nature of the Aboriginal family, and so institutionalises overcrowding" (written submission 30, June 6 2003: 4). Another organisation stated:

Many Aboriginal families undertake the care of family members, in particular children and young people. Often these situations may result in overcrowding and possible antisocial behaviour. In many situations DHW staff and policies don’t appear to understand nor are concerned about cultural or family responsibility (written submission 34, May 29 2003: 4).

According to the WA Catholic Social Justice Commission, overcrowded living conditions had potentially devastating consequences for Aboriginal families:

Living in culturally inappropriate housing is linked to the increased risk of child abuse in at least two ways. Firstly, overcrowded living and the constant passage of homeless groups between friends and relatives results in the loss of parental especially maternal control and authority over who has access to children. Second the poor mental health outcomes associated with living in culturally
"Indigenous Australian mental health indicators are on average much poorer than for the community as a whole. Overcrowding and living in housing that makes it harder to control who can enter, which are endemic conditions among Indigenous Australians, are associated with poor mental health in two ways. First the contact stress of living in overcrowded housing is associated with the onset of panic attacks, depression and low self-esteem. The lack of personal space for members of the household makes it very difficult to avoid or resolve personal conflicts. For those identified as clinically depressed such living conditions make it difficult to maintain regular habits required for the effective use of prescribed medication" (written submission 45, May 28 2003: 4).

inappropriate conditions exposes children to people with unpredictable behaviours (written submission 45, May 28 2003: 6).

Arguably, this lack of consideration and cultural awareness is related to the limited housing stock suitable for large families. A number of respondents commented upon the lack of suitable housing for Aboriginal families:

Homeswest especially down here do not make houses adequate enough for what Indigenous families are about. They give you a three-bedroom house and say only mum, dad and two children are to be here. They don’t realise the rest of your family is mothers uncle, cousin, you know. And no way are you going to shut the door on any of your relations to come and stay (confidential submission 89, female, tenant, Southwest).

Accommodation Offer

Essentially, following the process of allocation an applicant is made an offer for accommodation. The applicant is given one offer and must accept this offer unless a valid reason for declining the offer is provided. According to the Homeswest AP, "Applicants will be made one offer of accommodation which is to be consistent with their choices as stated on the application for, in the zone or country town of their choice unless a valid reason for refusal is given" (DHW, 2004: website).

Homeswest officers are required to consider a number of factors when determining whether an applicant has a valid reason for declining an offer of a property. These include medical grounds, distance from essential amenities, public transport or place of employment, lack of family support, proximity to people who may be troublesome, and being a member of a minority group in a particular area if there is a potential for harassment. It appears that the operation of the allocation system and the ability to decline offers of housing significantly influences the quality of housing offered and also reduces the ability of people to refuse poor standard accommodation for something more appropriate. Individuals and organisations repeatedly stated that Aboriginal people are offered a poor standard of housing when compared to that allocated to non-Aboriginal people, and are removed from the waiting list if they refuse the house due to the property condition.

A number of statements from Aboriginal tenants, advocates and a Homeswest officer illustrate these points. A women’s shelter in the metropolitan area commented, “You’ve got to come up with a really good reason. I don’t think cockroach infested or security doors missing or the place hasn’t been finished, is a good enough reason for them” (confidential oral submission 18 female, advocate, Metropolitan). An Aboriginal tenant in the great southern commented:

They offered me another home which was up in Spencer Park... it was really run down, old, crusty old home, and I thought straight away, ‘Yes, I know what you are doing. You’re just giving me a second chance to knock the home back, so you can just put me off the list. And sure enough it happened. They didn’t end up putting me at the bottom of the list. They just took me off completely (oral submission 76, female, tenant, Great Southern).
An Aboriginal woman in the Mandurah area commented:

If a house comes up say in Coodanup and then they say, ‘Sorry but you’ll have to take this.’ You have to take it and if she turns around and says, ‘But that’s not what I need, that doesn’t fit my needs.’ ‘Oh well look, you’ve got one more choice and if not, you’ll be down the bottom of the list. I can’t guarantee that you’ll get a house within the next three to four years’ (confidential oral submission 89, female, tenant, Southwest).

A former Homeswest officer working within the community stated that “…the policy is if you don’t take the house, you’re on the bottom of the list, and it used to be you get two offers, now you get one offer and you don’t take it you’re gone” (confidential oral submission 210, female, former employee, undisclosed location).

TAS highlighted that one of the reasons applicants may decline an offer is the limited time they have to view a property and make a decision about whether it is suitable. In addition, even though properties offered may be ear marked for maintenance this is not communicated to tenants, and therefore they may make a decision to refuse a property on the basis that maintenance work is required (written submission 44, May 30 2003: 84).

According to the AP, Accommodation Managers should explain to applicants if the property is under maintenance and provide them with a copy of the job orders so that they will be aware of the maintenance that will be conducted. The policy also states that applicants are required to sign a written statement indicating that they have understood maintenance is to be undertaken and that they will take this into consideration when considering whether the property is suitable.

The Uniform Maintenance Standard Policy appears to apply in these circumstances also. This specifies that when a tenant occupies a property it should be in working order and the property should provide safe and habitable accommodation (DHW, 2004: website).

Submissions have repeatedly contested the workability of these policies. Tenants advised that they were not informed that maintenance was to be conducted on properties at the time of allocation. Aboriginal tenants were offered properties that were not maintained, clean and with appliances and fixtures in working order. Aboriginal tenants were often explicitly told to take the property or be removed from the waiting list for declining a ‘valid offer’. One Aboriginal mother in the metropolitan area advised:

When my daughter first got her house in Armadale we went and had a look. No hot water, no gas heater, no stove. They said she should move in and worry about it later. I had to insist that they do something about it first. They fixed a couple of things (HWS and stove) a couple of days later but it was still all dirty. They told her if she didn’t take it she’d get knocked off the list. When she moved in she fixed it all up herself. If I wasn’t with her I think she would have been bullied into taking it like it was (written submission 12, February 28 2003: 3).

A young Aboriginal mother commented on the condition of her newly rented house:

I moved in, it wasn’t clean. I can’t open windows in the bedroom or lounge room. The Accommodation Manager told me it was safer to leave them that way, just closed up. I told him about the hot water system at the start. I didn’t have a hot water system for two weeks. I then went to get the gas connected. Lucky I asked the gas man to look at this pipe out the back. Someone had knocked off the hot water system. He said if we had put the gas on we could’ve been blown up. I told the Accommodation Manager I was going to the Ombudsman. Then I got a hot water system and a gas heater (written submission 6 February 20 2003: 9)
A Homeswest officer commented:

The properties they offer out to some people, the windows are jarred, and you can’t open them and these women are coming from DV and stuff. In some circumstances it’s going to take another six months for them to wait for something, so in the last stance they’ll take it (confidential oral submission 191, Homeswest Officer, undisclosed location).

In many cases, Aboriginal tenants advised they simply accepted that they must take what was offered to them or remain homeless. As one advocate advised:

They know people need a roof over their head because they have no other alternatives. If it was you or me, I won’t accept that, you can stick that house. But the blackfellas, no hassles, I’ve got a roof over my head the kids, thirteen or fourteen of my family will be able to sleep here and we’ll be nice and warm through winter (confidential oral submission 253, male, advocate, Midwest).

If an applicant wishes to decline a property they must provide the reasons in writing, which must then align with the AP, otherwise they will be removed from the list.

However, the literacy ability required, awareness, accessibility and understanding of policy, availability of assistance, or the emotional state of the applicant may hinder a written notification of decline of a property. Thus, in essence, a lack of a particular skill, awareness or of support may in all likelihood lead to removal from the waiting list.

It has been alleged by a Homeswest officer that Aboriginal people are treated less favourably that non-Aboriginal people when declining an offer of accommodation in that they did not necessarily face the same consequence of being removed from the waiting list:

I do find a lot of white people do decline a lot of stuff and they don’t get affected. Then with the Aboriginal woman who’s been on the list for some time, they will really try, but the properties are really bad. They will try and push them into that and if they don’t take it they do cross them off the list, in which a person has to appeal to be put back on the list (confidential oral submission 191, Homeswest Officer, undisclosed location).

I know the war veterans... the girls are like, ‘Oh, we’ve got to help them’, and even though they’ll offer them something good, they will decline it for little reasons, and they will say, ‘We’ll keep them on.’ Whereas that Aboriginal person, if he’s declined, especially being an old fellow, if he doesn’t have the exact reason, they will tend to knock them off and they’ll have to reapply again. And this old fellow won’t want to get into an argument with them, and he’ll just have to reapply” (confidential oral submission 191, Homeswest Officer, undisclosed location).
In addition, in some instances non-Aboriginal people were permitted to refuse offers of accommodation on the ground that they did not wish to live next door to an Aboriginal family:

You check the decline forms. I mean a lot of Chinese people especially do not want to live next door to Aboriginal people, so they will write it down. But if the person’s pleading, like really pleading with them, in which it does tend to work, they will still put it back on the listing for a next alternative offer, and possibly get them to change their zone of choice. In certain zones there’s a lot of Aboriginal clients, so they’ll get them to go out of them areas and put them on the list for another zone (confidential oral submission 191, Homeswest Officer, undisclosed location).

Priority Assistance

Access to housing in urgent circumstances is governed by the DHW Priority Assistance Policy (PAP). The PAP is linked to various elements in other policies, including general eligibility criteria, domestic violence, debt recovery and discretionary decision making. This Inquiry received evidence from Aboriginal people throughout Western Australia who often required priority assistance due to a range of interrelated factors, for example domestic violence, family violence, child abuse and other difficulties in maintaining tenancy. It was consistently reported that the application of the PAP and related policies often resulted in urgent housing needs remaining unmet, often with serious consequences.

Many written submissions received from organisations reached a similar conclusion in relation to the PAP. In many instances, the EOC officers witnessed the consequences first hand and were deeply distressed by what they saw.

The human right to adequate housing is recognised in many significant human rights documents, including the Universal Declaration of Human Rights and several human rights treaties ratified by Australia.

The most important human rights treaty relating to housing is the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 11(1) of the ICESCR recognises the right of everyone to “...an adequate standard of living for himself (sic) and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.” This right has been defined by the United Nations Committee on Economic, Social and Cultural Rights (UNCESCR) through General Comment 4 on Adequate Housing and General Comment 7 on Forced Evictions.

As set out in Article 11 (1) of the ICESCR, these two documents are the most authoritative legally binding interpretations regarding the right to adequate housing.

(See Section Two of this report for further details regarding human rights)

Criteria

According to the PAP, in addition to meeting all the DHW eligibility criteria, priority assistance applicants must also establish they have an urgent housing need. The PAP also states that people in crisis requiring immediate accommodation are not eligible for priority assistance. The preamble to the PAP explains that being accommodated in crisis or emergency accommodation does not give an applicant automatic precedence over other priority applicants. A person needs to be removed from the crisis situation and given the opportunity to look at other long-term housing options. These may include renting privately with bond and/or rental assistance, taking legal action to retain a joint ownership property, or moving into shared accommodation with a relative or friend (DHW, 2004: website).

This Inquiry accepts that the purpose of emergency housing is to provide short-term shelter for applicants who have no immediate housing option other than public rental housing. However, serious concerns have emerged from written and oral submissions regarding the notion that Homeswest considers occupying shared
accommodation with a relative or friend as a long-term housing option, and thus precludes applicants from priority assistance. This appears to be inconsistent with DHW’s own definition of homelessness, which includes secondary homelessness as being those in crisis accommodation or staying with friends or relatives. As one submission comments:

_The Homeswest definition of homelessness includes ‘residing in a refuge or place designated as temporary shelter.’ Many Aboriginal people who apply for priority housing are usually camping out at relatives place for what they believe will be a short period time before they get housing. These places are overcrowded because other people are doing the same. This is considered temporary shelter in the applicant’s eyes but Homeswest consider this a viable option. It is not a viable option when there are twenty people sharing a house with only two bedrooms and one bathroom (confidential written submission 40, May 30 2003: 4)._

In recording oral submissions, EOC officers consistently observed that many Aboriginal people appeared to have an expectation that priority assistance would resolve their emergency housing needs. In other words, priority assistance was in many instances taken to mean emergency housing.

The Gordon Inquiry (Gordon, Hallahan and Henry, 2002: 190) found that "...there is an area of need for individuals between the provision of emergency accommodation and the provision of Priority Assistance Housing", and recommended that "...there is a need to accelerate the provision of emergency family accommodation suitable for residency of up to three months."

The preamble to the PAP explains that the allocation of a property to any applicant is dependent upon a vacancy occurring. In areas of high demand there is a low turnover of housing stock and few vacancies, which makes it difficult for Homeswest to provide assistance within a reasonable timeframe regardless of the critical housing needs of the applicant (DHW, 2004: website).

Many priority assistance applicants expressed frustration regarding the waiting times for priority assistance.

_It is obvious that waiting times are in fact meaningless because they depend on the turnover of properties. Properties are scarce and we find that people are waiting well over the average or estimated times. We repeat - the wait times are meaningless (confidential written submission 14, March 25 2003: 4)._

The social consequences of not being adequately housed can be serious, particularly among Aboriginal applicants with critical housing needs. These consequences may include ill health, overcrowding and homelessness. This issue needs to be addressed as a matter of urgency.

The DHW policy explains that there is an awareness of the needs of applicants who have reached their turn on the waiting list, and that a balance must be maintained to ensure applicants are not penalised by remaining on the waiting list.
for longer than is acceptable. Therefore, properties must be carefully allocated to maintain consistency and fairness, and a balance between the competing needs of applicants on either the waiting list and the priority list (DHW, 2004: website).

This Inquiry has serious concerns about the effects of applying the ‘competing needs’ principle when dealing with the urgent housing needs of Aboriginal applicants. In particular, there is serious concern for single-parent women and grandparents who are primarily responsible for the care of children. The ‘competing needs’ principle is likely to lead to the entrenchment of existing inequalities based on race and the intersections of sex, marital status, age and disability. An expectation that priority assistance applicants, who have established an urgent housing need, compete with wait turn list applicants, who have not established urgency, would inevitably lead to gross inconsistency, unfairness and imbalance:

*I have four kids under five in a town house. I worry so much they are going to fall. It worries my mum sick. I asked for a transfer for safety reasons. They refused. They said I need barricades at the top of the stairs and on the landing, I have to pay for them myself. They told me if anything happens it will be my fault. I asked them to put it in writing so I can appeal. I’ve been waiting for that letter for three weeks (confidential written submission 12, February 28 2003: 1).

Establishing An Urgent Housing Need

According to the PAP (DHW, 2004: website), the circumstances that would normally justify priority housing include:

- Medical problems being negatively impacted upon by an applicant’s housing situation.
- A medical condition urgently requiring treatment that is not available in the area where the applicant currently resides, and where there is no reasonable access to public transport.
- Domestic or family violence.
- The need for accommodation that unites children with their family.
- Where child abuse has occurred necessitating the relocation of the family to avoid the perpetrator, or to assist the recovery of the traumatised child.
- Where an applicant requires accommodation in order to take a child out of care.
- Racial harassment.
- Homelessness.

Before an application is considered, Homeswest also assesses the past tenancy history of an applicant, for example outstanding debts or anti-social behaviour. A priority assistance applicant must also establish they have no ‘viable’ housing option other than public housing (DHW, 2004: website). An application may be terminated if Homeswest is not satisfied with either of these points.

This Inquiry received many submissions particularly from Aboriginal women and from advocates throughout Western Australia stating that despite being able to establish a critical and urgent housing need they or their clients were not placed on the priority housing list. Most claimed that the reasons for being declined priority assistance included previous tenancy history, an outstanding debt and being assessed as having other viable housing options. One Aboriginal woman commented, “When I was homeless they were always saying pay the debt off, wait longer. I know a woman who was killed because she was homeless. It was so sad she had 5 little kids. There are so many homeless people sick and dying” (confidential written submission 7, February 3 2003: 7).

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53 Primary homelessness involves a person sleeping rough, for example in the park or under bridges, and is considered grounds for priority assistance. Secondary homelessness involves a person in crisis accommodation or staying with relatives/friends. Tertiary homelessness involves a person living in insecure accommodation, for example boarding houses, caravan parks or rooming houses. Secondary and tertiary are considered as part of the priority assistance process.
In another example, a woman from a regional area reported being homeless for ten years with five children. Two of her children have health problems. One child has asthma and another child has kidney problems requiring treatment at Princess Margaret Hospital every few months. The woman alleged that the Regional Manager told her that she had to have a history in an area in order to be housed there. Also, she had incurred a debt of approximately seven thousand dollars due to damage caused by domestic violence, but the majority of the debt had been repaid and she had approximately five hundred dollars left to repay. Although Homeswest was provided with medical evidence and letters from social workers, she stated, “I was told by Homeswest that my children were not sick enough to be housed on a priority basis and that I must remain staying with my sister”

She was also informed that she could be housed quicker if she moved to a town in another part of the region. However, she did not wish to move away from her family, and commented, “They want me to go and live with the Wongi’s! It’s about where they want to put you, not where you want to be” (confidential oral submission 65, female, prospective tenant, Great Southern).

“You have to have an urgent and serious need, but then Homeswest doesn’t treat people urgently. People have to wait too long and seem never to get to the top of the list. How does Homeswest decide one persons need is more urgent than another?” (written submission 20, January 7 2003: 1).

These submissions are consistent with the EOC’s internal content analysis of complaints and inquiries made by Aboriginal people against Homeswest over a two-year period to May 2002. Many of these allege that race and impairment were factors in the rejection of applications for priority assistance and/or priority transfers. The main reasons given for applications being declined included outstanding debt, poor tenancy history or being assessed as having access to viable housing options (EOC, 2002).

The DHW’s own submission to the Inquiry reveals that since 1996 it has responded to 407 complaints of unlawful discrimination. Of these, 407 complaints or 59.92 per cent involved priority housing, priority transfers and wait times (written submission 35, May 29 2003: 16).

Further submissions discussed the impact of not being placed on the priority list and the consequences of being homeless. Women who were homeless felt that they were inadequate and had failed as women and mothers. In many cases, homelessness and feelings of inadequacy as a parent led to mental health issues including anxiety and depression, and many women expressed that they required medication to assist them to cope:

“Well, it does affect myself, because once upon a time I would have stayed with my kids. Now I feel like I’ve failed to be a mother, to have a stable home for my kids, now, you know. I’m an adult here and there’s me passing these kids around. You know what I mean? Once upon a time we were stable. We didn’t have to move. I mean, when I was in a home, my home was always...I’m not a dirty person. I don’t drink. You know what I mean? And yet I still can’t get any help. And now I feel like a sick parent, and it’s that stressful I’m on antidepressants (confidential oral submission 52, female, prospective tenant, Great Southern).

Other women expressed how stressful it can be moving with children between family members. Some long-term homeless women expressed a sense of hopelessness, that they will never get housed and that the homelessness will be generational. Others felt that they may remain homeless for their lifetime, but had hope for their children who may have a greater chance than them of accessing housing as adults:

“My kids are growing up fast. I may as well apply for a granny flat, or wait for them to get housing, and encourage them, ‘go and have a family, baby, and get some money and you might get a house.’ I mean, what’s that going to do to a kid? ‘Because I can’t help you. So you go and make a family and they’ll give you youth accommodation.’ That’s what it’s all boiling
A 25-year-old mother of four children had fled an abusive partner in Perth and moved to be nearer her mother who lives in a regional area. She was told that her situation was not urgent enough to warrant priority housing. There was no alternative but to stay with her mother, her mother’s partner, and a 15-year-old son. This was stressful because the three bedroom house was very crowded and also because of her mother and her mother’s partners alcohol consumption. She shared one room with all of her children, and reported that in this room a light switch was broken and wiring was exposed. She was afraid that they would be electrocuted. Homeswest was informed, but a year later it was still not fixed. She felt that the environment was not good for her children. There were arguments and there was no privacy.

Although she had provided copies of the restraining order against her violent partner, and letters from various people verifying her story and circumstances, Homeswest did not consider her situation critical enough for placement on the priority housing list, and simply placed her on the non-priority wait turn list. She had been waiting three months, and was then told to seek private rental. As a result, she felt increasingly depressed and stressed. (confidential oral submission 260, female, tenant, undisclosed location).

During the Inquiry, many women described how they had escaped domestic and/or family violence. In particular, there were examples of applicants being denied priority assistance in order to take a child out of care, because they had a prior debt and were deemed to have other viable housing options.

In one of the most disturbing instances, which highlight the serious consequences of an inflexible application of the PAP, EOC officers terminated an interview with a resident of a women’s refuge after she was notified that one of her children, in care at the time, had been sexually abused. She became distressed and traumatised, and the interview was rescheduled for the following day.

This Inquiry recognises the Homeswest eligibility policy, relating to applicants with poor tenancy history such as debt, anti-social behaviour and poor property standards. This states that, “Homeswest reserves the right to refuse assistance, or place conditions on further assistance to any applicant with substantiated breaches of the tenancy agreement or the RTA. This applies to applicants for both wait turn and priority assistance” (DHW, 2004: website). In addition, section 15(e) of the Housing Act 1980 asserts that Homeswest has the right to refuse any application.

Priority assistance applications that are declined and fall in the ‘poor tenancy history’ or ‘other

A parent had a large number of children who were removed from her care. She had escaped a violent partner and was currently living in a women’s refuge. Her application for priority housing was supported by numerous letters discussing compelling medical, psychological and legal reasons why she should be granted priority assistance. One letter stated that the Department of Community Development (DCD) had grave concerns about the welfare of the children who were assessed as being ‘at risk of abuse’ in their current placement. DCD supported the return of her children, subject to her securing appropriate accommodation.

The letter from Homeswest notifying her that her application for priority housing had been declined claimed that the, “Applicant’s current circumstances do not warrant priority listing. Applicant to be offered bond assistance for private rental. Application to be registered while debt is being repaid.”

Following the decline of her priority application, she was unable to secure housing in the private rental market, despite trying seven real estate agents. In her words, “It’s against their policy...well it says in their policy that they’ll give a house if they need to get the kids back. I can appeal against it but, I don’t know, I’ve never done it before.” She was unsure what to in the meantime “[the refuge] only short-term accommodation. And I don’t want to go back to mum’s because it would be a bit too overcrowded. She’s in a Department three bedroom and she’s got my other kids, and that’s the only other place I’ve got to go to.” Even though there would be ten people living in the three bedroom house, she felt that she had no choice. (confidential oral submission 261, female, undisclosed location).
viable housing options’ categories are often referred to senior officers for re-consideration under the DDMP. The policy appears to cover situations where the “…applicant’s or tenant’s circumstances fall outside existing policy and guidelines and a decision, made solely within current policy could result in inequitable treatment of the customer” (DHW, 2004, website).

In light of the case cited above and in similar cases, it appears that those with discretionary decision making powers do not always use them to bring about equitable outcomes for applicants or tenants. Rather in many instances, it appears that ‘cost-recovery’ and ‘good business’ practice takes precedence over the basic human right to adequate housing. One woman explained that:

“The economic imperative to derive profits explains what might otherwise be almost inexplicable. For example, the treatment of victims of domestic violence and other criminal activities, who are often billed for damage to the property, evicted from their homes, and required to pay substantial amounts before being considered eligible for rehousing, becomes understandable in the context of a business undertaking. Added to these factors highlighted ... is the potent and toxic inheritance of colonialism and its decimating impact in the internal dynamics within colonised communities. Housing many Indigenous families is simply not going to be a financially profitable enterprise where commercial interests take precedence, however, the obvious outcome would appear to be that, those most in need of public housing in Western Australia will inevitably be excluded from it (written submission 23, individual, May 30 2003: 19).

This Inquiry acknowledges that Homeswest staff often have to simultaneously handle difficult situations and people. When discretionary decisions have to be made, in addition to the development and implementation of policy, staff beliefs, values, knowledge and organisational norms of behaviour are likely to play a significant role.

A submission from a women’s refuge expressed concern about the marked difference in the number of non-Aboriginal clients compared to Aboriginal clients who were successful in having their priority assistance approved at the first level of Homeswest decision making. Alarmingy, it was stated that they had never seen an Aboriginal application for priority assistance approved at the first level of Homeswest decision making (confidential oral submission 90, organisation). This is significant given that women living in refuges are homeless, have often fled violence and may have children, and alongside these there are often health issues.

This same refuge advised that of the 105 Aboriginal families who sought housing assistance from the refuge over a ten month period, only six were housed by Homeswest after exiting the refuge and only two of those were housed in the same region. Once again it was reported that...
applications for priority assistance were most often declined on the basis of an applicant having other ‘viable housing options’ or ‘poor tenancy history’ including debt and/or antisocial behaviour.

This Inquiry believes it is unreasonable for Homeswest, which is considered the housing provider of last resort, to view a substantial tenancy agreement breach of the Residential Tenancy Act as overriding the basic human right to housing, particularly where an urgent housing need has been established.

**Viable Housing Options**

A further aspect of the eligibility criteria for priority housing assistance is the ability of Homeswest to decline priority assistance where an applicant has ‘other viable options.’ According to the PAP, in the assessment of an applicant’s priority housing need:

...consideration is given to other housing alternatives. In some situations the use of the Department’s Housing Access Loans (HAL) to assist in securing private rental premise may be considered and alternative option to priority assistance. In the case of large families or applicants with special needs it is acknowledged that HAL and private rental is not necessarily an alternative. Other options that may be considered viable are sharing with friends or relatives whilst awaiting an offer of accommodation. Applicants who are listed on a priority basis and who make other housing arrangements while awaiting an offer of accommodation will have their circumstances reassessed for retention on the priority list. Applicants receiving assistance through SAAP will be given every consideration for a priority listing for rental housing and if already listed under priority will retain that listing (DHW, 2004: website).

**Staying with Friends or Family**

Submissions from throughout Western Australia reported that many Aboriginal priority applicants, and in particular women escaping domestic and/or family violence, were advised by Homeswest that their priority application had been declined as they were assessed as having a viable housing option, namely sharing with family or friends.

As noted earlier, this Inquiry has serious concerns that, in the context of Aboriginal societies, moving into shared accommodation with a relative or friend is categorised by Homeswest as a viable housing option. This often results in overcrowding and appears to be inconsistent with the DHW definition of homelessness. Within this, secondary homelessness is defined as involving a person in crisis accommodation or staying with friends/relatives.

According to this definition, it appears that when an applicant has established that they have an urgent housing need but are declined priority assistance because they have ‘a viable housing option’, which involves staying with friends or family, that Homeswest knowingly places this applicant into secondary homelessness.

Whilst acknowledging the diversity of Aboriginal people, sharing with family or friends as a viable housing option generally has a different meaning to European notions of the nuclear family. Aboriginal societies have different systems of kinship to European societies. There is less focus on direct blood relations and more importance placed on the social structure of a group. This often involves terms referring to classes of individuals with common characteristics, for example gender, age or marital status. In Aboriginal societies kinship is very significant and greatly influences the daily lives of people.

Oral and written submissions received from many Aboriginal people throughout Western Australia commented on the fundamental positions and relationships within the extended family, and within clan and kin groups, which are established by religious law and custom. Everyone has a position and a relationship with all members of the immediate and extended group. This involves defined rights and obligations that must be observed. In this context, kinship obligations may include accommodating family members who are in need of shelter.

However, many Aboriginal people commented that Homeswest staff seem to think that Aboriginal family groups prefer to live in the same house,
even though in many instances it may lead to severe overcrowding, tensions and housing poverty. This Inquiry believes that such an understanding of kinship systems within Aboriginal societies is an oversimplification, and appears to be used to justify not providing priority assistance to Aboriginal people experiencing secondary homelessness.

Avoidance Relationships

This Inquiry also received substantial evidence that in parts of Western Australia the practice of declining priority assistance, due to the applicant having a viable housing option of staying with family or friends, has led to applicants being forced into primary homelessness. This is a result of applicants not being able to stay with family due to observing avoidance relationships. 56

I feel not at ease, I find it very hard...you know I have my son here and he’s been through tribal law...when you have a son gone through tribal law, there’s quite a lot of things...I have to wait until he gets out of the kitchen...I have to then live with my sister...I have to give way to them all the time...a lot of old people beginning to speak up...they want one bedroom places...so they don’t have to live with son in laws...Department don’t respect our Aboriginal law and culture (confidential video submission 2, female, tenant, Pilbara).

In this instance, the relationship between the son-in-law and mother-in-law is not only one of avoidance, but also of great duty, service and respect on the part of the man. He is not allowed to talk to her directly and has to honour her requests. It was explained that for many Aboriginal people the kinship structure is organised in such a way that ‘avoidance relationships’ exist between certain members as a part of intricate marriage regulations.

56 Observing avoidance relationships may mean that it is not acceptable for some people to make contact and/or be alone or in proximity of one another. Avoidance relationships may be between adult brothers and sisters, or between a man and his mother-in-law.
EOC officers conducting oral hearings were aware, not only of a profound sense of culture and connection among social groups in different regions, but of a clear and obvious practice of language, law and culture. There is an obvious correlation between the lack of housing, culturally inappropriate housing design, overcrowding, maintenance problems, debt related practices or policies and cultural dislocation, and the limited capacity of Aboriginal people to observe cultural practices. This forces many Aboriginal people to live with other family members in secondary homelessness and in breach of cultural law or to live in primary homelessness.

Many Aboriginal people recounted their experiences of being forced to stay with family in overcrowded housing due to their priority application being rejected. Many claimed that whilst family connections are close and family will not turn you away, they desired the privacy of their own home. Others reported the difficulties associated with being forced to live with family, for example no privacy, increasing tension, guilt over possibly contributing to family stress, substance abuse and at times child sexual abuse.

EOC officers conducting individual and group interviews throughout Western Australia witnessed first hand the many instances where staying with friends or family as a viable housing option resulted in unacceptable levels of overcrowding. Officers also viewed numerous Homeswest letters declining priority assistance on the basis that the applicant was staying with family or could stay with family. In these instances, the applicants were mainly single-parent women who had fled domestic and/or family violence. Some tenancies were put at risk due to a series of homeless family members needing accommodation and whose presence resulted in reports of anti-social behavior.

Many submissions reported that the practise of declining priority assistance on the basis of an applicant staying with family has led to Aboriginal families, who are already under public housing stress, accommodating family members who would otherwise be primary homeless. It was widely reported that this practise invariably results in the overcrowding of households and is often followed by complaints of anti-social behaviour, primarily from non-Aboriginal neighbours. According to the ATSIC submission:

"Homeswest does not take into account, when allocating housing, the extended nature of the Aboriginal family, and so institutionalises overcrowding and... Homeswest, very well knowing that Aboriginal families have to provide for their extended families, do not take this cultural requirement into account in their housing designs. Thus they continue to build standard number of bedroom houses, which then get overcrowded" (written submission 30, June 30 2003: 4).

The Gordon Inquiry identified that:

"Aboriginal people represent a large proportion of the hidden homeless, in temporary accommodation or staying with relatives. Overcrowding in particular exacerbates health problems, increases the likelihood of damage to property leading to debt and eviction, and creates social conditions conducive to family violence and child abuse" (Gordon, Henry and Hallahan, 2002: 186).
According to the TAS, Homeswest is aware that many Aboriginal applicants and their families are living in overcrowded and unhealthy conditions. The TAS points out that staying with family in unsatisfactory conditions is included in the definition of homelessness set out by the Homeless Task Force. However, Homeswest considers such arrangements to be a viable housing option:

Dependency on friends or relatives can lead to or exacerbate family conflict. ...that in such circumstances Homeswest claims to be a ‘benign’ landlord, tolerating overcrowding amongst its Aboriginal tenants rather than provide sufficient housing for growing and extended families. In TAS experience it is more likely for the host family to be at risk of eviction and having a ‘poor tenancy history’ recorded, than it is for the visiting family to be housed by Homeswest (written submission 44, May 30 2003: 17).

The TAS concludes that Homeswest eligibility policy and assessment practices indirectly discriminate against Aboriginal people.

The Department of Community Development (DCD) conducted statewide consultations with women, including Indigenous women, in response to the State government’s commitment to access, equity and opportunity. The consultations sought women’s views on issues impacting on them. A major issue raised by Indigenous women was housing. In particular a key area of concern reported was "...overcrowding and underreporting ...there are systemic deterrents to reporting housing needs (for example if the Ministry of Housing know there are more people living in a house the rent goes up)" (written submission 34, June 11, 2003:).

**The Private Rental Market**

As mentioned previously, the attainment of priority assistance is subject to the condition that no other ‘viable housing options’ are available for the applicant. EOC officers conducting individual and group interviews throughout Western Australia, received consistent reports that applicants are required to obtain between seven and ten written rejections from private real estate agents before being considered eligible for priority assistance. Although attempting to access the private rental market does not appear to be a requirement under the DHW policy before the applicant can be granted priority assistance, the applicant must demonstrate that there is no other viable housing option other than public housing. In order to demonstrate this, the applicant is often asked to provide evidence of unsuccessful attempts to access the private rental market.

At times, the level of evidence required by Homeswest showing that the applicant has attempted private rental could be described as excessive. In one submission, a woman staying at a refuge advised that she had been required to show proof of seven unsuccessful attempts to get private rental. (confidential oral submission, female, prospective tenant, undisclosed location)

An advocate commented on the effect of requesting excessive proof of attempting to access the private rental market. He commented:

…it seems unfair and callous to require Aboriginal people, who face racism on at least a regular basis, to put themselves in a position where they expose themselves to further racism a number of times in order to prove they are eligible for public housing (video submission 3, male, advocate, Metropolitan).

The TAS raised concerns regarding the use of declining eligibility on the basis that an applicant had not shown that they had attempted to secure housing in the private rental market. The TAS outline that while there is no condition requiring an applicant to provide documented evidence regarding an inability to access the private rental market, it appears Aboriginal applicants and other
"I am a sole parent and the mother of 8 children. My children and I have suffered from domestic violence and, as a result of that, I had to leave my home and come to the refuge for the time being. I have been at the refuge for about 9 weeks, and currently I am looking for a house to live in. I have been actively looking for a house to rent. I have approached private rental. I went to Homeswest to apply for priority housing. I included letters in support of my application. My partner went very violent on me, and I had to leave the house. Homeswest eventually charged me with $3,400 for cleaning and for leaving furniture and belongings there. They took all of my furniture out of the house and left it on the road. People helped themselves. I started paying the debt from the middle of the year 2000. It was automatically deducted from my social security payments. I have been in the woman’s refuge about nine times. The people from Homeswest told me that I was unsuccessful in my priority listing application, and told me that they would assist me with money for bond and that I could find private rental. They gave me a letter stating that I was unsuccessful because my current circumstances did not merit priority rental, and that I could access private rental. I was very shocked when they rejected my application. I have never damaged one of their houses. I could appeal later, but I have never done that before and don’t know how to do it. I don’t know what to do in the meantime. I cannot stay here for long because this is only short-term accommodation. I cannot go to my Mums place because it would overcrowd her place. I have tried seven real estate agents. I’ve just gone in there with people showing me the houses. I have filled in application forms, but they reject them and tell me that they don’t have to give me a reason for rejecting my application. I need a home so that my children’s life returns to stability and a good routine” (oral submission 207, female, tenant, undisclosed location).

applicants are frequently being required to provide such evidence.

Homeswest’s response to the TAS makes clear that the General Manager, Mr Bob Thomas, wrote to all regions advising them of the issue of obtaining documentary proof regarding the unavailability of private rental accommodation and that it is not a requirement under policy. This response also acknowledged that Homeswest recognises the difficulties that many applicants, particularly Aboriginal applicants, endure in attempting to obtain private rental accommodation.

The TAS submission claims that while Homeswest agreed to discontinue this practice it still requires Aboriginal applicants to prove an inability to access private rental. The TAS concludes that the use of ‘other viable housing options’ and the requirement that Aboriginal applicants prove an inability to access the private market continues to be common practice by Homeswest.

This Inquiry gathered evidence, from throughout Western Australia, confirming that Homeswest Aboriginal priority assistance applicants are being required to show evidence of attempts to secure housing in the private rental market. This is despite the problems of racial discrimination and other intersecting forms of discrimination in the private rental market. The EOC officers sighted many letters from Homeswest declining Aboriginal priority assistance applicants, often due to multiple factors including debt and poor tenancy history, and offered bond assistance for private rental as an alternative to priority assistance and recommended this as a long-term housing option.

Aboriginal people and advocates consistently reported discrimination against Aboriginal people in the private rental market throughout Western Australia. This Inquiry gathered substantial evidence to support the view that Aboriginal people on the priority list, particularly women and children escaping domestic and/or family violence, experience a higher degree of disadvantage than non-Aboriginal applicants. This is due to the intersections of race, sex, marital status, age and disability discrimination in the private rental sector.

Many submissions raised the problem of discrimination experienced by Aboriginal people accessing private rental properties. For example, the ASRC stated that it was not ‘a realistic option’ for the majority of Aboriginal clients they assist (written submission 43, 2003: 7).

One refuge worker stated that while some private real estate agents may be willing to assist Aboriginal people, the owners may be reluctant
and concerned about the family size. An Aboriginal woman in the Southwest expressed her frustration with the private rental market:

"If you’re Aboriginal you might as well, you know, try to get into Buckingham palace ... I tried to get private housing in Bunbury. I filed up to 30 applications with different Real Estate... I kept getting knocked back. I have come to the conclusion that I cannot access private rental because of my Aboriginality" (confidential oral submission 264, female, tenant, Southwest).

Aboriginal tenants consistently confirmed the futility of their attempts to access the private rental market. According to one grandmother "the estate agents won’t do anything to help you if you’re coloured. Nothing available - you try and try for weeks and weeks" (written submission, February 13 2003: 1).

Some tenant advocates also criticised the Homeswest Homeless Helpline because of its emphasis on the private housing market. This advocate stated that, "We now refuse to use this service because we are no longer prepared to expose poor Indigenous persons to the discrimination of the private market..." (written submission 14, 2003: 8).

It is quite clear from the oral and written submissions that on the whole the private rental market is not an option for many Aboriginal people.

"It’s more difficult for Aboriginal people to get private rental unless you know somebody. B applied for a house that he and J are in and they wouldn’t give it to him. Then J went for it and they gave it to her straight out. J is a white girl. That was a problem with a real estate agent in Mt Barker (confidential oral submission 66, female, prospective tenant, Great Southern).

On many occasions, Aboriginal families experienced difficulties in acquiring private rental housing due to racism and assumptions about antisocial behaviour. Anecdotal evidence suggests that some private landlords and real estate agents are reluctant to rent to an Aboriginal family:

Accessing private housing can be a huge hurdle for Indigenous women and families as they are caught in the poverty cycle, with no assets or in many instances unable to obtain a reference. Housing will assist the woman with bond assistance however obtaining private rental will be very difficult with the family’s record, the number of children and being Aboriginal (written submission 34, organisation, June 11 2003: 4).

Recently in an appeal hearing we were told that the Aboriginal person had to prove in writing that they couldn’t access private rental. Yet I’m aware of a directive from head office saying that it’s not a requirement. So it seems that the organisation at a regional level either isn’t receiving the information from head office or they are not following directives like this (written submission, 38, organisation, June 3 2003: 2).

A primary homeless Aboriginal woman advised EOC officers that her attempts to access the private rental market were futile. As a result, she and her six children returned to her non-Aboriginal ex-defacto, who was violent towards her, in order to get private rental housing (confidential oral submission 66, female, prospective tenant, Great Southern).

An Aboriginal housing officer advised that the practice of requiring proof that Aboriginal tenants have sought private rental is still commonplace. This officer commented that, "Unless you can prove that you’ve tried several agencies and they’ve knocked you back, in which you’ve got to bring in a list of their names and the numbers, and which they will investigate it, then they’ll reassess priority" (confidential submission 191, Homeswest Officer, undisclosed location).
Emergency Housing

In addition to the PAP, Homeswest has an Emergency Housing Policy (EHP) that enables the provision of housing on a fixed term lease. (DHW, 2004: website). According to the EHP, emergency housing is for applicants who have no immediate housing option other than public rental housing. It is a short term option that allows the tenant to resolve their situation and make alternate arrangements.

For some tenants, they are offered emergency housing on a temporary basis to meet their urgent housing needs and are then unable to secure a transfer to more suitable public housing accommodation. It appears that once they are in emergency housing they are deemed as being adequately housed. As stated, “This accommodation arrangement has a tendency to become long term for the client as they are deemed to be ‘adequately housed’” (written submission 46, May 30 2004: 8).

In addition, according to some submissions the standard of emergency housing was often poor, as the houses were marked for demolition or refurbishment. As pointed out by the WRAS:

Occasionally emergency housing is allocated to a tenant. This housing is usually vacant because it is due for demolition or refurbishment. Often the property is in a state of disrepair and does not meet the needs of the size of the family. This situation is further exacerbated by a general reluctance to carry out maintenance or repairs because the property remains tagged for demolition or refurbishment even though it is occupied and there is a rental return from the property. This practice contributes to increasing tenant liability on vacation for the same policies apply to this accommodation as to any other housing stock in terms of liability for property damage (written submission 46, May 30 2004: 8).

An Aboriginal single mother and her two children, both of whom have medical conditions, moved into an emergency house approximately three years ago. The family were told that the arrangement was temporary, for approximately six months, until more suitable housing could be found. When the family moved into the house there was no gas to the house, there was rubbish in and around the house, and a severe cockroach infestation. At the time of visiting this family, the front door did not shut without a stocking being tied around the handle, and the door did not fit the frame. When the tenant wished to open the door she used a knife to prise it open. Also, several of the windows did not fit the frames and could not be opened or shut properly. The house is located on a main road and there were no fences surrounding the house. The fact that there are no fences and a lack of secure windows and doors makes it very easy for people to break into the house. The family have suffered repeated break-ins where their belongings were taken. The boards on the front veranda were not secure and the posts holding up the veranda were dangerously loose. One of the children had fallen down the stairs because of the loose boards.

The children, a boy and a girl, shared a bedroom that did not have a door and was sectioned off with a curtain. The main bedroom did not have electricity to the light and water frequently leaked through the electrical fitting. The electrical wiring in other parts of the house often caused light globes to blow. There were several holes, cracks and structural problems with the walls due to the age of the house and the lack of repair.

Despite the extremely poor standard of this house the tenant was told that she could not receive any maintenance as the house was listed to be demolished. The mother suffers from and is treated for anxiety and depression as a result of the standard of housing she and her children live in (confidential oral submission 79, female, tenant, Great Southern).
**Rent to Income**

Homeswest policy defines rent to income assessment as "...the calculation of the rent for a tenant as a percentage of gross household assessable income of all household members. Housing assistance is provided in the form of a subsidy" (DHW, 2004: website). According to the preamble to the Rent to Income Policy (RIP) (DHW, 2004: website):

Under the Commonwealth State Housing Agreement, where a tenant does not have sufficient financial capacity to pay the full market rent, the level of subsidy is to be set according to the following factors:

- the level of income, including income from assets of the tenant and other household members;
- the number of dependent children in the tenant’s household and the receipt of Family Payments from Centrelink;
- tenants with similar capacity to pay, pay similar rent; and
- poverty traps are minimised.

The level of subsidy is calculated so that no household need pay more than 25% of gross assessable income in rent.

The inquiry identified a number of areas of concern regarding the application of the RIP and related policies regarding the impact on Aboriginal tenants.

**Overcrowding**

The DHW acknowledges that:

*Overcrowding is more prevalent in Aboriginal tenancies and in the main this is accepted by the Department unless overcrowding results in other tenancy problems such as anti-social behavior or health concerns. While concerned about any resulting health and safety issues relating to increased occupancy of a tenancy the Department must also ensure that the correct level of rent is paid. The Department charges tenants a reduced rent based on the income coming into the household. The reduction in rent is a taxpayer-funded subsidy and the Department therefore has a responsibility to ensure the level of subsidy provided is appropriate and reflects the level of need of the household. Where the household income increases due to increased wages or through additional household members the Department expects to be provided with updated information to enable it to adjust the level of rent being paid. Tenants can also have family or friends stay with them for up to eight weeks before their income is included for rent assessment purposes (written submission 35, May 29 2003: 24).*

The TAS reported that the way in which rent is assessed could be a greater disadvantage for Aboriginal tenants than any other group. They commented that "Homeswest policy allows ‘deeming’ of household income whether the income is actually received or not. Aboriginal people are less likely than non-Aboriginal people to be receiving the Centrelink benefits to which they are entitled" (written submission 44, May 30 2003: 27). This practice is confirmed by DHW Policy guidelines on rent to income:

*Tenants not in receipt of an income or an income lower than the base statutory benefit, but who are eligible to make application for a statutory benefit but choose not to, will be deemed to be receiving the base statutory benefit for which they would be eligible for the purposes of determining a subsidised rent (written submission 35, May 29 2003: 7).*

This Inquiry heard of particular instances where grandparents were caring for grandchildren, and were entitled to Centrelink benefits but did not claim them. It was explained that some grandparents and family members in their care did not claim entitlements as they were concerned that the rent would increase whilst others did not claim benefits they were entitled to due to not wanting government institutions to intervene in their lives any more than necessary.

One submission stated:

"Sometimes a client may be looking after a child but not getting the family payment for her. The
An Aboriginal woman who has 8 children approached Homeswest to transfer into a larger tenancy. As there were 2 single duplex properties available, Homeswest agreed to renovate by removing the common wall to the duplex so that the family could live under one common roof. As this was a duplex property the tenant now receives 2 separate accounts for utilities and rent associated with the tenancy as if it were still 2 separate duplex properties. The tenant was unsure whether Homeswest informed her of the billing arrangements.

After the renovations, wires were left hanging out of light sockets in the foyer and from the smoke alarm. She said, “I’ve since approached Homeswest and applied for a transfer or to get maintenance repairs done but I’ve been told that they won’t transfer me because they don’t have suitable properties.” The tenant went on to say that because she now has to pay two separate rental payments associated with the duplex she found herself in arrears of rent. In order to reduce costs the tenant disconnected the power supply from one duplex and runs extension cords from one duplex property to the other so that there is sufficient power supply. Since the time of taking this submission, the tenant states that this has been the situation for her and her family for the past 18 months and Homeswest has been informed.

She has now received an eviction notice for arrears. She commented, “I’m paying off my arrears, the 2 fortnightly rental accounts plus the two separate utility bills.” The tenant demonstrated that her fortnightly income of family payment is $500. She pays Homeswest $200 or whatever she can afford (oral submission 187, female, tenant, Goldfields).

mother may pay a contribution if you’re lucky. But Homeswest will say there is a child there so the rent is assessed as if they are receiving a Centrelink payment for her. Insisting on the carer applying for the Centrelink payment puts enormous pressure on the family, especially if the grandparents are looking after the grandkids for a while and they are supposed to claim for the payment where they already have some arrangement between the two of them” (written submission 38, June 32003, p. 4).

The DCD Women’s Policy Unit identified that a key concern to Aboriginal women in relation to public housing was the under reporting of overcrowding. The DCD attributed the under reporting of overcrowding to the fact that once the rent is reassessed based on excess occupancy the rent is likely to increase. This acts as a systemic deterrent to reporting housing needs (written submission 47, May 23 2003: 2).

“I was living in a house with a husband and wife and four kids, and they was on the dole and the money is not covering their expenses; they’ve got a four bedroom house, they’ve got four kids and by the time they pay for their bills, board and whatever they’ve got nothing left to buy food. So I am not going to... it’s not a situation where I’m going to tell Centrelink that I’m staying at this address and declare and tell Homeswest. For the sake of this woman that I’m staying with her and her husband, when their rent can go through the roof if they know that someone else is in there. As soon as you get some one working and the kids start working, that rent goes up and up to the maximum level. But people are still destitute” (confidential oral submission 192, group, tenants, Great Southern).

Rent Subsidy Forms

According to the DHW policy on backdating of rental subsidies/payments, tenants have a number of obligations:

- Tenants are required to advise Homeswest immediately of any change to household composition or in the event that household income increases or decreases by $10.00 per week or more.
- Homeswest reserves the right to backdate rental payments, where a tenant’s household income increased by a minimum of $10.00 per week for a three month period or more and the tenant did not advise Homeswest.
- Homeswest is not liable to repay any overpayments in rent, if a tenant fails to notify of a decrease in household income.
- Where a tenant fails to return a rental subsidy form within three months of the due date and the subsidy has been cancelled, the rent subsidy will not be backdated and will apply only from the date that the subsidy form was submitted (written submission 35, May 29 2003: 11).
Concerns regarding the application of this policy were raised by organisations, and in individual written, oral and video submissions.

Clients have a lot of trouble filling out the rental rebate form. If we don’t help them, especially with getting them to backdate the rebate. One lady was going to be evicted for $600.00 and it was purely a paperwork debt from cancelling the rebate. Homeswest claimed she hadn’t returned her rebate form. Luckily we had a copy of the form that we had sent in for her. The information exchange scheme is only for the tenant, they still have to get verification of income for all the others living at the house and they have still got to fill in the rent rebate form (written submission 38, June 3 2003: 4).

The regular completion of rent rebate forms requires information on every person residing in the household and proof of their income.

“I remember when I was signing up for a house. Homeswest had taken all my pension and left me, a single mother, without a cent. I went to get my money for the sign up and there was no money there. I asked them to give me some time to find out from the bank but they said no money no house. It was terrible, humiliating. An advocate paid for me to get in the house. Three fortnights in a row, it was them taking it all. I had to wait weeks for them to pay me back. Then they gave me a cheque which took days to clear” (written submission 10, February 18 2003: 1).

According to the TAS, this requirement presents a number of difficulties for some Aboriginal tenants.

...a home, which provides shelter to a high number of adults and children, can be a chaotic environment. Often the occupants will have other more immediately demanding concerns to deal with. For example, hospital or doctor’s appointments, court appearances (as defendant, witness or family support) or funerals. A follow up reminder is sent by Homeswest but it is not uncommon for families who are late with their rebate form to find their rent has been increased to full market rent and the new charge backdated, sometimes many weeks. Convincing Homeswest to reverse their decision can be a lengthy negotiation process often requiring the intervention of third parties (such as members of TAS’ network) (written submission 44, May 30 2004: 27).

A further area of concern regards the cancellation of the rebate due to an allegation often made by neighbours of extra household members:

It is widely reported that Aboriginal families have their rent increased and backdated on the allegation that they have not truthfully reported the household income and composition. Families have been thrown into significant rent arrears overnight and find the onus of proof that they don’t owe the money is on them. For example, Homeswest may dispute the date on which additional occupants came to the premises, based on complaints from neighbours about overcrowding. Homeswest officers have also been known to make assumptions that people they have seen at the premises are occupants rather than simply the frequent visitors that characterise large Aboriginal families with close kinship ties. It is difficult for Aboriginal families to convince Homeswest to understand the intricacies of their family - who is visiting, who is staying temporarily, who is staying permanently, who is contributing to household costs, who is not and why not (written submission 44, May 30 2003: 28).

Individual Property Market Rents

According to the DHW Rental Policy Manual, two separate processes are used to assess rent. Rent to income assessment is based on tenant income and not the market features of a property. Individual property market rent is charged when a tenant is not eligible for a rent to income subsidy and the rent is based on the market features of the property (DHW, 2004: website). The TAS illustrated some of the effects of this policy on Aboriginal tenants:

Where the family income (actual or deemed) exceeds income limits for a rent rebate (for
example, Aboriginal tenancies are more likely to have ‘non-dependent’ adults and youth receiving Centrelink income support), Homeswest charges full market rent, (an aggregated amount established by the Valuer General’s Office, according to indicators such as location, size and structure (written submission 44, May 30 2003: 28).

The fact that a Homeswest property may be of less than acceptable standard does not reduce the amount of rental due on the tenancy. Families that have an income exceeding the income limit are charged full market rent, even though it may be “...doubtful that a significant proportion of those properties would attract the same level of rent in the private market” (written submission 44, May 30 2003: 28). One Roebourne tenant complained that many Aboriginal people are required by Homeswest to “…pay top dollar for houses that are nothing less than a bloody dog box” (oral submission 206, female, tenant, Pilbara). An Aboriginal woman commented:

I think it’s really unfair how they charge Aboriginal families extra for having people staying there. It should be one charge for the tenant and not putting extra charges all the time. We have obligations to our family who are homeless because of Homeswest in the first place. (written submission 27, February 3, 2003: 8).

The JCC drew attention to Aboriginal tenants who were on Community Development Employment Program (CDEP):

...that’s the first opportunity they’ve ever had to get an income. It’s taxed but Homeswest charges the rent according to the gross amount. That means that their rental is a lot more for their income that if they’d stayed on Centrelink. But if they don’t accept an offer of a CDEP position, Centrelink will breach them. The CDEP projects are often only for ten weeks so then they’ve go to reapply again. (written submission 38, June 3 2003: 4).

Centrelink Deductions

A number of submissions raised concerns regarding the practice of Homeswest in requiring tenants, in receipt of statutory benefits, to pay their rent via Centrelink Direct Deduction. According to Homeswest, the rental arrears of Aboriginal tenants are approximately seven times that of non-Aboriginal tenants, or $323.76 compared to $48.00, despite both groups receiving similar statutory benefits and paying similar rent. Homeswest claim that given the automated rent payment options and direct debit, there is no reason why any tenant should be unable to maintain regular rental payments. They also claim that any tenant falling behind in rent is provided with a referral to a financial counsellor, and property visits take place before a tenancy is terminated and it is a condition of tenancy that tenants receiving statutory benefits pay their rent via Centrelink Direct Deduction and;

“Unfortunately, direct deduction is voluntary and tenants can withdraw from the scheme at any time. Attempts to change Commonwealth legislation in relation to this issue have been unsuccessful”. (written submission 35, May 29 2003: 18)

The TAS reported that DHW often failed to notify tenants when changes to rent payments occur:

Homeswest requires tenants to have their rent directly debited from their social security payments, despite the Commonwealth’s requirement that such arrangements must be voluntary. The direct debit facility (if not its compulsory nature) has broad community support. However, the form allows Homeswest officers to increase deductions without prior reference to the tenant. This has led to tenants being caught without sufficient funds to meet even the most basic needs (like the need to feed their children or purchase medication). Problems with direct debit were documented in 1999 by Shelter WA and have been raised through the HAC standing committee process several times since. TAS is aware of many cases of Aboriginal families suffering disadvantage, and their tenancy being jeopardised, when deductions have unexpectedly increased”
Most tenants reported that they paid rent through Centrelink deductions. However, some people reported that:

Making us do direct debit is stopping us from managing our own money. It should be our choice about managing our own money. Nothing changes - once in the missions, we had to get permission how to spend our money. Now it's the same - they control our money (written submission 12, February 28 2003: 2).

One tenant described, "I get about $300.00 a fortnight but Homeswest takes $200.00 out of my pension before I even get it. Then it's really hard to get food and stuff for the kids. It's hard to get food vouchers but if I cancel my direct debit I might get evicted" (confidential written submission 22, January 30 2003: 7).

Only one tenant revealed that the option of the DHW card, as opposed to the direct debit system, could be used to pay rent at a local post office. Of all the tenants interviewed throughout Western Australia almost all had no understanding of how much rent they paid or the details of charges, for example deductions for water, maintenance and other debts.

The TAS attributed the frequent problems experienced by Aboriginal tenants to the failure by Homeswest to separately itemise all charges on accounts:

…the Department diverts payments from designated accounts to other accounts in the tenants’ name (for example to the account for a debt unrelated to the current tenancy) without prior consultation or notification. In TAS experience this often comes to light when an Aboriginal tenant receives a breach notice for non-payment of rent or another account and an advocate investigates. Tracking tenants’ payments and charges between accounts is a difficult process. On occasion TAS has had to employ the services of a certified accountant to assist (written submission 44, May 30 2003: 29).

Due to this lack of understanding about the details of charges, many Aboriginal tenants believed that maintenance charges may be debited directly from their pension or other direct debit system of recovery. One tenant commented, "They take out of my pension, money to fix things, like the door, toilet, taps - I don’t know how much, too much problems, you’ve got to wait too long. $126 a week I’m paying, I don’t know what I’m paying for..." (video submission 5, female, tenant, Pilbara).

**Transfer**

A tenant may be moved from an allocated to an alternate accommodation through the Transfer Policy (DHW, 2004: website). This policy recognises that situations may arise that cause the tenant to require to move to alternative accommodation. Unless the situation is of ‘extreme urgency,’ where the tenant will be transferred on a priority basis, there are three categories of transfers. These include eligibility transfer, special transfer and cross transfer. Also, Homeswest may request that tenants transfer when they require the property for redevelopment.

**Criteria**

In order to qualify for a transfer a tenant must have no substantial breaches of tenancy or the Residential Tenancy Act for a period of a year. These breaches include rent arrears, debt, complaints of antisocial behaviour and unacceptable property standards. It is apparent
from Homeswest data that more Aboriginal people than non-Aboriginal people are considered to have a poor tenancy history (written submission 35, May 29 2003: 12). Therefore, Aboriginal people may be less likely to qualify for a transfer to more appropriate accommodation.

This is highlighted in comments made by the JCC:

*With transfers the clients have to have an inspection first. They spend ages getting the place all cleaned up ready, scrubbing and cleaning and then Homeswest comes in and says - you’ve got an outstanding water bill so we won’t process your application until it’s paid. So a lot of people don’t even show as having applied for a transfer. They won’t even get a look in unless they are two weeks in front in the rent, all their bills are paid, and the house and yard are spotless. Magistrate Whitely says that the tenant only has to keep the place reasonably clean but not up to a re-tenantable standard, that is up to the owner to put some funds in. Homeswest don’t allow any consideration for that* (written submission 38, June 3 2003: 3).

According to submissions received, requests for transfers are often declined on the basis that the tenant needs to repair certain parts of the house and improve property standards. It appears that in some cases the Homeswest requirement of particular property standards, which seemed to vary markedly between Accommodation Managers, were not as stringently applied when allocating, thus positing tenants within poor standard and overcrowded housing. In order to meet the requirements for a transfer, some tenants found themselves responsible for conducting maintenance on properties that they claimed were in a poor condition when they moved in and had received little or no maintenance over an extended period of time, contributing to deterioration:

*You can’t go for a transfer, that’s even worse, because you have to fix it all up. I’ve had people who wanted transfers, but they think, ‘Oh, it’s going to be too expensive having a transfer.’ They’re already living in a dump, and it’s got so many things wrong with it that Homeswest aren’t going to transfer them. Everything’s busted, they’ve got three children and all the cupboards are falling down. They want to transfer but Homeswest say, ‘No’, they have to pass an inspection. You know how the transfer process works (confidential oral submission 57, male, Homeswest Officer, undisclosed location).*

It was also suggested that the decision of an Accommodation Manager to grant a transfer may be influenced by budget constraints:

*The Accommodation Manager’s are loathe to agree to a transfer because of the cost to their budget of bringing a place ready to rent out again to the next tenant. What happens is that it’s going to cost them and it’s going to come out of their budget so its easier to just refuse a transfer, especially if it’s in the later part of the financial year, there might not be any money left in the budget. That’s how it was explained to us* (written submission 38, June 3 2003: 3).

An Aboriginal family advised that they had repeatedly requested a transfer, only to be refused for a variety of reasons. After requesting a transfer on the grounds that the property was overcrowded the Accommodation Manager came to inspect the property and advised that old car bodies would need to be moved. The car bodies were removed, yet a transfer was not granted.

At the second request for a transfer the family were told they would need to establish a garden. The tenants advised that they had done their best but rubbish left in the garden by previous tenants, which they had requested that Homeswest remove when they moved in, hindered this establishment.

In addition, contractors who had worked on the sewerage system in the back garden had uncovered buried rubbish. The garden had been left bare aside from yellow sand.

The tenants were then advised that they were required to be ‘decent tenants.’ The tenants advised they had only one minor incident with a neighbour, which was subsequently resolved. The tenants are still waiting to qualify for a transfer and are living in overcrowded conditions in poor standard housing (confidential submission, female 12, female tenant, metropolitan).
This is reiterated in a comment from an Aboriginal tenant, "They wont move me, they say it will cost too much to get the place fixed up" (written submission 11, February 14 2003, p. 1).

Failure to transfer tenants had devastating consequences for one family who commented, "When the AM [Accommodation Manager] refused to transfer me, my sons were sexually abused and I suffered domestic violence" (confidential written submission 24, February 4 2003: 2-3).

An Aboriginal woman spoke of her experience with trying to secure a transfer, "I have been a tenant of Homeswest for 26 years. When I was attacked they wouldn’t list me for a transfer and I had to appeal and reapply. They only moved me after I had been hospitalised." The woman spoke of the effects on her grandmother and cousin who were also unable to secure transfers from their properties to more suitable accommodation:

My old Nan has been waiting over a year for a transfer and she can’t cope in the big house and yard she’s got to look after. She has heart and eyesight problems and they show her no respect.

My cousin was given an emergency house over three years ago - she is still waiting for a transfer. She has mental health problems, in and out of hospital. She has been through hell. She is the victim of violence. But Homeswest just leaves her there in that old 3 bedroom slum of a house with 6 kids. Now welfare is threatening to take her kids (written submission 27, January 30 2003).

**Tenancy Management**

The management of Homeswest tenancies involves the use of routine inspections and property condition reports.

**Inspections**

As part of the tenancy agreement with Homeswest, tenants are required to maintain the property to an appropriate standard. However, it is evident from various submissions that what is considered to be an appropriate standard varies markedly between Accommodation Managers. This is emphasised by a former SHAP worker:

It’s different from Accommodation Manager to Accommodation Manager. You may have someone with a high standard of expectation where it’s a Homeswest property so they want it treated like they would treat their own property. They would not look at the fact that a woman is alone with five young kids at home and yeah there are marks on the wall. There is an Accommodation Manager who would refer clients to SHAP for dirty hand marks on the walls (oral submission 190, female, former SHAP employee undisclosed location).

According to some submissions, Aboriginal tenants feel threatened and humiliated by the inspection process and are concerned about meeting the particular standards an Accommodation Manager may have. A submission stated that "Inspections are regarded as threatening and intrusive. Often clients feel the need to avoid inspections, which ends off detrimental to all parties involved" (written submission 39, May 19 2003: 4). A further submission supported this, commenting that "Many Aboriginal tenants report feeling humiliated by the inspection process, by the assumptions and judgements made by Homeswest officers, by criticism in front of children..." (written submission 44, May 30 2003: 45).

These negative perceptions were repeated in individual submissions. Of particular interest are the non-notified or late visits, and the perceived negative and demanding attitudes of those inspecting properties. These may lead to fear and avoidance for Aboriginal people. One Aboriginal woman stated:

When I have an inspection Homeswest picks on little things and they are rude and blaming about things that happen by accident. But they don’t want to do things they should do - like they wouldn’t fix my window for months and months. They come around without calling first and then complain it’s not clean (written submission 7, February 3 2003: 7).
An Aboriginal tenant asserted “They make us feel negative about everything. At inspections when they walk through their body language says they are disgusted. They don’t sit down and have a cuppa and chat” (written submission 11, February 14 2003: 5). A further submission conferred, “One lady I know would constantly try to avoid them because she was so scared of what would happen. It wasn’t that the house wasn’t clean and tidy. She was just scared how she would be treated” (written submission 11, February 14 2004: 5).

Another Aboriginal tenant stated:

My Accommodation Manager came around for an inspection. She was hours late. I sat there all morning. I had to get someone to pick up my boy from school. I had written on my PCR (property condition report) about how dirty the place was when I first moved in. so now the Accommodation Manager comes along and starts telling me I have to clean the floors and walls. I told her that was the same as when I moved in and told her to look at my property condition report. She said that’s just the way the bosses do it. When my daughter first moved in the walls were all scratched and scraped and now they complain it’s not A one for them. We don’t see why she should do their dirty work for them (written submission 12, February 28 2004: 3-4).

Some submissions questioned whether inspections lead to the accomplishment of any necessary repairs to the property. The TAS surmised that inspections are ‘one sided’ and that the Accommodation Managers responsible do not as a rule note pressing maintenance problems, for example sagging ceilings, rotting floorboards and inadequate security (written submission 44, May 30 2003: 45). An Aboriginal woman from the metropolitan area confirmed this stating, "They do inspections and they see holes in the wall or the crack in the toilet or whatever and they don’t fix any of this stuff. They never do an inspection and help you by just seeing the state of the house and doing the repairs” (written submission 3, February 3 2003: 7).

This issue was also raised by a tenancy support agency in the Kimberley. They claimed that the irregularity of inspections had a detrimental impact on tenants in terms of receiving appropriate maintenance or repairs to properties, and in terms of contributing to debt and liability once the property is vacated.

In the Kimberley I am not aware of many inspections of Homeswest houses unless they are vacated or the tenant asks for an inspection. Due to the lack of inspections, Homeswest do not see the maintenance and repairs that need to be done to their housing stock and will claim it all as Vacated Tenant Liability (confidential written submission 40, May 30 2003: 6).

In contrast to this, the TAS claimed that some Aboriginal tenants are subject to more frequent
and rigorous inspections than non-Aboriginal tenants. Some Accommodation Managers may impose requirements on the tenant and insist on returning until they are satisfied, and thus subjecting tenants to an unreasonable number of inspections. According to TAS, "...in TAS experience Aboriginal tenancies are subject to far more frequent inspections than other tenants" (written submission 44, May 30 2003: 24). They also described that, "In one case an Aboriginal woman who had sole care of her senile, incontinent mother and 5 children was subject to six-weekly inspections" (written submission 44, May 30 2003: 45). An Aboriginal woman spoke of her experience:

They are alright to me at inspections. But mum had to have six inspections in three weeks. The house had to be up to their standard constantly or they’d complain. She’s got to keep cleaning it to keep it ship shape. But if you want to ask them to fix something they just write it down and nothing happens (written submission 11, February 14 2004: 5).

However, these regular and sometimes undisclosed inspections are not limited to the internal house. An Aboriginal tenant commented on the practice of Homeswest officers undertaking informal or ‘drive-by’ inspections. The TAS suggested that an untidy front yard area may give rise to more frequent household inspections (written submission 44, May 30 2003: 44). One submission stated, "I know they do drive-by’s. Why can’t they just let us be? I pay my rent on time. What’s their problem with us? I know it’s because I am an Aboriginal woman" (written submission 10, February 18 2003: 3). A further submission asserted, "Frequent ‘drive-past’ inspections without notification are an infringement of privacy and lead to anxiety and humiliation as Aboriginal people" (written submission 16, January 13 2003: 2).

In addition, the TAS concluded that the poor health facing Aboriginal tenants may negatively impact their ability to meet the required property standards for inspections:

Homeswest has demanded that an Aboriginal woman with chronic asthma use harsh chemicals to clean off mould in the bathroom or face eviction, where the mould was linked to lack of a ventilation fan. Homeswest has demanded an Aboriginal woman with permanent injuries to her arm scrub children’s grubby hand marks off walls or face eviction. Homeswest demanded that an elderly Aboriginal woman with arthritis and heart disease clean up the yard or face eviction (written submission 44, May 30 2003: 6).

One lady had asthma really bad, she’s passed away now, and they told her to use bleach to clean all the mould. That stuff can kill you. She had an exhaust fan but it wouldn’t work and they came to fix it. Instead they took it out and left a big hole in the ceiling (written submission 11, February 28 2003: 4).

Property Condition Reports

Property condition reports are conducted and utilised by Homeswest to account for the condition of the property when the tenant’s lease commences and prior to the tenant vacating. According to Homeswest a comparison of these reports enables them to ascertain the amount of maintenance required to return the property to a re-tenantable condition. These reports are also utilised to make an assessment regarding the amount of liability that is to be charged to the tenant. Aboriginal tenants and advocates raised a number of concerns relating to this process.

According to the TAS, the property condition report, "...appears to be an unreliable document and yet it is the basis of much of the alleged vacated tenant liability carried by Aboriginal people" (written submission 44, May 30 2003: 35). One reason the property condition reports are considered unreliable is that they are often handwritten and illegible. Many submissions commented that poorly written reports caused difficulties for tenants and advocates, particularly if seeking to dispute the stated condition of the property or appeal vacated tenant liability:
What concerned me was the outgoing report, that’s barely legible you know, you can’t even read that. There are a couple of pages here, some of it you can barely read. Look at that line there, how do I know what he’s saying there? I wanted to appeal the amount they charged me. It’s part of my appeal too that I couldn’t read this report. I’m an English teacher by training and I find it very difficult to decipher what it says (oral submission 11, female, tenant, Metropolitan).

The reports also provided little room for extended written property condition description, and often the witnessed description was limited to brief and subjective terms such as ‘fair’, ‘poor’ and ‘good.’ Thus, a further concern is that the reports may not accurately reflect the condition of the property given the layout of the reports, and the subjective inspection and assessment by different Accommodation Managers:

Ingoing property condition reports also do not necessarily reflect the state of disrepair of these properties and Indigenous tenants grateful for housing are unlikely to challenge the property condition report and the subjective assessments contained in that documentation (written submission 46, May 30 2003: 7).

Homewest policy states that the Accommodation Manager is to arrange a joint inspection to assist the tenant with the completion of their section of the property condition report (DHW, 2004: website). However, according to the experiences of many Aboriginal people the Accommodation Manager completed the report independently of the tenant, and the tenant was required to complete their section of the report without assistance. As some tenants were unsure about completing reports they were revealed to have signed them without making their own property assessment. This means that the tenant accepted Homewest’s assessment of the property standards. In some cases, literacy ability contributed to the difficulty Aboriginal tenants had in understanding and completing the report. One submission concludes, “Homewest uses the ingoing property condition report to assess tenant liability. But with the property condition reports, Aboriginal tenants just sign them” (written submission 38, June 3 2003: 6).

Maintenance

A consistent claim raised is that Homewest does not properly maintain and repair the properties as required under section 42 of the RTA, which compels the owner to maintain and repair the premises.

Homewest acknowledged that, "Of all tenancy functions maintenance is the most controversial [and] some stock is old and in need of maintenance” (written submission 35, May 29 2003: 19). However, they also claimed that the public housing stock is maintained “...to a standard commensurate with the wider community” (written submission 35, May 29 2003: 190). Homewest highlighted the significant funds spent on housing maintenance, which they state is approximately twice that of the private sector (written submission 35, May 29 2003: 12). They refer to statistical evidence indicating that the average annual day-to-day maintenance expenditure on properties occupied by Aboriginal families is $788.94 compared to $433.48 for non-Aboriginal occupants (written submission 35, May 29 2003: 12).

Types of Maintenance

Homewest maintenance is divided into four main programs. (1) day-to-day maintenance, which is either conducted at the request of tenants on a needs basis or by the Accommodation Manager as required after inspection. (2) vacated maintenance, which is conducted after the tenant leaves the property. (3) planned maintenance, which is conducted on an annual basis and is the process of identifying maintenance requirements in key high cost categories through ongoing survey of properties. These categories are separate from day-to-day maintenance (4) programmed maintenance, which is conducted on a needs basis and includes “...external painting and the associated minor repairs to the property. This
form of maintenance is designed for the long term protection of the Homeswest assets” (DHW, 2004, website).

This Inquiry received many submissions that raised issues regarding day-to-day, vacated and planned maintenance programs. In particular, evidence gathered through oral and written submissions, video footage and photographs described or displayed housing that could be at best described as substandard and in urgent need of repair. Some of that housing may also be reasonably considered unsuitable for human habitation. At the invitation of Homeswest tenants, EOC officers viewed this housing stock firsthand.

An organisation in regional Western Australia contributed a submission primarily aimed at raising this issue, and provided details and photographs of properties that were in serious need of repair and maintenance. According to this organisation, these houses showed that contrary to maintenance policies, which includes specific time frames for action, Homeswest was “...ignoring emergency repair reports and not responding to maintenance issues” (confidential written submission 36, January 13 2003: 9).

A survey of these properties showed deficiencies such as rat holes, missing floorboards, sewerage leaks, large structural cracks in walls, gas leaks, mouse and ant infestations, missing taps, broken door frames, inoperable toilets, blocked sinks and ovens, and faulty electrical wiring. According to this organisation, these tenancies “...indicate a complete disregard to the safety and health of Aboriginal tenants in the Great Southern region. It is significant that non-Aboriginal homes are superior in appearance” (confidential written submission 36, 2003: 3).

The substandard condition of homes was not limited to the Great Southern Region. EOC officers were also shown considerable evidence of substandard homes and maintenance problems in the Pilbara region. Damages to houses included large holes to the house exterior leaving tenants exposed to easy entry, man size holes in floorboards, windows bolted from the outside and unable to be opened by tenants, cupboards removed and not replaced, wooden floorboards and frames eaten by white ants, toilet pipes leaking, and front doors held together with knives to line-up with the frame (EOC, 2003). These descriptions may well represent the worst examples of housing for Aboriginal tenants and it is likely that some Aboriginal tenants have homes that have been properly maintained and repaired.

One Perth tenancy advocate commented, “On the one hand, I have seen many houses in need of attention and on the other hand there are some families in very good solid double brick homes” (written submission 41, May 30 2003: 9). However, the vast majority of Aboriginal people who made submissions to the investigation commented on poor standard of housing and the difficulties associated with maintenance repairs and tenant liability.

Responsiveness to Requests

A significant issue raised by many Aboriginal tenants was the lack of responsiveness on the part of Homeswest officers for requests for maintenance:

An Aboriginal woman lives in a house with four children aged 13, 10, 4 and 1. She pays $140 a fortnight in rent.

When she took up the tenancy, three years ago, the house was full of cockroaches and cracks in the walls of the house. The underground pipes were damaged, plumbing was corroded and sewage was flowing outside the back door.

She said, “I have told Homeswest several times about the problems. It has been 3 months [April 2003] since I last told Homeswest again about the problems. I now have to keep the back door shut so the little ones don’t go near the sewage and my youngest has bronchiolitis. You complain and they just don’t respond.”

In early May 2003, the tenant claims she was in front with her rent. However, on June 3 2003 she received a breach notice from Homeswest for not repaying a debt associated with bond.

Despite the tenant agreeing to have a certain amount deducted through “direct debit,” the process for court action had already commenced.

Seventeen days after the breach notice [June 20 2003] she was issued a termination notice (oral submission 188, female, tenant, Goldfields).
The house is 25 years old. There are holes in the walls. The wood combustion stove needs repairs, and is unstable. New plumbing needs to be done. I can’t close the cupboard doors properly. The kitchen, bathroom, and laundry sinks need replacing. The skirting boards need replacing. I have told Homeswest about these issues. They only seem to be concerned about my rent payments being on time, and how many people are living with me in my home. Surely my fortnightly rent of $187.00 warrants regular maintenance (oral submission, female, tenant, Goldfields).

A SHAP worker told the story of two of her clients:

With one client he gave us a paint kit, so we sort of went into the house and painted a room. But she’s reported the window and door, you know, she can’t lock her door and the window’s been broken for yonks and they still haven’t been there to repair it. And the cupboards are the same as, you know all rotted through. The place belongs to Homeswest and they’ve got to be maintained. But they don’t maintain their homes (oral submission 60, female, SHAP employee, undisclosed location).

This girl I work with, she refuses to go to the office. I said, well you might as well come along with me. She went down because she had a leak in the laundry, and it was really dangerous you know. Well he did send the people that do that straight away because we was going to ring the health inspector, but a lot of times I’m sticking my neck out (oral submission 60, female, SHAP employee, undisclosed location).

An Aboriginal Homeswest officer described incidents where Aboriginal tenants had complained that they had not received maintenance requested six months previously:

I’ve even had clients where you are really horrified that this hasn’t happened when they’ve complained for six months that they need new doors because the doors are falling apart and they need privacy and stuff, and they’re not willing to give them a door because they say they don’t look after the property that well. And you know some Aboriginals are too ashamed to come and tell us, the door fell off because it was rusted. So by the time they come in they don’t have the rusting so they’ll get charged for a new door. And it’s not fair because the properties are really old. I mean if you open it, it will fall on you. They don’t maintain them properly (confidential oral submission 191, female, Homeswest employee, undisclosed location).

Aboriginal tenants and advocates alike spoke of long delays:

There are unacceptable delays with the provision of repairs and maintenance for properties housing Aboriginal families. Homeswest is required to ensure urgent repairs are completed expeditiously. On occasions, however long delays have left families without heating, running water, or proper toilet facilities. Often Homeswest do not check to ensure that maintenance has been carried out (written submission 46, May 30 2003: 7).

“They should fix things when they don’t work or break down... maintenance, you know. I’m too old to keep chasing and asking them again and again to fix it” (oral submission 33, female, tenant, metropolitan).

An Aboriginal woman advised, ”I told Homeswest about my faulty oven ignition, about a week after it failed. It has been broken now for two months.’(oral submission, tenant, Goldfields). A further tenant commented, ”You get one thing done a year. You get a washer in a tap one year and you get the tap next year” (oral submission 123, group, tenant, Southwest). An advocate from a women’s refuge stated that the condition and quality of houses provided to women is poor. They commented that tenants get repeated knock backs for maintenance requests and must make numerous requests before action is possibly taken:
There’s a lot of women that come after they have gone through a relationship and they’re having problems. They’re quite happy to leave the old house because it was a wreck anyway. And they try and say that the maintenance officers will come and do something about it. They get no, no one calls them back, no one bothers, so they just give up. By the time they leave they are liable for all the damages that are done to the house (oral submission 204, female, advocate, Metropolitan).

The TAS claimed that the lack of response to requests for maintenance could be partially attributable to the inaccurate recording of requests. In their experience, requests for maintenance from the tenant do not necessarily reach the Accommodation Manager, who often claims to have no prior knowledge of the request (written submission 44, May 30 2003: 38). The lack of appropriate maintenance request records was reiterated by a Health Inspector:

Some times a blocked drain had been in the house for two to three weeks. You have got a lot of kids around. I almost think it’s not acceptable. Homeswest say they’ve never been contacted because nothing’s written down. There is no way of actually tracing it. Unless they have it pumped straight into the computer that something is amiss at that house. Unless they put it down, it’s not recorded anywhere (oral submission, male, health inspector, undisclosed location).

Standard of Repairs

Several submissions advised that poor quality materials are used in Aboriginal homes. A female tenant commented that “You walk into any Noongar’s place and they have got all the same tiles down, same colour, the cheapest, one brand and no matter where you go up the line, no variety, nothing” (oral submission 59, female, tenant, Great Southern). An advocate concurred, “They won’t cover floors for Noongar’s, you move in and you haven’t got floor covering and you’re warmer outside. You’re going into a fridge. When white folks move in they’ve got the floor coverings and they’ve got the gardens done for them” (oral submission 53, female, advocate, Great Southern).

Some respondents described the effort applied and time taken to have necessary repairs addressed. One tenant commented that,

“With the maintenance they see a black woman living there, they fix it up ‘bodgier’ and you get charged 100 percent. They don’t do it properly. There are a lot of things falling apart because they don’t do it properly” (oral submission 41, female, tenant, Metropolitan).

Another Aboriginal woman stated:

The floor tiles are all cracked and coming up in the passageway. Water is leaking out of the walls and they’re coming up. They sent people three times to look, but nothing has been done. That’s been months now. They fixed two of the tiles but there’s another 15 that need replacing. It took five months to look at the leak in the wall. Don’t talk about the water bill (written submission 11, February 14 2003: 4).

Contractors

In some regions, tenants explained that there were delays and extended waiting times because contractors would not complete maintenance work unless there were about two or three other homes that need work concurrently. This was particularly evident in regional Western Australia. A tenant described this situation, “If the contractor is doing only one job, well, we’ve got to wait four or five months until someone else’s home needs fixing. They will not come down just to do one person’s home. So we suffer until other homes go broke” (oral submission 205, group, tenant, Katanning).

Some tenants claimed that the standard of work completed on Aboriginal homes was mostly dependant on the contractor:

The standard of work you get done depends upon the contractor. Some contractors are good and they will try and do a good job and match the paintwork that you already have with the
new paint. Some don’t care and you will have one wall one colour and other walls another colour. Some contractors will charge Homeswest for two coats but they only do one (oral submission 50, female, tenant, Great Southern).

The TAS also alleged that on some occasions contractors were paid for work that was not completed. A tenant in the Midwest spoke of the delays she experienced in obtaining priority maintenance and then the contractor seeking payment for work he had not completed.

*Due to a problem with the heater I don’t have hot water for washing, showers or dishes. When I use the washing machine water from internal pipes leaks through walls into the lounge room and flood floors. We pay $102 per week rent for this house and would expect better conditions and service. I have informed Homeswest on several occasions about the problems and each time I am told it will be fixed. Six months ago a maintenance man came and put job orders in to say he had done the work but he hadn’t. He said he would come back later to do it, but he hasn’t* (oral submission 160, female, tenant, Midwest).

In addition, some tenants suggested that the maintenance work conducted is not always well co-ordinated between contractors and Homeswest.

*Homeswest don’t communicate with contractors. I had some contractor do some plumbing and I was left with pipes and electrical wires exposed and I was without taps for the weekend. One contractor comes to do part of the work and then someone else has to come and do another part of the work but it’s not co-ordinated* (oral submission 205, female, tenant, Southwest).

**Tenancy History**

Some Aboriginal tenants alleged that the Accommodation Managers aim to provide help to all the ‘good’ tenants. Those who are not seen as ‘good’ tenants will not receive maintenance:

*An elderly tenant in the Pilbara related how she was required to make contact with the contractor herself to organise repairs to a laundry tap that had been running continuously for two weeks. The difficulty for this tenant was that she did not have access to a telephone.*

*However, despite this the Homeswest officer advised the tenant that in seven years she has never known Homeswest to phone the contractor. The tenant was told to find a phone box and to make contact herself. The tenant was also advised that despite her maintenance being recorded as ‘priority’ there was a possibility that the plumber would not be able to come that day.*

*When the call was made by mobile phone to the plumber’s office the tenant was told that it was unclear when the plumber would be out that way* (oral submission 256, female, tenant, Pilbara).

*Homeswest say they have got two lists, good clients and bad clients. So if you fall into the category of a bad client then they don’t have to come and do anything in your home. A bad client is if you’re not clean, if you don’t keep up with your rent or you owe them money. The manager came to my house and when he walked in the door he was like, ‘Oh you’re clean.’ And I said to him, ‘Excuse me? We like to keep clean places.’ But I’m telling you he was like, ‘You’ve actually cleaned your place up* (oral submission 58, female advocate, Great Southern).

*Ms B is an Aboriginal mother who has been the victim of severe domestic violence. She is particularly nervous about having men in the house and Homeswest was specifically asked to get the contractor to telephone for an appointment to carry out repairs. She was upset when a man arrived at the door over a week later just as she was preparing to leave to collect her children from school. She refused to grant entry and asked him to come back the next morning.*

*Some time later when her Accommodation Manager was contacted about the repair, the tenant advocate was told he was unaware the repairs had not been carried out. Homeswest, asked the advocate to contact the contractors and gave the phone number to make a time but the contractor insisted they were not required to give prior notice and would only agree to attend as soon as possible* (written submission 44, May 30 2003: 41).
This practice is endorsed by clause 29 of the Tenancy Management Policy which states that tenants with a Homeswest debt will not be assisted with property maintenance or upgrade above normal health and safety requirements (DHW, 2003: website).

A Homeswest officer also commented on the practice of alerting each other about whether maintenance should be conducted on properties. She described, “I’ve noticed Aboriginal people who’ve moved into a house have had no maintenance, but they’ve got a flashing on it saying, ‘Be aware before making any maintenance on that property’” (oral submission 191, Homeswest employee, undisclosed location).

Mrs L is an elderly Aboriginal woman. Her kitchen is old and dilapidated. At her last inspection she asked if it could be fixed up. The Accommodation Manager told her that if she paid her account he would see what he could do. Mrs L paid her account but the Accommodation Manager was not provided with sufficient capital works funds in the last budget round to carry out the upgrade and it is unlikely to be approved in the foreseeable future (written submission 44 May 30 2003: 40).

Properties for Re-development or Demolition

The TAS advised that maintenance on properties that are either earmarked for redevelopment or demolition would be limited and determined by Regional Management. For these properties, it is often specified in the tenancy agreement that only essential maintenance will be carried out and that this is permissible under section 82 of the RTA. This allows landlords to contract out of repair obligations where it is written into the tenancy agreement.

The TAS asserted that even where Homeswest have not contracted out of repair obligations in the tenancy agreement advocates are commonly advised that the minimal maintenance policy applies. This application of Homeswest policy without the addendum in the tenancy agreement is potentially a breach of the RTA (written submission 44, May 30 2003: 41-43).

A Homeswest officer advised that requests for maintenance were more likely to be acted upon when tenants had advocates assisting them.

“It’s good to go through an advocate service, because if you’ve got a bit of backing up, they will move. If it’s one on one with Homeswest it’s really hard. As soon as you’ve got an agency behind you and helping you, they tend to open up a bit more, than if you’re telling them this on your own. You’ve got to keep telling them from what I’ve seen.” (oral submission 191, Homeswest employee, undisclosed location).

One Homeswest officer felt that maintenance was not well attended due to the pressure and workload of Accommodation Managers:

You think to yourself, ‘Why hasn’t it been done before?’ Or, ‘This should have been fixed.’ But it’s like the Accommodation Managers are so busy, they’ve got so many properties, you know, there’s so much pressure. Simple things just get put away, filed (oral submission 191, Homeswest employee, undisclosed location).

The poor standard of housing and lack of appropriate maintenance and repairs left many tenants feeling a sense of despair.

Health and Duty of Care

In the submissions gathered for this Inquiry, many Aboriginal tenants claimed that their health and safety were being jeopardised by the standard of housing and the limited or lack of maintenance conducted on properties.

In the Pilbara, some tenants claimed they were being dangerously exposed to asbestos and stressed that people are suffering from this. In some houses EOC officers were requested by tenants to film the damage to walls. In these houses the asbestos, which was blue and white in colour, dropped to the floor in particles and on closer examination crumbled in the hand like powdered dust. As tenants in Roebourne advised, “Our people been dying through this, I lost my little brother through this asbestos, when they paint it you can smell the asbestos, it smell, make you sick, get more sick and sick” (video submission 6, female, advocate, Pilbara). An Aboriginal woman in the Pilbara stated, “...we get
sick and sick, we tell Homeswest... said that asbestos in houses is not a problem unless it’s damaged... we’ve got video of all houses damaged with asbestos” (video submission 10, female, tenant, Pilbara). An Aboriginal grandmother commented:

I’ve got 6 grandchildren, all at school. This is how the kids get sick now, our people being dying through this asbestos...I lost my little brother through asbestos... when they paint it you can smell the asbestos... it smell... make you sick... get more sick and sick... (video submission 11, female, tenant, Pilbara).

Unacceptable sewerage problems were also identified. There were widespread reports of sewerage leaks from septic tanks and open drainage into backyards which were said to have gone unheeded by Homeswest. The health risks to children were especially disheartening.

The health of tenants was also of concern with regard to potential residential hazards, for example pest infested houses. An advocate in the Armadale area advised:

And they say it’s the responsibility of the tenant but when they first go in the house shouldn’t the house be bombed anyway? Not go in there and they’re still running around. They say we already did it. Why are they still alive? Why are they still running around? I’ve seen some infested houses. You open up the cupboard and you can see the crap in there you can just see it its just all over there. And you see these little brown things (oral submission 204, female, advocate, Metropolitan).

An Aboriginal woman from the metropolitan area commented on the prevalence of cockroaches:

A big problem I have had in every house I’ve been in and I’ve seen it in other Aboriginal houses too- is the cockroaches and other insects. This house was infested when I moved in. I put it on the property condition report but they didn’t spray. I had to get help to get them to do it. Even though it’s been sprayed twice they have charged me to do it. It is still infested (written submission 3, February 3 2003: 8).

Another Aboriginal woman in the metropolitan area commented:

Every house I ever had has been infested with cockroaches. They say they’ve sprayed but it doesn’t kill them. I have to buy cockroach bombs but they are expensive. They have diseases and I don’t want them in my home (written submission 22, February 3 2003: 7).

An Aboriginal woman from the Goldfields advised:

I live in an old house. It is a four-bedroom house in Adeline. When I moved in the house...
was full of cockroaches. The plumbing is broken, and pipes underground are falling apart. There is sewerage coming out next to the back door. I asked them 3 months ago about the pipes. I have four kids living in my house. My youngest daughter has bronchitis. I keep the back door shut so the little ones don’t go near the sewerage (oral submission 71, female, tenant, Goldfields).

In addition, faulty wiring combined with plumbing problems left some tenants concerned they could be susceptible to electrocution. One tenant described her experience, “When it rains there is moisture on the walls and ceiling inside the house. It is very dangerous; you can actually see the water on the ceiling. I’m concerned that someone will get electrocuted” (oral submission 34, female, tenant, Great Southern). A further tenant stated, “I had some contractor do some plumbing and I was left with pipes and electrical wires exposed and I was without taps for the weekend” (oral submission 59, female, tenant, Great Southern).

Another woman stated, “When it rains the water comes under the door. You have to walk through a big puddle to get to the front door. There is no recess in the shower and water flows down the passage and into the laundry and bedrooms” (written submission 12, February 28 2003: 3).

For others, gas leaks were a major hazard:

One house I had was built on a rubbish tip. If you dig, under the dirt there was all sorts of rubbish under there. The last couple of months I was there, the gas pipe leaked and they didn’t fix it until I moved out and a white family moved in. My kids and I have asthma - we have to use the puffer every day. The fumes were affecting my kids. It was somewhere outside. Visitors were always saying they could smell it. But they never fixed it until after (written submission 11, February 14 2003: 4).

In the Pilbara, grave concerns were raised regarding the lack of maintenance and inappropriate housing being a possible danger to children. For example, missing windows left young children vulnerable to sexual abuse due to the house being accessible at all hours. The CSJC agreed and stated that inappropriate housing conditions posed a greater risk to children, and could increase the risk of child abuse in at least two ways:

First, overcrowded living and the constant passage of homeless groups between friends and relatives results in the loss of parental, especially maternal control and authority over who has access to children. Second, the poor mental health outcomes associated with living in culturally inappropriate conditions exposes children to people with unpredictable behaviours and mood swings (written submission 45, May 28 2003: 7).

In addition, the lack of doors and other security devices leaves the houses open to robbery and damage. One Aboriginal woman commented, “You can’t lock your windows, you can’t guarantee that when you sleep that your daughters are going to be safe” (oral submission 200, female, tenant, Pilbara). An Aboriginal man commented:

There was a lady from X Street, she comes from (undisclosed), and I moved her gear over to the street over the other side of the video shop. And I went in there and there was no door handles on the laundry and the front door. The front door was locked with a screw. She asked me for a screwdriver so I gave her a screwdriver to get her gear in and this was a full blood lady and this is what Homeswest had given to her. And when that lady moves out they will charge her for the damaged locks that weren’t there when she moved in. She most probably hasn’t written the faults in that house so she gets charged with that (oral submission 145, male, tenant, Pilbara).

The lack of security despite repeated requests had left many women vulnerable to attack.

An advocacy organisation commented, “Woman living alone or with children are discriminated against by the lack of provision of strong and adequate security and all doors and windows. They therefore live in constant fear” (written submission 32, May 30 2003: 9). One Aboriginal woman did not have simple locks on her doors:
An Aboriginal woman spoke of her frustration at not being provided with security when she was transferred to another house for medical reasons. The woman has a medical condition that is aggravated by stress. She had also been raped in a previous Homeswest house. She was transferred to a house to be closer to her family who can assist with the children and provide support. Failure to provide housing with security screens has seen an increase in the incidence of her stress related seizures.

She said, "I was in a house before on my own and I was attacked in that house and raped and I became pregnant. So I thought the main thing for me was to have security on in the house. When I moved to another house they wouldn’t put security on in that house so I went off and bought a security alarm and it cost me all this money.

When I had this transfer I couldn’t afford to move my alarm so that’s still sitting in (undisclosed location). Now X here is telling me she wont put security on the house. After all that I have gone through it should be a priority.

I can’t sleep at night because I’m worried that someone is going to come through my house. I mean you hear about home invasions all the time. What’s a little woman like me going to do against anyone coming into my house? There is nothing I can do. (oral submission 46, female, tenant, metropolitan).

Whenever I want some help they say they’ll do it but they don’t. I asked my Accommodation Manager last May to do something. I couldn’t lock my back door, they know I’ve been a domestic violence victim but I had to get my brother to fix it. My Accommodation Manager told me he would do it, he didn’t. I couldn’t even lock the door, but they didn’t care (written submission 10, February 18 2003: 2).

Evictions

Homeswest expects tenants to comply with community expectations and to abide by three rules; to pay rent, maintain the property to a standard commensurate with the surrounding neighbourhood and live in harmony with neighbours. Homeswest maintains that:

Where tenants fail to comply with their tenancy obligations the Department has procedures in place to encourage tenants to meet their responsibilities. These procedures and actions occur prior to the commencement of action under the RTA and are a direct attempt to minimise the need to take legal action and proceed to court. In the majority of instances, these procedures are sufficient to prompt the tenant to take the required remedial action. However, where this does not occur legal action is initiated (DHW, 2004: website).

According to Homeswest, the rate of eviction on a per capita basis for Aboriginal families is three times higher than for non-Aboriginal tenants. In 2002, Homeswest evicted 89 tenants; of these, 23 were Aboriginal. This equates to 0.56% of all Aboriginal tenants compared to 0.19% of non-Aboriginal tenants (written submission 35 May 29 2003: 23).

Some submissions queried the validity of the eviction statistics. The TAS stated that the Homeswest definition of eviction is limited to those tenancies where a bailiff is required to forcibly evict the tenants. However, many Aboriginal tenants vacate upon receiving notice of termination:

Homeswest’s official eviction statistics are unreliable as an indicator of the level of evictions. Homeswest definition of eviction is limited to those tenancies where a bailiff is required to forcibly terminate the tenancy. Many more tenants are effectively evicted before such action becomes necessary (written submission 4, May 30 2003: 54).

Homeswest commented that evictions are only used as a last resort. Homeswest recognise that some tenants:

...face difficulties particularly related to limited financial resources, tenancy management skills and to a lesser degree limited lifestyle skills. The Department has a social obligation to assist these families and pursue all possible avenues to help them to
maintain a successful tenancy... [and] The Department recognises that eviction has a significant impact upon tenants, the family and in many cases also impacts on the wider community. As such, eviction action is taken only as a matter of last resort only after all efforts to save the tenancy have failed. Moreover, the Department will also investigate whatever opportunity exists for eviction to be stopped, irrespective of how far eviction action has proceeded (written submission 34, May 29, 2003: 22).

Homeswest has a Legal Recoveries Procedures Manual to guide Accommodation Managers and Regional Recovery Officers about the process to be followed to ensure all efforts are made to save a tenancy that is at risk of eviction. These procedures include referral to financial counsellors, Aboriginal Customer Support Officers or other support programs (for example, the SHAP, the DHW and the DCD Tenancy Referral Program or the ATSS).

Criticism and Concerns

Some submissions questioned whether it is Homeswest’s practice to evict only as a measure of last resort. One tenant spoke of the decision to commence eviction being taken over a minor matter. She stated, “I got a termination notice for non-payment of water - $18. It said pay up in 7 days or legal action will be commenced” (written submission 12, February 28, 2003: 5). A further tenant said few attempts are made to resolve issues prior to eviction action:

Evictions should be a last resort. A lot of it could be sorted out other ways. Eviction only causes over crowding somewhere else. There are no steps to try and sort thing out first. Evictions break families up, interfere with children’s school, causes health problems (written submission 25, January 7, 2003: 8).

This was affirmed by the ALS, “Once the mandatory notice of eviction letters have gone out some officers no longer feel they need to try and resolve any housing problems” (written submission 29, June 9, 2003: 12).

“In 1999, I moved to a Homeswest house in Bunbury. In October 2001, my brother was murdered in Perth. I had to go to Perth whilst my brother was on life support for a couple of weeks. Then he died, but I had to stay in Perth because there was a coronial enquiry about my brother’s death.

I had to stay in motels, and I could not afford to pay the rent and fell behind the rent.

When I came back from Perth, a week before the funeral, and went to Homeswest I asked them if I could top up my rent to pay back my owed rent. They had done it in the past when my Auntie died in a car accident. I cleared the first debt in about a month time. However, this time they did not let me do that.

They did not give me any reason for their refusal. They were going to take me to court for defaulting in my payments” (oral submission 86, female tenant, Southwest).

However, one submission asserted that eviction processes often depend upon the inclination of individual Accommodation Managers, “Some housing managers will look at all the options to keep people in the house and others they just apply the current policy to the line” (written submission 12, February 28, 2003: 8). According to a regional DCD office, although Homeswest may attempt to adhere to procedural fairness under their evictions policy, this is not always the practical result:

The current system to deal with this issue is intimidating and offers limited support for many Aboriginal families. This process involves DHW representatives including a legal representative to discuss the issues with the families. Often due to educational levels and cultural differences, the Aboriginal families are often disadvantaged and the process largely results in evictions (written submission 33, June 11, 2003: 4).

Many Aboriginal tenants receive termination notices stating that if the situation is not remedied they will be required to vacate the premises by a set date. Submissions commenting on the issue of eviction clearly indicated that many Aboriginal tenants do not understand the
termination notices and upon receipt simply vacate the premises without defending any action. It is not always clear that tenants have the right to remain in the premises and contest the termination. According to the TAS, “Given low literacy levels in the Aboriginal community, many misunderstand the notice and vacate the premises at this point” (written submission 44, May 30 2003: 55).

One submission claimed that Homeswest has threatened eviction on the basis of alleged criminal activity by family members associated with the legal tenant. Homeswest is said to have relied upon section 39 of the RTA to threaten a tenant with eviction, even though the advocate considered there had been inadequate investigation and substantiation of criminal activity (oral submission 42, female, advocate, Metropolitan). This submission also advised that some tenants have recently been threatened with eviction under section 64 of the RTA. This section enables the landlord to give the tenant notice to vacate the premises within 60 days without any grounds for termination. One advocate discussed the lack of natural justice and the potential impact on a client and her family through the inappropriate use of section 64 of the RTA:

You can’t just make allegations like this and threaten such a severe action for this family. We are talking about a family of five children being made homeless. You can’t just make decisions under the whim of a no grounds termination. If there are allegations to be addressed then in the fairness of natural justice you have got to investigate it (oral submission 42, female, advocate, Metropolitan).

According to the Deaths in Custody Watch Committee, the impact of eviction upon families may be long term. They stated that, “many of the deaths in custody cases can be tracked back to the lifestyle changes and loss of family and stability which inevitably occurs after an eviction” (written submission 32, May 30 2003: 22).

An elderly Aboriginal woman who received a termination notice advised, “When they told me I had three weeks to get out I thought I was going to have a stroke. It was so much pressure. I had this pain across my chest. They always put the pressure on the old people” (written submission 11, February 14 2003: 5).

Role of Homeswest

Homeswest stated that the decision to evict is not their own, but is made by the Magistrate of the Local Court and that tenants have the opportunity to present their case to the court. As the TAS pointed out, few Aboriginal people choose to defend court action due to historical relations between Aboriginal people and the court system. The TAS claim that according to their research “less than 3% of all Court applications are defended by tenants, few of these are Aboriginal, most that are, have an advocate. Unfortunately, few tenancy services provide representation in Court due to lack of resources” (written submission 44, May 30 2003: 55-56). Furthermore, the TAS claimed that if an application is not defended in the court, very little evidence is required to secure the termination order which is sought:

Evidence may be limited to establishing that the correct notices have been served correctly. There is wide variation between Local Courts in WA and between the Magistrates and Clerks who hear tenancy disputes. It is true that some seek evidence as to the seriousness of the alleged breach of agreement on which Homeswest relies. However, the documents on which Homeswest relies, only provide evidence which supports termination and may not be a balanced view of the circumstances (written submission 44, May 30 2003: 55).

Notably, the tenant is excluded from the HAM once Homeswest takes action to terminate the tenancy:

Once Homeswest takes the decision to terminate the tenancy and serves notice of the decision, the tenant is excluded from the Homeswest Appeals Mechanism, where a semi-independent review of the decision to terminate could be less formally conducted than through litigation (written submission 44, May 30 2003: 58).
Tenant Liability

Tenant liability involves costs incurred by the tenant for damage to the premises caused by misuse, neglect or wilful damage and for the removal of rubbish. There are two types of tenant liability, occupied and vacated tenant liability. Homeswest contributed data indicating that the average occupied and vacated tenant liability for Aboriginal people far exceeds that for non-Aboriginal people (written submission 35, May 29 2003: 12). Tenant liability was an issue widely reported on across regional and metropolitan Western Australia and was of particular concern for Aboriginal tenants, advocates and organisations alike.

Concerns

Aboriginal individuals and organisations relayed a number of concerns regarding tenant liability. For example:

- There were large debts incurred upon the vacation of homes.
- Little or no maintenance on substandard houses led to large debt.
- The appeal system was inadequate to deal with situations where tenants disputed tenant liability.
- Tenants were charged for normal wear-and-tear items, such as loose doorknobs, fly screens and broken toilet seats.
- Tenants were charged for damages caused by past occupants.
- Tenants were reluctant to transfer to more suitable housing due to the likelihood of incurring exorbitant tenant liability debts on vacating a tenancy.

The Residential Tenancies Act details some provisions in relation to tenant liability issues. Section 38 of the RTA states that tenants are responsible only for damage caused or permitted, deliberately or negligently. ‘ Section 50 of the RTA holds the tenant vicariously liable for the actions of anyone on the premises with the permission of the tenant. Section 15 provides Homeswest with a process to establish the tenant’s responsibility when section 58 is breached, and a process to determine reasonable compensation. Although section 58 requires Homeswest to keep this to a reasonable minimum, clauses 12 to 15 in the Homeswest tenancy agreement set out the tenants responsibilities in matters that may lead to tenant liability. Interestingly, TAS point out that the RTA does not refer to the issue of ‘fair wear-and-tear.

Issues of Responsibility

Many submissions raised concerns that tenants are incurring significant debt where appropriate maintenance has not been conducted on faulty water pipes, hot water units and taps. The issue of high water bills was frequently raised. According to one respondent, Homeswest has not ensured proper repairs to water mains and pipes and is passing on water bills to tenants, some as high as $500 (written submission 42, June 3 2003: 7).

An Aboriginal woman in the metropolitan area stated, “The taps are running not just dripping. I showed my Accommodation Manager more than 3 weeks ago. The taps are still running” (written submission 12, February 28: 3). Another Aboriginal woman commented, “Leaking water pipes that went on for years. It came from the tap dribbling down behind the wall for a long long time. Huge water bills.’ (written submission 10 February 18 2003: 8). A further tenant stated, “Under the sink leaks all the time. The cupboards are wrecked. Under the sink it’s just plastic. It leaks with hot water. I told them about it weeks ago. Water was

An Aboriginal tenant in the Pilbara provided a serious example of lack of Departmental assistance. Although blind, he stated that he was offered no assistance from DHW in his housing needs and relied solely upon help from a non-government disability support group, which subsequently closed office. The tenant advised that he was subject to tenant liability costs for property damage considered to have been caused by squatters after he had vacated and terminated his tenancy. However, he was given no advice about DHW internal appeals mechanisms. He subsequently unknowingly signed an agreement to repay this debt, and did repay. He should not have been held properly liable for from the outset (oral submission 148, male, tenant, Pilbara).
wasting everywhere” (written submission 11, February 14 2003: 4).

Submissions from regional Western Australia, particularly from the Pilbara, stated that some water bills amounted to thousands of dollars and that one was apparently as high as $10,000. One advocate from the Pilbara commented:

One person had a bill of $2,000. Now you have to fill an Olympic swimming pool for $2,000. I asked why and they say the taps leaking and I say well ring Homeswest and then they don’t do anything. This seems to be that sort of problem (video submission 9, female, Pilbara).

A tenant in Roebourne told his story of a burst hot water unit:

The pipes were gone green and I said it’s going to bust. And the other day it busted. I phoned him up and told him my pipes busted. I told him three weeks about it. Nothing’s been done. I had a contractor coming out, he’s done a rush job, and he’s gone back and said he’d be back on Monday to fix it up. He never came back (oral submission 145, male, tenant, Pilbara).

The WRAS also stated:

Tenant liability regarding excessive water use is a concern for Aboriginal tenants. While Homeswest maintains high water use indicates a lack of living skills, tenants are required to meet cost of water usage even when escalating costs are the result of delays in repairing leaking taps, broken mains, and underground leaks. etc. (written submission 46, May 30 2003: 6).

A further issue raised relates to Homeswest’s claim that they “…absorb all maintenance costs with the exception of those maintenance items that are determined to have been caused by willful damage, tenant neglect or misuse…” (DHW, 2004: website).

According to numerous submissions, Aboriginal tenants were charged tenant liability even though they had not received maintenance on houses for some time, in some cases years. Many of the items charged as tenant liability were simply old and worn out. As one tenant stated, “The cupboards: we reported years ago, because it was all rotten. You know chipboard? They were all falling apart and that. See, he never fixed the cupboards up, but when I moved out, he charged me $1500.00 for brand new right through” (oral submission 77, female, tenant, Great Southern).

The WRAS commented that, “Delays in repairs and maintenance have led to higher levels of tenant liability when properties are eventually vacated” (written submission 46, May 30 2003: 7). In addition, the WRAS asserted that the poor standard of work completed by some contractors was seen as a contributing factor to tenant liability charges. They claimed that, “Shoddy or below standard workmanship contributes to tenant liability, as the cost of repairing household items is billed to the tenant, as is the call out fee for tradespeople” (written submission 46, May 30 2003: 7).

Some Aboriginal tenants, and perhaps some Homeswest officers, appeared to be unsure about the responsibility of the landlord in terms of maintenance as opposed to tenant liability. Although tenants are to be charged for wilful damage, tenant neglect or misuse, some items charged appeared to be the responsibility of the landlord. For example, faulty electrical wiring, structural damage to walls due to the age of house, and water damage due to unsound plumbing, burst pipes or roof leaks.

The KCP confirmed these issues and discussed the responsibility for damage by youth, which is often misplaced upon tenants:

There is little knowledge of just what the tenant is responsible for and what falls within DHW’s domain. Much damage is caused by the
An Aboriginal mother in the metropolitan area stated that she was required to pay for damage caused by young children, “I had a broken window. Little kids lent against it and cracked it.

“One Aboriginal guy was in his house nine years. He won a prize for the way he kept his house and garden. He did it all himself. When he moved they charged him over a thousand dollars. Like for flyscreens and to strip and polish all the floors. They just automatically charged him for everything” (written submission 12, February 28 2003: 2).

Homeswest said I had to pay for it up front before they would fix it” (written submission 11, February 14 2003: 2).

Interestingly, a tenant alleged that her Accommodation Manager had advised her to report a window damaged by her children to the police as a break in:

One of my lounge room windows got broken. I was told to go to the police and report it as a break in and then it would be fixed right away. It wasn’t a break in and I didn’t feel comfortable lying to the police about how the window got broken. I didn’t lie to the police but my window is still broken. I have put a piece of board across the broken window but it’s not very secure and anyone could easily break in. I have been told by the Accommodation Manager that he doesn’t want too many tenants with tenant liability and this is the reason he won’t replace the window (oral submission 50, female, tenant, Great Southern).

The TAS noted that in November 2001 Homeswest amended their policy regarding charging tenant liability for properties earmarked for demolition or redevelopment. However, they also pointed out that:

…many Aboriginal tenants continue to carry debts arising out of previous unfair practices, and the charging of tenant liability in such circumstances is now a matter of discretion. Aboriginal people in particular are affected by tenant liability charges related to redevelopment projects, because they are the largest group adversely affected by redevelopment projects (written submission 44, May 30 2003: 37).

Housing Provision

It appears that a further reason for tenant liability is in relation to an inability to meet the
needs of Aboriginal families through the allocation of suitable housing and/or the lack of appropriate housing stock:

Aboriginal people have often got very large families and when they transfer say from a three-bedroom to a five-bedroom that they should have been entitled to at the beginning, they’re given a lot of t/l [tenant liability] charges, or vacated debt charges. This results from what I classify as robust living or having too large a family in too small a house. Homeswest doesn’t take into consideration that if you’ve got eight in a three bedroom house its going to have a different wear and tear to if you’ve got three in a three bedroom house (oral submission 209, male, advocate, undisclosed location).

A government officer in the Midwest highlighted how the overcrowding of tenancies can contribute to tenant liability:

The house accommodates five to six people maximum. In an Aboriginal home I have counted 43 people in a one-bedroom unit. If you take how many times those people go in and out the door, that door there would not stand up to the amount of traffic it goes through. In other words the house wears out in a third or quarter of time that a normal house goes through because of the traffic of people and no-one acknowledges that (oral submission 159, male, government employee, Midwest).

Rights to Appeal

This Inquiry is concerned that tenant liability is an accepted reality for many Aboriginal tenants and is accepted as a feature of renting public housing. Also of concern is the number of Aboriginal people who expressed that they were unsure why they had been charged tenant liability. As the TAS submitted, “Many Aboriginal people have routinely accepted that they must pay a tenant liability charge, similar to any other bill they receive through the mail” (written submission, May 30 2003: 6).

Homeswest maintains that they have procedures and policies in place that enable staff to apportion tenant liability charges fairly, including flexibility in the assessment of charges where cultural differences or unique circumstances apply. However, the TAS asserted that Homeswest assumes tenants have negligently caused or permitted damage to premises (written submission 44, May 30 2003: 31).

This is illustrated in the Accommodation Manager’s Job Task Manual:

The tenant is ultimately responsible for any property damage, whether or not they caused it personally. The first obstacle you may encounter is the tenant denying any knowledge of how the damage was caused or by whom. Unless the tenant can provide police reports proving that the damage was caused by persons unlawfully on the property, it is their responsibility (DHW, 2003: 29).

Homeswest states that tenants have the right to dispute all tenant liability charges under the HAM. However, in many cases while Aboriginal people disputed a proportion of the tenant liability charges, they expressed a lack of faith in appealing the charges through the HAM. The TAS advised that Aboriginal tenants may not appeal tenant liability through the HAM due to a lack of awareness of the appeal process:

Contrary to policy, information about the appeals process is not routinely provided with the initial notification of the charge. Only recently has Homeswest entered into discussions on this issue, conceding that notification of occupied tenant liability has not routinely included information about the right to appeal and agreed to now supply it (written submission 44, May 30 2003: 32).

A further problem may be that tenant liability charges are unable to be heard at all levels of the HAM. A person disputing tenant liability beyond the first tier of HAM must take the matter to court. As the TAS pointed out, past negative experiences with authority may prevent Aboriginal people from appealing tenant liability in court:
Homeswest’s practice of putting the onus to disprove liability on the tenant is particularly problematic because such charges are precluded from review at the only semi-independent tier (3rd tier) of the Homeswest appeals mechanism. This causes particular disadvantage to Aboriginal tenants who have no other recourse than the Courts for an independent review of the charges. TAS submits that due to historical factors, Aboriginal tenants are less likely than the average tenant to initiate legal action against a government department. While other groups who have a history of difficulties with authority (such as some refugee groups) face similar barriers, Aboriginal people are the largest group to be so affected. Many Aboriginal tenants have taken the decision not to challenge charges for fear of further damaging their relationship with Homeswest (written submission 44, May 30 2003: 33).

The reluctance to appeal may be accompanied by literacy difficulties, as advised by the JCC:

Problems with policy affect everyone but the difficulty for our Aboriginal clients especially is that they might not be as articulate or literate as non-Aboriginal people. They can’t say that’s not the policy because they don’t know whether it’s the policy or not. I know of only one or two Aboriginal people that have a computer, let alone the Internet. They can’t make an argument in policy terms (written submission 38, June 3 2003: 2).

This was confirmed by an Aboriginal mother who expressed a lack of faith in the appeal system:

I think appeals are no good for Aboriginal people. It’s hard to fill in the form and then front to a hearing. They carry on like we are on trial. Most Aboriginal people don’t appeal things they just accept the bill and pay for it. Aunty twice has had houses that were knocked down after she left. They were old fibro houses. She got charged about $3000 each time even though they knocked them down. I told her to appeal but people don’t want to go through that (written submission 3, February 3 2003: 2).

It is imperative that the policy relating to tenant liability charges is accurately, fairly and consistently applied, as there are a number of serious repercussions for tenants who accumulate debt. For instance, the load of a financial burden, which is compounded for low income earners; whether the tenant will be evicted; whether housing will be offered in the future; how quickly they will be housed; and whether they will be targeted as ‘bad’ tenants, which may impact on the type of services they receive from Homeswest.

Some tenants advised they had been threatened with eviction for failure to pay alleged debt. An Aboriginal woman stated, “If I owe them anything it’s a different matter. They are at me, sending me letters, threatening to evict me and my family. They come down real heavy on me for a small amount” (written submission 10, February 18 2003: 9). Another Aboriginal woman spoke of her frustration with regard to tenant liability:

One minute I’m in front then all of a sudden I’m $897 behind one week. Why do I have to pay for their mistakes? Out of the blue I get a termination notice. I’ve never had problems with payment before. My circumstances didn’t change and suddenly I’m getting evicted (written submission 11, February 14 2003: 2).

**Appeals Mechanism**

If applicants or tenants are dissatisfied with Homeswest decisions or the service provided to them they are entitled to seek an administrative review of Homeswest actions through the three-tiered HAM. This mechanism is designed to enable an independent review of negative decisions. According to Homeswest:

The right of appeal is integral to the Homeswest Customer Service Charter. The Homeswest Appeals Mechanism offers customers a quick, informal, thorough, fair and inexpensive means of appealing a decision unfavourable to their case. The sequential three-tier system meets the requirements of the Commonwealth/State Housing Agreement that applicants for and recipients of housing
assistance have access to an independent appeal mechanism. (DHW, 2004: website).

Homeswest claims to actively encourage clients to use the appeals process and maintains that the “...appeals process is widely used and is easily accessible to all groups including Aboriginal people” (written submission 35, May 29 2003: 32).

**Structure, Functioning and Criticism**

Homeswest acknowledges that there have been ongoing concerns and dissatisfaction with the HAM, which have been expressed by various advocates, community representatives and individuals. Homeswest has attempted to address those concerns and improve the process by commissioning reviews of the HAM. In 1993, the HAM replaced the two-year-old Homeswest Independent Appeals Tribunal and has been the system in operation since.

In 1996, Donovan Research was commissioned by Homeswest to undertake a review of the three-year-old HAM and to recommend improvements. Amongst the recommendations was for example, that Homeswest implement a staff training program in tenancy law and provide training for HAM representatives; improved access to Tier Three of the process; enhance independence, and a formalised feedback loop. Also, Shelter WA was commissioned in 2000 to undertake a review of the HAM. Shelter found that 89% of appellants did not know or were unsure about the policies relevant to their case, and found that 50% of appellants felt that neither or only one Tier Two panel member understood and/or cared about their case. The recommendations included an improvement in the monitoring and evaluation mechanisms, information dissemination, administrative practices, and the implementation of education and training programs for HAM representatives (written submission 44, May 30 2003).

It appears that attempts to address the dissatisfaction with the operation of HAM have not alleviated concerns. In particular, advocates and organisations raised concerns about the different tiers of the process.

**Tier One**

Tier One is the review of an unfavourable decision prior to that decision being forwarded to the customer. This requires that an officer appointed by the Regional/Branch Manager, who is at a higher level than the officer who made the original decision, reassesses the unfavourable decision.

Many advocates perceive Tier One as lacking real independence and as simply a ‘rubber stamp.’ The TAS also pointed out that the reviewing officer is not always a more senior officer (written submission 44, May 30 2003: 102). In addition, at times the original officer who made the decision is under the guidance and instruction of a senior officer, who may be the person appointed to review the decision. This can mean that the officer reviewing the original adverse decision is simply reassessing or re-endorse a decision they may have guided from the outset. It has been suggested that reviews should be conducted outside management reporting lines.

**Tier Two**

If a customer is dissatisfied with the decision made at Tier One they can appeal at Tier Two. This involves putting an appeal in writing and submitting it to the Appeals Committee, which is comprises a senior Homeswest officer who was not involved in the original decision making and a community member.

One of the difficulties at this level is that the appellant must explain and argue in writing why the decision made against them contravenes policy (written submission 44, May 30 2003: 12). Lack of access and awareness of Homeswest policy has been highlighted as a problem at this point of the Homeswest review process. One individual submission claimed that there is no procedural fairness for those tenants who are unaware of their rights and who do not have access to legal advice:

*Given the lack of access to policy particularly for Aboriginal people with their literacy profile. Further, documentation which may be necessary to prove a decision is wrong is held*
by Homeswest and is not readily accessible to tenants/appellants (written submission 44, May 30 2003: 12).

**Tier Three**

The third level of appeal, the Public Housing Review Panel, comprises three independent community representatives. The appeals must be made in writing, and although an appellant may request an opportunity to explain their case, a hearing is at the discretion of the panel.

The TAS raised a concern that while a Homeswest officer provides a summary of the case in conjunction with relevant documents to the panel, appellants do not know what information has been provided, and therefore do not know what information has been taken into account when an adverse decision is made (written submission 44, May 30 2003: 102). The JCC expressed concern about the lack of feedback or reasons for decisions provided to appellants.

*Third tier is problematic because there is no way of knowing how they have come to their decision. They don’t give reasons for their decisions and Aboriginal clients don’t feel satisfied that they have been listened to. All they say is that the Tier 2 decision has been upheld without any explanation. Sometimes is says after reading the file and considering all the evidence... but we never know what that evidence is (written submission 38, June 3 2003: 11).*

A further concern for tenants and advocates relates to the restriction on matters that can be heard at Tier Three. For example, appeals about debt or day-to-day maintenance are not able to be appealed at this level, and the appellant must take these matters to the Small Disputes Division of the Local Court.

An advocate commented:

*How can someone pay to go to court and fight for something that’s Homeswest policy? The client has to know the policy in the first place, most of them don’t know, only advocates know these policies or the latest version of them.*

How does a client convince the court about fair wear and tear? (written submission 38, June 3 2003: 2).

Individuals who made submissions felt that there was a lack of understanding or care in relation to cultural issues and individual personal circumstances, and a lack of faith in the appeal system to overturn adverse decisions. A Kimberley organisation reiterated this point and claimed that the HAM is not geared towards an individual comfortably making a complaint:

*There are many things going on in people’s lives - the HAM is not geared to the individual making an appeal ‘Aboriginal clients without an advocate cannot successfully navigate such a system. They are living in cars and refuges. Families are moving from place to place and the kids aren’t going to school. They just can’t cope with the paperwork (written submission 40, May 30 2003).*

One regional DCD office criticised what is perceived as an adversarial approach adopted during Homeswest appeals. They also thought it was important for members of the appeals committee, both government and community representatives, to have an increased understanding of the needs of Aboriginal women, an increased understanding of institutional and individual racism, a willingness to take seriously or accept an applicant’s concerns, and to take steps to reduce the semblance of an adversarial approach in hearings (written submission 34, June 13 2003, p. 1).

**Anti Social Behaviour**

The submission from Homeswest, through the Director General, comments on the necessity for appropriate behaviour and offers guidance regarding this:

*Historically, in the formulative reaches of policy, notice has been taken of the values of the broader community. For example, in the controversial issue of what is and what isn’t acceptable behaviour of public housing tenants the Department has always tried to adopt the*
values of the street and asks tenants to live within these norms subject to procedural fairness (written submission 35, May 29 2003: 3).

The Complaints Process

The process for handling complaints of anti social behaviour is detailed in the Recoveries Procedures Manual. In brief, a Homeswest officer is to speak to the complainant neighbour initially, approach the tenant for an explanation and then respond ‘as appropriate.’ According to the TAS, in practice this process can be problematic for Aboriginal families for three main reasons.

First, the person making a complaint is provided with an explanation of Homeswest policy, which can lead the neighbour to report any activities to Homeswest and the police, to record events in a diary, and approach other neighbours to support a complaint. This they claim, has led to a number of Aboriginal families being kept under surveillance with car number plates being noted and photographs of private lawful activities being taken (written submission 44, May 30 2003: 50).

Second, the neighbour may be asked to refer Homeswest to other neighbours that can support a complaint. According to the TAS, Homeswest does not necessarily approach the next nearest neighbour to substantiate a complaint. In a number of cases, the TAS has approached neighbours other than the complainant, on behalf of the Aboriginal tenant, and has obtained evidence that refutes the allegations of anti social behaviour.

Third, the TAS questions the level of natural justice afforded to Aboriginal tenants who are the subject of anti-social complaints. TAS claim that sending a letter to the tenant informing them of a complaint does not equate with natural justice requirements. It may also not be effective due to the lack of literacy skills amongst many Aboriginal tenants.

The Nature of Complaints

Homeswest requires tenants not to, “...unreasonably disturb or disrupt the quiet enjoyment of neighbours” (written submission 35, May 29 2003: 23). Whilst it is understood that Homeswest receives complaints that are legitimate, some written submissions from individuals and organisations claim that neighbours have initiated anti social behaviour complaints on a discriminatory basis. As one submission confirmed, “Aboriginal tenants are more likely to be the subject of community prejudice than any other group” (written submission 44, May 30 2003: 46). A further submission stated that the “racist views of neighbours cannot be ignored. There are still many people within the Australian community that will allow their discriminatory views to exaggerate and embellish their interpretation of certain events” (written submission 41, May 30 2003: 5).

“There is a woman at the bottom of my street who calls us ‘black bitches.’ She come into my house and said, ‘Do you want a hole in your leg?’ What type of woman comes into your house and says that?” (oral submission 23, female, tenant, metropolitan).

An Aboriginal respondent commented, “...we aren’t being anti-social, it’s the prejudice of the neighbours. We are sick and tired of playing the neighbours games” (written submission 12, February 28 2003: 5).

Of great concern to this Inquiry are the expressions of rejection and alienation that consistently appeared in submissions from Aboriginal tenants regarding non-Aboriginal neighbour’s behaviour. Arguably, statements like the following indicate the negative impact of unchecked racist views upon the Aboriginal psyche:

The house that mum moved into, other Aboriginal people lived there previously and the neighbours are like, ‘Oh no not another boong family.’ They put Aboriginals in the same house where there have been problems before. There is a lot of prejudice. If they had half a chance they’d send us all out to Cullacarabardee. Its way out in the middle of nowhere (written submission 11, February 14 2003: 6).

A further submission asserted, “They are walking
on Aboriginal land but they don’t want us to live near them. It’s especially hard when they are buying their houses and we are Homeswest” (written submission 11, February 14 2003: 6).

In some cases, it appeared that the ability to complain and be heard was far too easy, and thus became a convenient outlet for a variety of trivial complaints. This is highlighted in the following statement:

*She was an Aboriginal mum, with five kids, on a single supporting parent benefit, so she didn’t have the money to do paint jobs and gardens. But the guy next door who was a white family wanted to sell his house and he couldn’t sell his house so he would make complaints to Homeswest on every little thing. He was basically watching her to make a mistake so he could ring up Homeswest and complain. Her referral came across my table so I went out and did an interview, and I actually did an interview of the whole street. It was only this one person that had a problem and it was purely and simply because his house was on the market (oral submission 190, female, former SHAP worker, Metropolitan).*

In particular, a tenancy support group stated that racial views were apparent in the Homeswest file concerning the tenancy. They commented, “One client was the only Aboriginal tenant in the complex and some of the neighbours comments that I read in the file were definitely concerned with matters of race” (written submission 41, May 30 2003: 1).

A former Homeswest employee in the SHAP program asserted that in her experience policy was utilised to pursue eviction of the grounds of antisocial behaviour even where racial discrimination was involved. Furthermore, that the DHW was not properly considering this point, and that only one Accommodation Manager had thoroughly investigated the complaints of anti-social behaviour.

It is interesting to note that many Aboriginal people do not complain about the activities of their neighbours, “We don’t go next door and hassle them, we are just minding our own business” (written submission 7, January 30 2003: 8).

A further submission conferred, “There was a lot of noise over the Christmas break and we never complained about anything” (written submission 21, February 10 2003: 2). An individual from the JCC agreed that the contribution of anti-social complaints comes primarily from non-Aboriginal people. This person commented, “In 14 years I’ve never known of a complaint like that written by an Aboriginal person” (written submission 38, June 3 2003: 10).

One member of an Aboriginal family in the Southwest requested a transfer from Homeswest on the basis of threats of violence and anti social behaviour by non-Aboriginal neighbours. This tenant was concerned for his young family, and was devastated that Homeswest did apparently nothing to address his concerns or transfer him and his family to other housing. He commented, “I was virtually begging them. Even though they weren’t going to shift the people across the road I was begging them to shift me and the kids. I said, ‘You put my kids in a meat grinder – get us out.’ Well he left us there” (oral submission 81, male,
An Aboriginal man experienced an ongoing dispute with his non-Aboriginal neighbours which lasted approximately 12 months. His neighbours taunted him with comments such as ‘useless piece of black shit’, ‘nigger’ and ‘black cunt’. The relationship between this man and his neighbours deteriorated to the point that friends and associates of his neighbours became involved. His children were threatened on their way to school.

“When it came to a black and white issue nobody wanted to deal with it. Yeah, nobody wants to touch it because it was a black and white issue. It’s like if you join with the black people you’re a boong lover. I’ve had police officers being called that while I was standing there, ‘oh you’re just boong lovers, you can’t let them walk all over our kind.’ Now what sort of talk is that? To me that’s white supremacy talk.”

The violence escalated to the point that his house was firebombed. He was eventually placed on priority assistance but waited a further 16 weeks to be housed.

“I mean I went to Homeswest with lots of important paper work to try and inform them of the trauma that not only myself but my children were going through. Well they just said ‘you’re doing the right thing and push you out the door. Well it got to the stage where my house got burnt and I think about 90% of my stuff has gone. Things that I can’t replace. Well it took 16 weeks to get another house, even though I was on emergency priority listing” (oral submission 81, male, tenant, Southwest).

Common Complaints

In many cases, simple cultural differences accounted for complaints. This was illustrated in one submission, “Loud animated and excitable conversations are not uncommon in the Indigenous community and this is often misinterpreted as arguments” (written submission 41, May 30 2003: 5).

Neighbours may call police to the homes of Aboriginal tenants for numerous reasons, for example many Aboriginal families like to sit outside but this attracts street attention. Other neighbours simply complain because they dislike having Homeswest properties near their own, fearing this will lessen the value of their property. In addition, Aboriginal children may be excessively watched and observed when simply playing in the street:

“There was only one other Homeswest house there, and they picked on these particular people. There were a lot of people staying in this small three-bedroom house and you know complaints started with the kids playing out the front on the street. There’s nowhere else to play. You can’t lock them in the back yard, and they’re not close to parks or anything like that. So it all started over the kids going into the neighbour’s backyard. You know, politicians got involved. All the neighbours took up petitions and, Homeswest didn’t even give them the opportunity to explain their side of the story, and wanted them moved out (oral submission 123 female, tenant, Southwest).
Such minor complaints by neighbours often lead to further complaints, which may only be given legitimacy through the response of Homeswest. This response may involve breaching the tenant and sending letters to neighbours advising them of action they could take. A number of submissions commented upon this inevitable outcome and the lack of an alternative response that places the rights of Aboriginal tenants ahead of minor grievances from non-Aboriginal neighbours:

Minor complaints by neighbours then lead to further complaints that are then fuelled by Homeswest’s response to the complaints. The response often means breaching the tenant and sending letters to neighbours ‘coaching’ them about the type of action they should take. Eventually the whole neighbourhood is up in arms because the real issue is that they want to get these black people out of their street. So they harass with petty complaints until they get what they want. Instead of Homeswest getting the letter and saying, ‘We received your letter; unfortunately children will make noise in the backyard.’ That’s what they could write. ‘Yes there are cars parked on the street but that’s okay.’ ‘Sorry we can’t act on that.’ When they get these complaints they should just write back, ‘Kids make noise on Saturday afternoon. We cannot investigate this normal family behaviour.’ At least then you could stand back and say that they care about people. Turn these complaints back on these people (oral submission 18, female, advocate, Metropolitan).

A further submission stated, “It’s really hard with anti-social because it’s the little things they do complain of and it builds up, builds up, builds up, so they just make one big thing out of it, when it was just a minor thing” (oral submission 191, Homeswest employee, undisclosed location).

An Aboriginal mother commented on the treatment she experienced from her neighbours after moving to a remote area:

Homeswest put me at the back of (undisclosed location) where the older people are established. I’m a new comer with 5 children. I couldn’t get the kids to school. The neighbours rang Homeswest to complain. They didn’t come to me. They went to the shire, the education department, the welfare. But no one said anything to me. They form a circle at the front of the house criticising my children. The other day I went home and I was so fed up I went out and asked if I could join their meeting. They all just disappeared. It’s not their business. Our children are like our hearts (written submission 11 February 2003: 2).

One tenant commented on the response of Homeswest to complaints by neighbours, “I know that they ask neighbours to watch Aboriginal tenants and make notes and reports about them” (written submission 18, female, tenant, Metropolitan). Another Aboriginal woman commented:

Homeswest want us to abide by our neighbour’s rules. We have been suppressed so long. The neighbours and Homeswest want to rule our lives. They think they are tax payers and put us down. The go to Homeswest because they know Homeswest will get rid of us (written submission 11, February 2003: 2).

“It has been KCP’s experience that Homeswest tend to put the onus on the family in managing behaviour rather than taking a logistic approach and considering all factors that might be contributing to the problem. Issues of health, overcrowding, inadequate/inappropriate accommodation, location with easy access to schools, training, employment, retail outlets and social support services all need to be considered” (written submission 39, May 19 2003: 9).

Similarly, a tenancy advocate service provided an example of a neighbour who actively campaigned to have an Aboriginal family evicted. However, the series of complaints lodged did not contain enough detail to warrant eviction. Arguably, it was claimed Homeswest coaches neighbours in their handling of such complaints and fuels further complaints, “DHW gives information to the complainant specifying what kind of information would be needed to evict and, in my view
encourages complainant to be vigilant with their complaints” (written submission 41, May 30 2003: 6).

It is interesting to note that some submissions recognised that the type of housing provided by Homeswest may contribute to complaints about anti-social behaviour. Many Aboriginal families are large and are consistently placed in small Homeswest houses. For example, “...if an Aboriginal family is having a gathering, but that family has nowhere else to sit together but the front yard, they may well become the subject of complaints from neighbours merely because of the visibility of their activities” (written submission 44, May 30 2003: 47).

One advocate particularly stated that overcrowding leads to complaints of anti social behaviour:

The sorts of things neighbours complain about are kids playing footy in the street, and they’ve got too many children in too small a house, too many cars on the property. Complaints that they climbed over the wall and damaged a plant or a rose getting their ball. I think if Homeswest had families properly housed with five bedrooms, with more room and a bigger yard – when the lounge room is their bedroom they go outside to play (written submission 38, June 3 2003: 10).

Resulting Eviction

There are multiple issues contributing to the bringing of anti-social complaints against Aboriginal people. In many cases these can lead to the eviction of tenants. According to the Deaths in Custody Watch Committee, the Accommodation Managers are supposed to offer mediation through Aboriginal Housing Officers. However, it appeared that procedural fairness does not appear to be guaranteed as, “Homeswest may then begin eviction proceedings rather than discussing the complaints with the tenants” (confidential written submission 40, May 30 2003: 6). Homeswest would perhaps contest this comment, as their submission states:

The Department is a houser of last resort and in a sense never evicts anyone as most evicted tenants overcrowd another Departmental tenancy. Hence the Department’s disposition is to respond positively to a breach and try and get tenants to correct the position and remain in the tenancy. Only a very small percentage of tenants (0.25%) are bailiff evicted (written submission 35, May 29 2003: 23).

In some evictions it appeared that Homeswest considered family violence as anti social behaviour. According to the JCC, “Homeswest doesn’t always distinguish between anti-social behaviour and domestic violence” (written submission 38, June 3, 2003: 10). The TAS confirmed this and provided correspondence between Homeswest and the police indicating that, “Homeswest appears to characterise anti social behaviour as the sight and sound of domestic violence” (written submission 44, May 30 2003: 49).

An Aboriginal woman who was subjected to domestic violence stated:

A couple of years ago they had me down as causing anti social behaviour. I don’t drink or take drugs but I was blamed for the behaviour of others like me ex terrorising me. He would smash the windows and I would get the blame even though I had a restraining order. Those neighbours at that house used to harass me even taking photos of my family. They organised petitions and everything and Homeswest was accusing me and threatening me with eviction. But they wouldn’t move me to safety. Now I have that on my files at Homeswest that I am the cause of problems (oral submission 41, female, tenant, Metropolitan).

The TAS claimed in their experience that some cases showed Aboriginal people who suffer mental illness, and their families, are at higher risk of receiving anti-social complaints and being subsequently evicted. It appeared that Aboriginal families were held responsible for the actions of their mentally ill relative:
“Eviction does not resolve the problem for these families, but simply intensifies it by rendering the family homeless or relocating the problem. It is not uncommon to see an entire extended Aboriginal family suffering a lack of access to appropriate housing due to the mental illness of a relative.” (confidential written submission 44, May 30 2003: 49).

A 68-year-old grandmother stated:“When I first moved here I got a complaint about cars pulling up and all. I told them I got a big family. They come and visit here. They made me feel like a prostitute the way they talked to me. Another time the police dropped my granddaughter here because her partner was playing up. Then her partner followed her up and down the road swearing and shouting. So then I got a letter from Homeswest asking me what’s going on. My neighbour is pretty good to me. As for the rest of the street they’re just prejudiced. This one bloke got rid of the lady and her kids next door. They were a big family with kids coming and going. He got out a video camera and he got them out. They were evicted. I imagine what they’ll do to me if there’s a complaint” (written submission 3, February 5 2003: 8).

One submission revealed that no one Aboriginal tenant is necessarily beyond the subject of a neighbourhood complaint or beyond being issued with a formal Homeswest threat of eviction. This submission stated, “I am a JP and have been employed by Homeswest, Legal Aid and Juvenile Justice and never expected to be treated with so little respect as to getting a breach letter for ‘anti-social’ behaviour” (written submission 21, February 10 2003: 3).

In addition, visitors and relatives may contribute to particular issues and alleged anti-social behaviour that may lead to the eviction of the tenant. A submission from an advocate organisation discussed the high proportion of homeless Aboriginal people who then reside with family members or friends. This may create overcrowding and place enormous stress on the tenant and the homeless members, which can impact upon health, hygiene, children’s education and financial security. One submission commented, “Some visitors to the tenancy are unwelcome, but family obligations and a desire not to rock the boat mean that extended/fragmented tenancies are not uncommon. Visitors will often bring with them social problems that impact on the tenancy” (confidential written submission 41, May 30 2003: 3).

This advocate organisation also commented on the capacity of individual tenants to remedy and control behaviour at their home. A tenant advocate questioned this:

DHW may well acknowledge that a tenant is not to blame for incidents occurring and the previous tenancy history may well be highly regarded, however under the RTA the tenant is responsible for the conduct of visitors on the property with their consent. This section of the act is used regularly even on the most vulnerable of tenants. Letters of warning are of little value to such people as they are often incapable or unable to prevent incidents from occurring. They may even be intimidated by visitors within the property, or perhaps the real problem is people dropping in to see the visitors (confidential written submission 41, May 30 2003: 4).

Even when the Department acknowledges that the tenant is not the cause of anti-social behaviour, the tenant is held responsible and expected to solve problems that are well beyond his/her resources. Discrimination occurs when an Indigenous tenant, without any personal anti-social complaints, loses a tenancy because of the behaviour of homeless relatives” (confidential written submission 41, May 30 2003: 4).

Particular submissions illustrated the lack of control some tenants have over visitors. For example, in one case persons responsible for behaviour at a tenants house were ‘lawmen’ under traditional culture and not easily reproached. In another case the tenant herself was physically assaulted when she attempted to stop others from damaging the property.
An advocate discussed the high population of homeless families and visitors living with friends, and the consequent stress placed upon a tenancy, “Visitors will often bring with them social problems that impact upon the tenancy ... Letters of warning are of little value to such people as they are often incapable or unable to prevent incidents occurring” (confidential written submission 41, May 30 2003: 3).

Support Programs

There are a number of programs that offer support to tenants who are at risk of eviction. Homeswest provides the SHAP, which is an early intervention tenancy support service. The influence of potential eviction and the role of SHAP was succinctly stated in one submission, “Often people abandon properties due to fear of impending eviction, become homeless and end up in SHAP funded accommodation” (written submission 34, June 13 2003: 4).

In addition, the DHW and the DCD provide the Tenant Referral program, which is initiated in tenancies where children are involved and in which legal action has commenced (written submission 35, May 29 2003: 48). The ATSIC asserted that the Stronger Families program provided by the DCD should be built into the way at risk families are managed by the DHW (written submission 30, June 11 2003: 6). A submission confirms that the “DCD must assume its responsibility in partnership with the DHW when children are involved” (confidential written submission 14, March 25 2003: 10).

Particularly, in the Pilbara some anti social behaviour by Aboriginal tenants, involving alcohol related incidents, impacted negatively on youth attendance rates at TAFE or employment. Notably, the Pilbara Aboriginal community in collaboration with Safer WA attempted to develop community protocols to address this behaviour.

However, there is some contention that government departments may actually contribute to anti social problems at an existing tenancy. One submission commented, “It is our experience that relevant Departments are not satisfactorily addressing the issues and problems relating to the hidden homeless and anti social behaviour” (confidential submission, written submission 14 March 25 2003: 5).

This submission reported that the Juvenile Aid Group of the police department frequently brought troubled adolescents to a tenancy without properly checking if they lived there. In addition, that the DCD repeatedly asked a tenant to provide accommodation for a homeless family even though they knew the tenancy was at risk due to the uncontrollable behaviour of others in her home. There is also some contention concerning the success of Homeswest intervention:

Many Aboriginal families face eviction from public housing due to what is considered as anti social behaviour. The current system to deal with this issue is intimidating and provides limited support for many Aboriginal families. This process involves DHW representatives including a legal representative to discuss the issues with the families. Often due to educational level and cultural differences, the Aboriginal families are often disadvantaged and the process largely results in evictions (written submission 34, June 13 2003: 4).

Family and Domestic Violence

In June 2003, the Homeswest Family and Domestic Violence Policy (FDVP) was updated. This policy provides guidelines for responding to difficulties experienced by victims of domestic or family violence. Homeswest recognises that:

Domestic Violence is a whole of society issue and Homeswest recognises its role and responsibility as an active participant in an active and co-ordinated response. Homeswest acknowledges that victims are most at risk following a separation from the perpetrator and that stalking is also a major problem, which is experienced to various degrees of vengeance. Homeswest further recognises that the needs of children should be a guiding factor in any decision-making. It is also acknowledged that the UN Declaration on the Rights of the
Child (1989), Article 9 states that the safety of the child must be paramount in all circumstances. The objective of the Homeswest family and domestic violence policy is to define and outline assistance in this area (DHW, 2004: website).

Homeswest understands domestic violence to be “...behaviour, which seeks to control another, it involves covert as well as overt behaviour” (Best Practice Model Victim Services, Domestic Violence Prevention Unit, 1998: 6). It is estimated that between 89% and 95% of domestic violence offenders are men. It is acknowledged that all men, women and children have the right to live free from violence. Homeswest recognises the invaluable contribution of women’s refuge services and other supported accommodation services in advising applicants of their entitlements and in assisting and supporting applicants to meet tenancy responsibilities, under very difficult circumstances. Homeswest considers that such agencies are an integral part of policy implementation.

Homeswest acknowledges that domestic violence is a main factor when considering applications for priority housing assistance and priority transfers. However, many submissions raised concerns about the effectiveness of this policy.

**Proof of Violence**

The TAS expressed concern that Homeswest requires proof of domestic violence through police reports, even though this may not be considered an appropriate avenue. There are numerous reasons why Aboriginal women may be reluctant to seek police assistance. The TAS stated that one reason is racism within the police culture. Aboriginal women clients attempting to escape violence claim to have been denied police report numbers on the discriminatory basis that ‘they asked for it.’ Furthermore, Aboriginal woman may be reluctant to call police about a violent family member due to historical injustices, for example oppression and deaths in custody. One submission stated, “Due to historical factors (including oppression and deaths in custody) many Aboriginal women are reluctant to call the police to accuse a family member” (written submission 44, May 30 2003: 23).

A co-ordinator of a women’s refuge highlighted that many women flee the house where they have experienced domestic violence, and may be reluctant to report it for fear of further attacks or for family members who may still be at the property (oral submission 90, female, refuge worker, undisclosed location). It has been asserted that some police may even deny abused women a violence restraining order (VRO), which is a central feature of Homeswest policy, due to discriminatory perceptions about Aboriginal women. Some women may have developed more forceful ways of defending themselves from serious violence, often involving the use of weapons. One tenant stated that she was refused a priority transfer on the basis of domestic violence, presumably because she could not obtain a report number from the police. She commented that the police told her, “Sounds like you’re violent to him.” To which she replied, “I’ve got to stand up to him because otherwise he will keep punching me” (oral submission 41, female, tenant, Metropolitan).

Difficulties in reporting matters to the police was a clear theme in individual submissions. One submission stated, “I don’t like to call the police. My mum was having problems like that once and she called the police. She got a broken jaw for her trouble. The police don’t help. It just makes matters worse” (written submission 6, February 20 2003: 8). The reluctance of Aboriginal women to contact police was reiterated in the Kimberley consultations. One crisis centre advised that, “In many situations, restraining orders incite more violence and threats of suicide from the partner, and threats of violence from in-laws. As suicide is prevalent in this community, women do not take these threats lightly” (oral submission 203, advocate, Kimberley).

The WRAS discussed the difficulty of acquiring new housing from Homeswest without formalising a legal complaint:

*There appears to be a lack of empathy for tenants who cite domestic violence as a reason*
for requiring priority transfers or emergency housing, particularly if the tenant has not applied for a violence restraining order or has not pressed charges against the alleged assailant. Many people do not take such formal actions within the legal system out of fear of escalating an already volatile and threatening situation. The requirement to furnish proof of formal legal action in such instances further limits access to safe housing for this population. Traditionally Indigenous people have a fear of and lack of trust in the police/legal system, which has worked against them. Of primary concern in cases of domestic violence is the safety and welfare of the children and the person being abused and this priority should be mirrored in public housing practices (written submission 46, May 30 2003: 5).

The TAS pointed out that these concerns are not new, but were the subject of a review in 1988 by the Housing Advisory Committee and were recently considered in the Western Australian State Government Gordon Inquiry (Gordon, Hallahan and Henry, 2002).

A number of submissions, predominantly from the Perth and the Great Southern region, raised the issue of family violence. One Perth based tenancy support group clearly explained the seriousness of this issue:

Family Feuding is a major problem in the Aboriginal community. Feuding, vendettas and grudges are commonplace within the fabric of many Indigenous family structures... people/tenants have no doubt in their mind that they will be ‘mobbed’ or seriously injured. In this environment maintaining a tenancy is extremely difficult (written submission 41, May 30 2003: 1).

This submission further explained that tenants are reluctant to involve police or courts for fear of greater danger to themselves or of aggravating an existing feud and generating future reprisals. It is important to understand that some people caught in this cycle of violence may be on parole and may have their own freedom jeopardised if the authorities become involved.

A number of submissions from Aboriginal Homeswest tenants revealed the trauma associated with feuding and violence:

I was so scared. I didn’t have a phone on then, to ring for help or anything. All I could do was hide. They were just walking past and they threw a brick through the window. They can see straight down the street to my house. I got so stressed out I lost a baby I was expecting. I told the Accommodation Manager about it. They told me to write a letter about it all, what had happened. I just want a transfer (written submission 6, February 20 2003: 9).

I was wanting to be moved when my house was smashed in but Homeswest just wanted to evict me. I done nothing wrong. I was being attacked but they wouldn’t help me. That house was a nightmare. People running through with baseball bats, nail bombs, balaclavas over their heads, petrol bombs. Homeswest still wouldn’t move me. The blackfellas came through and trashed it and they still wouldn’t move me. That bloke killed someone down the street after we moved out. But I kept paying rent there and they said we will move you in a week but they didn’t. I moved out. I couldn’t stay there but I kept paying rent (written submission 10, February 18 2003: 7).

Some tenancy advocacy services stressed that Homeswest policy does not adequately recognise the issue of feuding, specific to the Aboriginal community. They expressed concern that Homeswest is lacking an awareness and proper consideration of feuding issues, and their impact on transfer requests, allocations, and property issues for Aboriginal people (written submission 46, May 30 2003: 10).

Homeswest Priority Transfer does not adequately allow for such circumstances. Further, even if a priority transfer is approved it may be several months before an allocation becomes possible. By this time the home may
well have been 'mobbed' or the tenant has fled interstate, or to the homes of family and friends where protection can be maximised. The tenant is invariably left with a debt to Homeswest and the transfer may well be void if approval has not been given to vacate prior to a new allocation (written submission 41, May 30 2003: 2).

Awareness of Policy

In one submission the tenant admitted a lack of knowledge regarding actual policy and outlined a subsequent issue, “I don’t know what DHW domestic violence policy says. They know I am the victim of violence and that I am isolated and at risk but they’ve done nothing to help me” (written submission 18, January 2 2003: 6).

One Kimberley organisation submitted that no clients had accessed services for assistance under this policy, even though domestic and family violence is prevalent in the region (written submission, May 30 2003: 4).

A young pregnant Aboriginal woman with children is a victim of domestic violence. Ms W spoke of being unable to get housing because of prior debt caused by her defacto during a domestic violence incident. She claimed that despite getting a police report number she was charged with the damage. Initially the debt was $5000.00 she repaid $4000.00 but was still unable to be housed.

She said, “I need housing. I have a baby on the way. I’ve been living in refuges all of my life. I’ve been to refuges at Bayswater, East Perth, Narrogin, Gosnells and Bentley. Where am I going to go? I’ve been living in and out of refuges all my life. My ex was constantly in and out of jail. Now I'm down here, now I just give up” (oral submission 45, female, tenant, Great Southern).

Tenant Liability

Some submissions commented that the transfer of housing due to domestic violence could only be approved under Homeswest policy if the applicant was eligible on all grounds. Unfortunately, many tenants who are victims of domestic violence are likely to have had their homes damaged and are likely to incur tenant liability costs that then bar them from assistance under this policy. As a respondent indicated, “Aboriginal women therefore commonly bear the weight of debt associated with broken windows and holes punched or kicked into walls and doors” (written submission 44, May 30 2003: 23).

The TAS pointed out that Homeswest can rightfully report damage to the police, but requires the tenants, the victims of violence to take that action. Submissions throughout the state revealed instances where tenants had reported violence and property damage to police, but had still been held responsible by Homeswest and incurred tenant liability costs. A young Pilbara woman stated that, she was charged $200 for damage caused by an ex-boyfriend despite contacting police and attempting, albeit unsuccessfully, to have charges laid (video submission 7, female, tenant, Pilbara).

If a police report is not made and if tenant liability is charged for damage caused through
domestic violence, there remains the option to appeal through the HAM. However, in these circumstances women may not feel able to tackle the appeal process. Women may feel emotionally fragile and in no frame of mind to be considering the legal process necessary to ensure that a tenant liability debt is not incurred as a result of property damage by a violent partner.

The JCC illustrated the great importance of support for women in a domestic violence situation:

*We have had cases where the woman escapes and we help her to get a restraining order just so she can get back into her house and get the other person out. By that time they’ve done considerable damage to the house and the woman has had the debt. You’ve really got to have an agency to fight it to get that reduced. It involves getting police report numbers, violence restraining orders. Homeswest claims that under the tenancy agreement they are responsible. But how can you be responsible for someone not even the police can catch. One of them went out the window and over the back fence to get away. Then the woman gets left with the damage and we have to help her to try and get a police report number. The police don’t give report numbers every time they come out (written submission 38, June 3 2003: 6).*

According to section 12 of the FDVP (DHW, 2004: website):

*Tenants may not be responsible for the cost of repairs to a property due to wilful damage, provided that the damage has been reported to the police” If property damage is not reported to the police, tenant liability is divided among the number of signatories to the tenancy agreement. Homeswest also allows discretionary decision making in determining tenant liability where domestic violence is not reported to the police.*

Regardless, much damage may also remain private due to family obligations. One submission conferred:

*Damage as a result of domestic violence often goes unreported as stipulated in the DHW policy for fear of private family business coming to the attention of the police and the risk of a family member becoming incarcerated or removed from the family (written submission 39, May 19 2003: 8).*

Another advocate stated:

*Having come from grandparents and parents of the stolen generations there is still a very real terror for homeless mothers that their children will also be removed. Often their long-term homelessness has been brought about by domestic violence, driving mothers and children from their homes. The abuser will then very likely trash the house, or at least damage the windows and doors. Unless the woman can get immediate police attention to this destruction and obtain a charge order number, she becomes burdened with the entire tenant liability debt often amounting to thousands of dollars (written submission 32, May 30 2003: 5).*

**Relationship with Homeswest Staff**

A theme consistently mentioned concerned the quality of relationships between Homeswest staff and Aboriginal tenants. In many cases the relationship was seen as negative. Although Homeswest recognise the continuous need for strategies that improve relationships between staff and Aboriginal people, “The Department has an intense work ethic and has always looked to improve the well being of its clients whatever the ethnicity. There is a need for continuous training to ensure the corporate attitude towards Aboriginal people is at a very high standard” (written submission 35, May 29 2003: 5). Judging from the majority of submissions gathered this area requires substantial improvement.
A Strained Relationship

The ALS discussed the often dire circumstances that lead many Aboriginal people to Homeswest and the often negative reaction received from staff:

Homeswest are often confronted by desperate people with little means to improve their personal circumstances and Homeswest is their only hope of providing any security for themselves and their families. Approaching Homeswest in these circumstances is stressful and people often react unpredictably to negative responses of Homeswest officers. They are then penalised for failing to control their emotions and that includes overlooking them in the allocation of housing. In light of this it seems essential that all Homeswest staff who interact with people/clients be given extensive training in both communication and cultural awareness, so as to empathise with their clients in stressful situations (written submission 29, June 9 2003: 9).

This was reiterated in an individual submission:

We want Homeswest to meet us on the same level. Not talk down to us. Work with us. They knock on the door and straight away you get on the defensive. You don’t want them to know your problems. Why do we have to explain everything? Why do we have to go to get help from advocates? We get letters saying we have to come in to meet them? Why? Why can’t they make a time to meet us? I have no car and no way to get there. But they don’t give any choices (written submission 11, February 14 2003: 8).

A number of respondents commented that quite often the relationship between Homeswest staff and Aboriginal tenants is negative and possibly discriminatory:

And when that threat happens it’s straight away, ‘Oh these blacks they can’t be told they only come out with anger.’ But you do all the right things you talk calmly, fill in forms, go to the interview, give them everything they need, you go back and tell them again, you go to the police, you go to the welfare, you go to all these other agencies, take back the papers. You’re still trying to keep calm with all of this, they don’t realise how much they are pushing you to the brink. And then as soon as you do explode it’s, ‘Oh what’s wrong with these blacks, they can’t be told’ (oral submission 52 female, tenant, Great Southern).

“They don’t understand why a person gets angry. It’s because they are asking the same questions, getting the same answers and they’re not doing anything. So naturally a person is going to say, “stuff you then”, you’re not helping a person.” Then they look at you and say you’re a bad tenant” (oral submission 215, female, tenant, advocate).

One tenant suggested that, “Homeswest staff could be more friendly and helpful and not make me feel I am nothing because I am an Aboriginal and want a home” (written submission 9, February 4 2003: 4).

Also of concern, are the feelings of persecution that some tenants experience in relationships with Homeswest staff. One submission asserted, “We are not citizens in our own country… Before they are finished I’ll be like a kangaroo resting under a tree” (written submission 11, February 14 2003: 6). A further submission explained, “There is a lot of prejudice. If they had half a chance they’d send all of us out to Cullacabardee. It’s way out in the middle of nowhere. People can’t get to the doctors” (written submission 11, February 14 2003: 6).

According to the Geraldton DCD, there was great variation in the level of staff responsiveness to Aboriginal tenancy matters and the quality of the relationship. They stated, “In some areas, the staff respond exceptionally quickly and sensitively, in others the response can be inappropriate, tardy and unhelpful” (written submission 33, March 28 2003: 6). The ALS pointed out a positive dealing with one Regional Manager and commended that staff member for her handling of a complex tenancy matter (written submission 29, June 9 2003: 11). One submission spoke of increasing contact with Regional Officers...
“Noongars have low self esteem, you know, being put down by people who are meant to be service providers, and they keep putting these people down, you know and they’re more or less saying, ‘Well you’re the little person. I’m the top person. I’ve got all the say and I’ve got all the authority.’ Well it’s knocking them even more. So naturally they’re not going to walk in a meeting and they’re not going to walk into that office and say, ‘Well look I’ve got a problem, would you please help me?’ Because already that person has done a good job of putting them down and, ‘you stay there, that’s where you belong.’ And that’s what happens in Katanning. They’re a service provider, but who do they provide for?
You know, you get sick and tired of going in there and trying to explain yourself, you know. It’s like being a Noongar person their attitude is we need to prove ourselves. You know? I don’t think so. We don’t need to prove ourselves to them. And I’ve heard that said by white people that Noongar’s need to prove... and I said, ‘I don’t think so. I don’t have to prove myself to you or anyone.’ I think we need to prove that we are clean. We need to prove that we can work.
I believe it’s important that we all come together. Then we might change things. Till then they’re just going to treat our people the way they treat them now. We’re meant to be living in the year 2003, and sometimes it’s like, fair enough, you might have a nice home or what, you might work and stuff, but they still try to put you down and keep you down. But like he’ll tell you he’s the person who’s got the last say, and what he says goes. He’s good at telling you that.
If people speak out they are treated with contempt I don’t know if they consider you as a threat but you are targeted as a troublemaker. They want you to feel like the old mission days where Aboriginal people are to do as they are told. Noongar people who are vocal and if you’re a representative of your people, you’re considered outspoken, they can’t handle that” (oral submission 58, female, tenant, Great Southern).

who were “approachable, fair and compassionate in their response” (written submission 14, March 25 2003: 10).

Similarly, the JCC acknowledged that Homeswest Accommodation Managers were working very effectively with their agency and Aboriginal families (written submission 38, June 3 2003: 14). Despite these positive comments submissions generally tended to focus on more negative aspects of the relationship.

**Accommodation Managers**
A central issue arising from the submissions concerned the quality of the relationship between Accommodation Managers and Aboriginal tenants. One Homeswest employee stated that the standard of Homeswest practices towards Aboriginal people simply “…depends on the quality of Accommodation Managers at the time and their relationship with the tenant” (written submission 2, May 30 2003: 4).

A former Homeswest Assistant Regional Manager highlighted the particular difficulties that Accommodation Managers face and how the pressure of meeting role requirements can lead to negative relationships between Aboriginal tenants and staff:

...Homeswest officers will do their best to help but they are coping it left, right and centre. You have one person at L3, they do applications, waiting lists, sign up, property reports, issues to contractors, turn around in 14 days, inspections and they also have to have their contact time with their tenants... 300-400 tenants per one manager... They are expected to be technical expert people, they have to measure the holes, windows and so on. Homeswest needs to bring back technical advisers like they had in the 80s and 90s. The hierarchy in Homeswest don’t care - they’re worried about figures, worried about outcomes. They don’t see staff working to 7pm, no family life and the abuse they and their system is creating. The turnover rate of staff here is huge... (oral submission 264, Homeswest Officer, undisclosed location).

“They pay their Accommodation Managers peanuts so that they are paper shufflers. They don’t really up skill them to the point where they are community liaison people” (oral submission 194, male, advocate, Great Southern).

The TAS also highlighted how the Accommodation Manager role has evolved over the past decade and
the possible impact of this on their relationship with tenants.

The role of the Accommodation Manager has evolved over the last decade. As the corporate philosophy of the organisation changed from the provision of a social good to the business management of an asset, the accommodation manager’s role has contracted its support to tenants and focused almost solely on meeting business targets. It is not surprising if Aboriginal tenancies are viewed as a problem by some Homeswest officers, given the issues Aboriginal tenants face and the consequent increased likelihood that they will attract more attention than non-Aboriginal tenancies and add to Accommodation Managers’ workloads. In addition, it is Accommodation Managers who often bear the brunt of tenant frustrations. It was reported that Homeswest officers themselves have identified that relations with Aboriginal tenants could be improved if they were able to authorise more maintenance and repairs (written submission 44, May 30 2003: 95).

A number of submissions commented on the high staffing turnover and change of Accommodation Manager as influencing the quality of relationships. One person stated, “...you get a good working relationship and you start to get things done, but then they go away and it starts all over again with a new person” (written submission 10, February 18 2003: 14). The TAS also commented on this issue and stated that this turnaround “...makes it very difficult for Aboriginal tenants to maintain any continuity or develop trust, as the new officer often claims to have no prior knowledge of an issue or arrangement” (written submission 44, May 30 2003: 96).

In particular, consultations in regional Western Australia highlighted the need for improved relationships between Regional Managers and Aboriginal tenants. An Aboriginal man explained that Regional Managers who had often worked in the region for an extended period of time became forces of their own. There was a feeling that they may be jaded and became too involved in the local community leading to negative assumptions and judgments that affect decision making: Unfortunately the Regional Managers throughout the regions tend to get like a king in their castle and they’re untouchable and that’s why they instil this sort of behaviour into their office staff, which pours out to the community people. So you’re having treatment like this mob have been saying, all of us have been saying they treat people differently because it’s been drummed in their head from the top (oral submission 98, male, tenant, Great Southern).

Regional Issues

In the Kimberley, some concerns about relationships with Homeswest were raised. One tenant commented on the Wyndham Homeswest office, “It’s not a welcoming place. I don’t know why they send different people every week. They don’t know anything about our community” (oral submission 198, female, tenant, Pilbara). Two tenants in Broome also voiced frustration regarding a lack of positive encounters with Homeswest staff, “I feel like I am dealing with rednecks” (oral submission 199, male, tenant, Pilbara), and “Their attitude is like ‘drop dead,’ ‘who the bloody hell do you think you are?’” (oral submission 197, female, tenant, Pilbara).

In the Pilbara, many submissions stressed that Homeswest staff spoke to Aboriginal tenants in an unacceptable manner and needed to improve their interpersonal communication skills. It was further claimed that non-Aboriginal persons would be served at the Homeswest office before Aboriginal persons (oral submission 200, group, tenants, Pilbara). In addition, one Pilbara

An advocate for Aboriginal people commented on a particular Accommodation Manager.

“He had no idea how to go out and involve himself in the Aboriginal community and really find out about people’s needs. Just, ‘You blackfellas, your trashing them bloody houses. I’m not going to give you another house.’ That was as complicated as it got” (oral submission 90, male, advocate, Great Southern).
advocate thought that the Homeswest computer software was problematic. The advocate stated that much of the tenancy system was controlled by software, for example automatic issuing of breach notices, and was “…not conducive to developing a better relationship” (oral submission 124, male, tenant, Pilbara). A former Homeswest staff member commented that Aboriginal people appreciate Homeswest staff taking time to develop better relations with them, but that unfortunately this was not encouraged by the DHW.

Cultural Awareness

A contributing factor to negative relationships between Aboriginal tenants and Homeswest staff could be a perceived lack of cultural awareness. Homeswest state that they recognise, “…long term systemic social issues which Aboriginal families face” (written submission 35, May 29 2003: 8). They also claim to ensure staff training in Aboriginal cultural awareness and in equal opportunity rights and responsibilities (written submission 35, May 29 2003: 31).

However, the ALS thought that there were too many complaints of discrimination and that Homeswest staff should “...be able to relate to Aboriginal people and have a deeper understanding of social influences on Aboriginal people, that is not evident today” (written submission 29, June 9 2003: 11). The Geraldton DCD office conferred with this and commented, “In many situations, Homeswest staff and policies don’t appear to understand nor are concerned about cultural or family responsibilities” (written submission 39, May 19 2003: 5).

A Pilbara Aboriginal support group queried the ability of Homeswest to translate in practice a cultural awareness commitment into culturally sensitive policy. They asserted, “We still practice our culture; we still have to comply with our customs and traditions. And yet we have policies that are in total conflict with a lot of things that we are obligated to do under Aboriginal culture and traditions and customs” (oral submission 126, female, tenant, Pilbara).

Homeswest really don’t care what the cultural or spiritual obligations of Indigenous people have. It's been stated that people don’t practice cultural obligations. The policies reflect this untrue statement and it doesn’t recognise the Noongar way, the law & belief systems especially relating to family obligations (written submission 19, February 8 2003: 4).

Some submissions contributed examples of the conflict between Homeswest policy and practices, Aboriginal culture and the impact upon relationships. The practice of ‘abandonment,’ under which a tenancy can be lost or forfeited due to a tenants absence, was raised. The concern was that tenants could lose their homes even when going bush in accordance with law and cultural practices. For example, in the Pilbara it was reported that “When it is law time people have to go - they can lose their house. Often neighbours report to Homeswest that no one is in the house then you can lose the house” (oral submission 202, group, tenants, Pilbara).

For some Aboriginal people, cultural practices or Aboriginal customary law requires the avoidance of certain kin or family members. It was said that Homeswest did not properly recognise this. An Aboriginal mother stated:

I feel not at ease, I find it very hard... you know I have my son here and he’s been through tribal law... when you have a son gone through tribal law, there’s quite a lot of things... I have to wait until he gets out of the kitchen... I have to then live with my sister... I have to give way to them all the time... a lot of old people beginning to speak up... they want one bedroom places... so they don’t have to live with son in laws... Homeswest don’t respect our Aboriginal law and culture... (video submission 3, female, tenant, Pilbara).

A death in the family is another event where non-recognition by Homeswest policy and practices of Aboriginal cultural practice may cause conflict for Aboriginal tenants and impact on relationships. As one Pilbara tenant stated, “Father died in the house. We didn’t want to be there but what can we do. In my culture we must move away for a
This issue was also raised at a Mandurah meeting where it was stated that Aboriginal people could not stay in a house after someone has passed away as that was against Aboriginal culture (oral submission 196, group, tenants, Southwest). Other people who were offered such a house were reluctant to accept, but risked losing their place on the lengthy housing wait lists.

One submission from the Pilbara referred to the Homeswest Cultural Policy stating that it was not consistently applied, with different managers interpreting policy differently. This advocate stated that, “If an Aboriginal person dies in that house then people should get a transfer straight out of there on cultural grounds” (oral submission 124, male, tenant, Pilbara). It was felt that recourse had to be made to senior Homeswest staff for such an argument to be made. In the Goldfields region one tenant advised, “I lost a family member in my existing housing. I need to move because of culture. I applied for a transfer six months ago. I'm still waiting” (oral submission 201, female, tenant, Goldfields).

In addition, some submissions claimed Homeswest showed a lack of compassion for grieving Aboriginal families.

“I know four separate families who have lost a family member and Homeswest has been onto them straight away about getting out or paying more rent or bond or changing the agreement - all the time they are grieving. They need to show respect and give them more time” (oral submission 214, female, tenant, undisclosed location).

In times of familial death cultural obligations may conflict with housing requirements, for example the payment of bills and rent. One organisation pointed out that:

Cultural obligations apply particularly in cases of a death in the family and funeral and grieving (or sorry) period that follows. Due to the high morality rate, sometimes one death is closely followed by another. At such times, families are financially stressed, obliged to make long journeys across the state to accept the hospitality of other family members living in that place, to stay for as long as they are culturally required to do to complete the grieving process. Other business to do with housing, payment of bills, home security and appointments are placed on the side in these times of crises (written submission 32, May 30 2003: 6).

In some regions, language barriers had an impact on cultural awareness and relationships between Homeswest staff and Aboriginal people. For example, in the Kimberley and Pilbara regions it was stated that local Homeswest officers did not appear to be aware of Aboriginal culture. It was claimed that this was partly due to a language barrier, as many people in those regions speak the traditional language and English as a second language (written submission 40, May 30 2003: 11).

It was also claimed that, “Although there are some language services available, they do not appear to be accessed by Homeswest” (written submission 40, May 30 2003: 4). Respondents in the Pilbara advised that Homeswest does not regularly use Aboriginal interpreters, and that, “…the only time they’re used is in the courts. And it’s too bloody late” (oral submission 124, male tenant, Pilbara). It was suggested that Homeswest should assist an independent organisation to employ Aboriginal people with language skills who could help tenants with housing matters (oral submission 124, male, tenant, Pilbara).

Working Together
A number of suggestions were offered for improving relationships between Homeswest staff and Aboriginal tenants. One submission commented, “They should come down to meet us at the grass roots levels. We are always expected to come up to their level. We want Homeswest to meet us on the same level. Not talk down to us. Work with us” (oral submission 213, female, tenant, undisclosed location). One individual suggested that Accommodation Managers should visit tenants for a discussion if a problem with
tenancy arises. This person commented, “Words of encouragement or praise go further than criticism, or bureaucratic correspondence which is hard to understand” (written submission 16, January 13 2003: 4). It was emphasised that Aboriginal people resolve problems by talking, not by sending letters.

Some Homeswest staff members were the subject of positive reports from Aboriginal tenants because they engaged directly with Aboriginal people. For example, in the Goldfields region it was said, “We had one very good officer... he was brilliant because he actually got out of the office, went and talked to people, looked around their houses” (oral submission 159, male, tenant Midwest). One Laverton tenant emphasised the importance of talking to Aboriginal people face-to-face and not just by telephone, “Too much talk, just go from one ear to the other. I told her I don’t want to talk to her on the phone, I want to talk to your face. Come to Laverton to talk and see my house - not just collect my money for rent” (oral submission 182, female, tenant, Goldfields).

In a submission, a former Homeswest Aboriginal mediator urged Homeswest to, “…to approach tenant behaviour in a respectful manner - sit down and listen to the issues” (written submission 21, February 10 2003: 5). The KCP added that in their experience, “…families are often excluded from participating in resolving issues and developing strategies to manage behaviour” (written submission 39, May 19 2003: 4).

One respondent in the Armadale region stipulated the need for keen staff and new methods of customer service to ensure tenants receive the support and aid required:

_Homeswest is one of those agencies that deals with a heck of a lot of people. But what they have to do is structure their staff who deal directly with their customers, that’s got to be structured in a way where either they say up front that they’re not interested in the human aspect of customer service or they start doing humanistic customer service. If a person comes in and they’re obviously stressed, they shouldn’t be dealt with in a room that has thirty other people in there. That should never happen. They should be paid the courtesy and taken to another room where they can talk about their stuff. If it takes twenty minutes, it takes twenty minutes and someone else steps in_ (oral submission 271, advocate, Metropolitan).

Furthermore, the ATSIC highlighted the importance of relationship building, and stressed a preference for a relationship-based model of service delivery rather than a medical design. (written submission 30, June 9 2003: 8).

Aboriginal Seniors

Some submissions highlighted a lack of awareness and acknowledgement of the place that senior Aboriginal family members have, particularly with regard to their responsibilities in caring for children. The WRAS stated:

_There appears to be little acknowledgement that older Aboriginal family members have cultural and familial obligations to care for grandchildren and extended family members. They are often transferred to one or two bedroom homes as Homeswest identify the number of tenants in a property have reduced as per their seniors policy_ (written submission 46, May 30 2003: 9).

A tenancy advocate service also stated that Homeswest policy should recognise that Aboriginal seniors may have ongoing responsibilities to their families. They stated that, “Transfer of Indigenous seniors to smaller properties limits their capacity to carry out some of their familial and cultural responsibilities within their own family and community” (written submission 46, May 30 2003: 9). An individual submission stated, “As people get older they rely on other family members to care for them and they also have children of their own so a smaller place is not appropriate” (written submission 25, January 6, 2003: 11). A grandmother added, “I have five grannies aged 11, 10, 9, 6 and 4. Their father is in prison and I like to try and give their mother a break. I live in a one-bedroom unit and it is a senior’s complex, if I had the children over it would be a breach of
Homeswest policy” (written submission 4, March 10 2003: 9).

Another grandmother told that she was seeking a priority transfer on medical grounds. She was refused seniors accommodation because her grandson was living with her, even though she needed someone on a daily basis to help her and take her to various places:

"I am nearly 68 years old. I have 11 kids and about 35 grandchildren. I had to get doctors certificates and letters to say I needed something to live in. Now I’m getting older I want to move to a smaller place, closer to my daughters and doctors. I’m up and down to the doctors all the time. I can’t drive. Sometimes I can’t walk around the house. It’s hard to shower. It’s in the bath and sometimes I can’t lift my legs. I have my grandson living with me and so I am paying extra rent. My doctor says I should be somewhere smaller. I was on the list for nearly 12 months. Then I got a letter saying I’m not eligible for seniors because of my grandson living with me. But I still needed to move (written submission 13, February 5 2003: 7)."

The JCC detailed some history relating to the development of the Homeswest seniors policy, which would allow Aboriginal seniors to have two bedroom units. However, they relayed that there was some delay with the implementation of this policy (written submission 38, June 3 2003: 2).

Submissions from the Great Southern also raised a number of issues regarding Homeswest accommodation for seniors. In particular, they discussed the Paddy Coyne complex, which was originally built in the 1980s on Aboriginal land for senior Aboriginal people (oral submission 55, male, tenant, Great Southern). These flats are largely vacant. Many elderly people do not want to live there because they are not suitable for their needs. Some commented that the location of this complex is dangerous as it is on an uneven and steep hill, which is difficult for seniors to negotiate safely. One elderly tenant confirmed that the lack of road leading into the complex meant that taxis could not properly access the units, which made life difficult for seniors like himself with medical conditions (oral submission 55, male, tenant, Great Southern).

In addition, some tenants spoke of the danger of having only one safe entry and exit in the flat. Although there is a back door, it opens onto a balcony with no steps leading to the ground. In the event of fire or other danger there was concern that the elderly person would not be able to easily exit, particularly through the back door where there is a drop to the ground and the possibility of injury. An elderly tenant stated:

"They’re not considering the cultural aspects of it. Those units they served their purpose when they first come out because it was the very first type of housing for elders in our region that I know of and, yes it was right. But as you look back, you look at all the safety aspects, like there’s only one entrance and there’s no access for ambulance, and if the elders owned vehicles they’d have to park it down in the big park, I mean they’re not really designed for elders. Most of the elders are unwell people; they need to have specifically designed homes. And I guess they’ve got a caretaker, but the caretaker doesn’t interfere in the day-to-day lives of people... I think they would be better serviced for young people. Young people, even though they should have a second entrance or another door, to escape, they’d be fit enough to jump down than some of the elders that are there now (oral submission 55, male, tenant, Great Southern)."

Furthermore, residents believed they were unable to have their grandchildren visit or stay as that may breach their tenancy agreement. One person clearly stated, “If they have families there, they’ll get an eviction notice because they’re not allowed to have their rellies there…” (oral submission 55, male, tenant, Great Southern). In Aboriginal culture family is extremely important, and such action was seen by Aboriginal tenants as a gross invasion into their way of living. Certainly, the sign that greets residents and visitors alike is less than inviting.
Aboriginal Staff

The Aboriginal Employment Development Strategy was adopted in 1992. In this, Homeswest made a commitment to employing Aboriginal staff and set an objective for 10% employment of Aboriginal staff. At present, Aboriginal Homeswest staff account for 7.76% of all staff, which as Homeswest pointed out compares favourably with other government departments. In addition, Homeswest has committed itself to furthering Aboriginal employment through a number of funded programs and schemes. For example, the Aboriginal Apprenticeship Scheme, which provides apprenticeship opportunities for Aboriginal people through the use of Homeswest building and refurbishment contracts (written submission 35, May 29 2003: 30).

Number of Staff

However, this Inquiry was told that, “There appears to be a disproportionately small number of Aboriginal workers in relation to the number of Aboriginal people accessing Homeswest services” (written submission 46, May 30 2003: 7). The importance of Aboriginal Homeswest staff was repeated in submissions throughout the state. A woman from Derby stated that “There is all white people working in the Homeswest office... They should have some Aboriginal people working in there because it is hard to go into that office for us” (oral submission 193, group, female, tenant, Pilbara).

It was repeatedly emphasised that effective access to housing services for Aboriginal people depends on greater employment of Aboriginal staff, simply because Aboriginal tenants “...need to know how to come in and speak to somebody - to have someone who can relate to them instead of being put down” (confidential written submission, February 8 2003: 3). One Pilbara advocate thought that Homeswest “...needs to try a lot harder to get Aboriginal people into their workforce” (oral submission 212, female, advocate, Pilbara). It was said that in the past the Pilbara had some Aboriginal trainees, but they all left. Allegedly, they had not been properly mentored and discovered an unintentional ‘culture’ of racism in Homeswest.

Position of Staff

Individual submissions stressed the importance of having Aboriginal staff, across levels, particularly at senior level. One person commented, “They should have more Aboriginal workers. I’ve seen a few at the front counter. But I’ve never heard of Aboriginal Accommodation Managers” (written submission, February 20 2003: 9).

Another Aboriginal tenant said:

I do see some Aboriginal workers in there. At the front, on the computers. I prefer to see Aboriginal people in Homeswest. But they can’t help much. They have to put you to someone higher up. There is never anyone Aboriginal higher up. They are all white. They wear suits you know (written submission 10, February 18 2003: 3).

EOC officers were told that Aboriginal Homeswest managers could make a real difference to tenants and tenancy. One submission explained, “I had an Aboriginal Accommodation Manager once. She was the best Accommodation Manager. She was fair. If you told her something she would explain things to you properly” (written submission 12, February 28 2003: 3).

One respondent expressed that Aboriginal people who work in Homeswest are not in positions where they are able to make significant decisions and influence policy:

Now, I know two Noongar people working in Perth. They used to work with Aboriginal people getting them into better homes, better accommodation. They go back, and this bloke I spoke to - he’s finished with Homeswest now - he said, we’re just put there like jacki-jacki, pull the strings. That’s all we’re there for, just to give information (oral submission 123, group, tenants, Southwest).

In the Southwest, an example was given about Homeswest Aboriginal staff being brought to the counter when Noongar tenants became upset. It was commented that these staff were young.
women who had no authority to make decisions. It was asserted that their supervisors were unfairly, “Putting them in the firing line” (oral submission 123, group, female, tenant).

One submission highlighted the potential conflict for Aboriginal people between their staff role in Homeswest and their position as a family and community member:

_There is an issue with recruitment of people in the office. They may have a blackfella they’re as much a part of the system as a receptionist but that doesn’t make it any easier. Sometimes it actually makes it harder for that person who is living in the community, her life, or day to day is always being, having a go at. She’s put in a very difficult situation. Whereas we can move in and out without a major issue evolving_ (oral submission 167, former Homeswest employee, Midwest).

**Experiences**

A former Aboriginal Homeswest staff member stated that from personal experience Aboriginal tenants, particularly women, were ‘harassed and belittled’ by non-Aboriginal Homeswest staff. This former Homeswest staff member commenced employment with high hopes, but found the work environment to be negative and unsupportive. This person stated, “Most of the time I would normally go days without ever speaking to a single soul, out of fear of being scrutinised” (oral submission 167, former Homeswest employee, Midwest).

A current Aboriginal Homeswest officer spoke of her experience with the non-Aboriginal staff, “Well it’s them and us, you know, and you know when they’re talking about it. They keep going, ‘It’s Aboriginal people,’ which is kind of daunting. You just look at them and go ‘Hmm.’ What can you say?” (oral submission 191, female, Homeswest officer, undisclosed location).

An Aboriginal Homeswest officer spoke of the difficulties she faced if she raised concerns about decisions or didn’t agree with other staff members’ inappropriate behaviour toward Aboriginal clients. She asserted, “You have to have a lot of courage there, because people do see it as, ‘You’re going against Homeswest,’ because you’re complaining you know” (oral submission 191, Homeswest employee, undisclosed location). This officer also questioned whether Aboriginal people were recruited for the contribution they could make or simply to add to the quota.

_I wonder why they get us in there. Is it just for the ten percent thing that they have? Whether they got us in there to make changes as well? And what are they doing to listen to us? They never actually ask us ‘What do you think about Aboriginal issues?’_ (oral submission 191, Homeswest employee, undisclosed location).

This officer also commented on her experiences at the National Aboriginal Islander Day Observance Committee (NAIDOC) week function in her office. Aboriginal staff attempted to share some of their food and culture with other staff. She claimed to overhear some non-Aboriginal staff saying, “That food stinks”, “…why don’t you cook like you used to cook?”, and “Do you live in humpies and do you cook on the fire anymore?” (oral submission 191, Homeswest employee, undisclosed location).

Another former Aboriginal Homeswest officer spoke of his experiences working in a Homeswest office.

_When I was distressed I was not given any support or comfort from other staff or the Regional Manager. The above resulted in me having stress/anxiety attacks and time off work. There were days when the people in the office wouldn’t talk or even acknowledge me being there_ (oral submission 167, former Homeswest employee, undisclosed location).

An Aboriginal allocations officer described the organisational culture and how Management deals with matters of a discriminatory nature where officers may not have followed policy:

_Some ladies have been rude from certain areas because they tend to argue with clients on the phone. It’s really hard with Homeswest because_
there’s a support network thing happening, in which if something goes bad for someone, ‘Oh poor thing,’ pat them on the back, ‘Oh never mind.’ That wasn’t true, you did your best. You know it’s not actually. You didn’t do your job properly. You know this shouldn’t have happened. (oral submission 191, Homeswest employee, undisclosed location).

She further asserted, “Those that are the problem makers, they tend to shift them around to get them out of them areas at the time, so it’s like they don’t work with it properly” (oral submission 191, Homeswest employee, undisclosed location).

One advocate suggested that an Aboriginal tenancy support service be established and provided at each Homeswest office, which would also provide advice and assistance for Homeswest staff. The advocate stated that this way “…its not like, ‘oh hang on there’s a black fella in this house, I’ll give it to Fred because he’s a blackfella.’ ‘Well he’s black, you’re black, you go and fix it’” (oral submission 194, male, advocate, Great Southern).

Staff Training

Homeswest states that it ensures the high quality of staff employed and training provided:

*The Department has an intense work ethic and has always looked to improve the well being of its clients whatever the ethnicity. There is a need for continuous training to ensure the corporate attitude towards Aboriginal people is at a very high standard. The staff have a reputation for dedication and hard work and one of the Department’s strengths is to recognise that it, like everyone else makes mistakes, to rectify those mistakes and get on with the job of providing good quality public housing* (written submission 35, May 29 2003: 5).

A Homeswest officer spoke of the non-Aboriginal staff attitude to training:

*They don’t come out of there with an open mind. They come out of there more agitated,* ‘Oh you know, why should we have to change?’ I mean equal opportunity is seen as a big downer in Homeswest, not as a positive role to help us get to where we need to go as a business (oral submission 191, Homeswest employee, undisclosed location).

A Pilbara organisation providing cultural awareness training to government departments questioned the level of staff cultural awareness training. They noted that Homeswest staff did not attend such training, which they felt should be compulsory for all new staff in the region. There was also concern that Homeswest staff did not understand the diversity of cultures existing in the region, “They don’t understand there’s so many different people” (oral submission 211, female tenant, Pilbara) They also emphasised that cultural awareness training needed to be undertaken in a culturally appropriate manner, and that required the engagement of local people, not Aboriginal people flown in from outside areas (oral submission 211, female, tenant, Pilbara).

Programs

Aside from Homeswest policies and practices, a number of submissions also highlighted issues relating to some Homeswest programs. Homeswest provide a number of support programs that aim to assist Aboriginal people. Homeswest stated:

*It is in recognition of the difficulties experienced by Aboriginal people that the Department provides a myriad of housing and support programs and services to enable them to achieve long term housing stability. Each year the Department spends large sums of money on programs that aim to improve social and housing outcomes for Aboriginal people* (written submission 35, May 29 2003: 8).

Some of the programs Homeswest refer to include:
- Supported Housing Assistance Program (SHAP)
- Aboriginal Home Ownership Scheme (AHOS)
- The Homeswest and DCD Tenant Referral Program
- Transitional Housing Program
- Community Housing Program (CHP)
- Crisis Accommodation Program (CAP)
- Supported Accommodation Assistance Program
- Aboriginal Cyclical Offending Program

Types of Assistance

Supported Housing Assistance Program

The SHAP was the subject of various comments in submissions some supportive others critical. According to Homeswest:

_The Department’s primary support mechanism is the Supported Housing Assistance Program. Under the program 18 support workers are employed to support around 120 families at any time. Between 300 and 400 families are assisted per year. The program targets those tenants whose tenancies are at risk due to their inability to resolve difficulties that are impacting on their tenancy. The program aims to provide tenants with access to appropriate skills development and support to enable them to fulfil their obligations and responsibilities as tenants and to ultimately sustain a tenancy. The Department works closely with agencies to ensure appropriate co-ordination and assistance is provided (written submission 35, May 29 2003: 9)._ 

Homeswest’s claim that the program was successful was recognised by the Gordon Inquiry and the State Homelessness Taskforce Report, which supported the expansion of the program.

However, a number of written submissions from organisations and individuals were critical of aspects of the program. The WRAS thought that the participation of Aboriginal people in SHAP was coercive and mandatory. They commented, “For many Aboriginal Homeswest tenants participation in the program becomes a mandatory condition of retaining Homeswest accommodation, accessing priority housing or applying for a transfer” (written submission 46, May 30 2003: 2). In their experience, the need to enter the SHAP in order to retain a tenancy or receive further Homeswest assistance was not imposed on non-Aboriginal people.

_The experience of our workers indicate that such conditions for provision or retention of public housing do not necessarily apply to non Indigenous Homeswest tenants, even those who are in similar situations to their Aboriginal counterparts. The practice of mandatory participation in a voluntary program is coercive and treats Aboriginal tenants less favourable than non Indigenous people” (written submission 46, May 30 2003: 2)._ 

According to the JCC, the involvement of SHAP in a tenancy is often for short periods of time, which means that they may not develop the necessary relationship of trust with the tenant. In addition, it was stated that SHAP would withdraw assistance when an eviction became imminent, leaving the tenant without support:

_If an eviction is imminent SHAP pulls out. I’ve never heard of a SHAP worker supporting a client through the court process, yet they have been working closely with the client leading up to it. They are very much seen by the clients as Homeswest workers (written submission 38, June 3 2003: 13)._ 

The ability of SHAP to address even basic tenancy issues was questioned, “I had one client who was being visited weekly by SHAP but they had no power or gas on” (written submission 38, June 3 2003: 12).

One submission claimed that SHAP workers were as compromised as Homeswest employees in that they did not always maintain a confidential relationship with the tenant, “SHAP is unworkable. They provide personal information to Homeswest. They told them things about my medical condition, mental illness, money troubles even if I received a food hamper. They are informers like the police” (written submission 18, January 2 2003).

The TAS repeated this concern. They felt that
SHAP workers had a conflict of interest as Homeswest employees, and in some instances have actually been summoned reluctantly to give evidence against tenants. The TAS asserted, “The fact that Homeswest funds the SHAP program, that it is Homeswest who is the client of SHAP rather than the tenant, puts SHAP workers in a fundamental conflict of interest situation, to the potential detriment of their Aboriginal clients” (written submission 44, May 30 2003: 65).

An Aboriginal woman who had been through the SHAP program had mixed feelings about her experiences:

“I have had SHAP - years ago they were good. It depends on the worker I suppose. They are useless for helping, they make appointments they don’t keep but then they just get on your back telling you how to keep the house clean. If I missed an appointment they would go running to dob to Homeswest (written submission 7, February 3 2003: 8).

Nevertheless, some tenants relayed their positive experiences with SHAP workers. One tenant commented, “She helped me. She helped me like getting cleaning stuff and supporting me at inspections” (written submission number 12, February 28, 2003: 7). Another tenant stated that her SHAP worker loaned her money to sign up for a home as Homeswest had incorrectly debited her account (written submission 10, February 18 2003: 1). An Aboriginal woman from the metropolitan area commented on her experience with SHAP workers:

SHAP helped me. They were alright. All of them were all right with me. I don’t have SHAP now. But eventually they couldn’t get Homeswest to do anything. It was more like I was my Accommodation Manager instead of my real Accommodation Manager (written submission 10, February 2003: 3).

According to Shelter WA, access to SHAP is a problem for the remote parts of Western Australia. Although the program is provided in Broome and there is funding available for SHAP in Fitzroy Creek, there are no community groups able to develop and provide this (written submission 42, May 30 2003: 9).

A former SHAP worker related a story of a client who had been referred to SHAP for poor property standard and was to incur tenant liability.

“I had a client in Heathridge she was probably a woman about the same age as me and had about, one, two three children about four children at home. One was twenty-eight and in a wheelchair. I got this referral through from Homeswest saying there was internal property damage. So I go along. I ring the client up, ‘Can I come and see you?’ ‘Yeah, yeah, yeah.’ Lovely woman.

I walked into the house and the first thing I saw were marks along the hallway. That was because of the wheelchair. I said to her, ‘Do you have a child in a wheelchair?’ She said, ‘Yes.’ I said, ‘Well what are you doing in this house, this house is not equipped for wheelchairs?’ She said, ‘I have been trying and trying and trying with Homeswest to get a purpose built house but the accommodation manager kept saying I’m already adequately housed.’

So I immediately, after that interview, or assessment, before I went any further I accepted her straight away on SHAP. Didn’t even bother with the assessment because I already knew what the problem was. Internal property damage, the wheelchair was gouging marks out of the walls as it went down the hallway because the house was too narrow for a wheelchair.”

The SHAP worker involved an Occupational Therapist (OT) who advised Homeswest that the tenant needed a purpose built house. While the OT’s assessment was accepted, conditions were placed on meeting the tenants housing needs. The tenant was required to maintain the ‘property standards’ of the current house before they would approve a purpose built house (oral submission 190, female, former SHAP worker, undisclosed location).

Homeless Helpline

Some submissions perceived the establishment of the 24 hour Homeless Helpline in 2001 as Homeswest’s main contribution to addressing homelessness. According to statistics provided by the TAS, while eight percent of helpline callers were housed by Homeswest and 11% were provided with bond and/or ingoing fees assistance, 66% were apparently not assisted at
all. The TAS questioned the usefulness of the helpline in assisting Aboriginal people, “While the Homeless Helpline has undoubtedly proved to be useful for some homeless people, indications are that this initiative is of little assistance to Aboriginal people” (written submission 44, May 30 2003: 78).

According to some community workers, some helpline callers were referred to local real estate agents or to the ‘To Let’ section in the local newspaper, and could then apply for bond assistance. The TAS commented that this offered little assistance to homeless Aboriginal tenants due to their difficulties in accessing private rental. They stated, “Given the access barriers to private rentals for Aboriginal people, such a response could not be seen as a service which would assist homeless Aboriginal people” (written submission 44, May 30 2003: 79).

Other community workers claimed they were told that Homeswest refuses to house some Aboriginal people due to ‘poor tenancy history.’ According to the TAS, this claim was supported by the manager of the Homeless Helpline in a meeting in February 2003. Allegedly the manager confirmed that some callers have been identified as ‘banned from all services’ and that other tenancies failed due to a lack of resources and support (written submission 44, May 30 2003: 79).

**Joint Real Estate Institute of Western Australia Program**

The Gordon Inquiry noted that Homeswest established a pilot project with the Real Estate Institute of Western Australia (REIWA). The aim was to assist Aboriginal families in entering private sector rental accommodation. The Gordon Inquiry considered this “...a very promising future direction, with the double benefit of assisting Aboriginal people into housing, and introducing Aboriginal people into the mainstream private sector” (Gordon, Hallahan and Henry, 2002: 177).

According to the TAS, while negotiations for the program establishment have been taking place for several years, as at May 30 2003 they were unaware of a single Aboriginal family who had been housed under the REIWA program (written submission 44, May 30 2003: 81).

**Crisis Accommodation Program**

As part of its commitment to offering programs to support Aboriginal people, Homeswest provides capital funding to non-government organisations for crisis accommodation, for example women’s refuges, night shelters, and short-term accommodation. The TAS commented that in their experience few women’s refuges can cater for large Aboriginal families, which in some cases has led to families being separated and children sent to relatives for care. Also, if a woman has sons over the age of 12 they are often excluded from the refuge. (written submission 44, May 30 2003: 75).

> “The Department is continuing to work with the Real Estate Institute of Western Australia to increase the ability of Aboriginal people to access the private rental market” (written submission 35, May 29 2003: 7).

**Home Ownership Programs**

Homeswest’s Aboriginal Home Ownership Scheme assists Aboriginal families in entering home ownership. Although the level of home ownership in Western Australia is 73.6%, the level of Aboriginal home ownership is 27.7%. (written submission 35, May 29, 2003: 112).

Home ownership is a dream for some Aboriginal people. However, for those without employment or on a lower income it is almost an impossible dream. Many submissions expressed the difficulties in meeting the eligibility criteria for home ownership, either through Homeswest or the ATSIC housing schemes. The main barrier to meeting the eligibility requirements of these schemes was the amount required for the deposit. Some people felt that the implementation of a more equitable system was needed, where the length of time renting and the amount of money contributed in rent over that time was counted:

> With the Aboriginal housing loan there is no way in the world that someone is going to have $2000 deposit to buy their house. If they want
Aboriginal people to buy their houses they've got to do it at our level. Where am I going to get $2000 dollars to buy a house? I'd love to buy a house but I can't afford it (oral submission 41, female, tenant, Metropolitan).

New Living Program

Even though the New Living Program (NLP) is not specifically targeted at meeting the needs of Aboriginal people, it was the subject of some comment. While Homeswest did not address this program in their submission, the perspective of Homeswest was partially evident in some submissions and particularly in a statement by Tom Stephens MLC, the then Minister for Housing. In summary, the NLP aimed to reduce public housing stock in suburbs with a ‘stigma of too much public housing’ and position it more evenly throughout the suburbs and regions.

However, it did not appear that existing Aboriginal tenants were often the beneficiaries of this program. As one person stated, “Usually when they polish the floorboards that means they’re going to sell the house because we just walk on the old floorboards” (oral submission 192, tenants, Great Southern).

According to the TAS, major redevelopment projects commenced in Western Australia from the mid 1990’s in Kwinana and Lockridge. The TAS noted that consequently there was an increased need for assistance for Aboriginal tenants dealing with issues relating to redevelopment, which are still relevant today. For example, they claim that Homeswest is reluctant to undertake maintenance and repairs at premises marked for redevelopment, have increasing inspections of properties and eviction of tenancies in areas marked for redevelopment, and that there are difficulties with applications and waiting times in the redevelopment areas.

Shelter WA submitted a report concerning Midland public housing forums held in 2002 that reiterated the concerns outlined by TAS. They commented that “Urban renewal policy denies tenants access to maintenance work” (written submission 42, May 30 2003: 5). It was also claimed that redevelopment was breaking up communities, moving people to other areas, and in some areas contributing to anti social behaviour, “Many households are being moved away from well serviced areas” (written submission 42, May 30 2003: 6).

Land values in those areas have increased rental housing speculators, and have reduced the availability of affordable housing through lessening the public housing stock and increasing private rental costs. Statistical data provided by Shelter WA indicated that “…while Homeswest concentrates on reducing its presence within the New Living areas, it has failed to keep pace with dwelling growth in other suburbs” (written submission 42, May 30 2003: 17).

The KCP commented on the effects of redevelopment. They noted that many tenants experienced ‘frustration and a sense of powerlessness’ through the process. The KCP found that some of those relocated would travel back to the community where they had family and were happy. The KCP also stated that the NLP and its developers simply focussed on the economic gains for private homeowners in the area, and polarised the community into Homeswest tenants and private home owners.

KCP provided an example to illustrate the impact redevelopment has on individuals and the wider community:

One family with young adolescent children had lived in the area for many years and was relocated to a neighbouring suburb. The young people enjoyed being part of a strong, local peer group and once relocated spent much of their time travelling back into the community to be with their peers. The trend of travelling back into the suburb by those relocated was not limited to the young people. One elderly gentleman would travel each day to sit at the coffee shop to meet with his friends while another travels to do her shopping and catch up with the ‘locals.’

The most strident example is that, in promoting the concept of redevelopment to the community Homeswest and the developers focus
on the economic gains that would be achieved by private home owners through the increase in property values. This was indeed good news for home owners and immediately polarised the community into those that have and those that do not. The type of development and the style of new housing that has emerge have created a new community of ‘have and have nots’ and continuing dissent against remaining Homeswest tenants” (written submission 39, May 19 2003: 10).

The TAS commented on the consultation process associated with the NLP. They claimed that Aboriginal residents were not properly consulted by Homeswest, that Homeswest has not retained records of those Aboriginal tenants that moved from redevelopment areas, and that Aboriginal families are being moved to outer areas that lack services and accessibility (written submission 44 May 30 2003: 73). On tenant asserted, “Putting us out of reach of services and community was like a punishment when we had done nothing wrong” (written submission 16, January 13 2003: 3). Another person explained, “Homeswest is separating families so we can’t live near each other anymore. They separate us and segregate us on purpose. They know what they’re doing” (written submission 12, February 28 2003: 5).

In particular, Dr Jeannine Purdy questioned the economic practices that Homeswest has employed over the past decade. She provided some detail of Homeswest business operations and argued that the Homeswest emphasis on business profitability, often by way of engaging in redevelopment projects with private enterprise, has been at the expense of its rental operations. She pointed to the profitability of programs such as the NLP, and concurrently noted a decline in public housing stock and the subsequent numbers of families being publicly housed (written submission 23, May 30 2003: 9).

Dr Purdy highlighted that Homeswest Annual Reports indicate that in some years the state provided no funding for public housing and instead relied for operating income, on profitable land sales. For example, the Annual Report 1992/1993 described Homeswest as “...a largely self-funded statutory authority [and] a major builder and land developer in Western Australia” (written submission 23, May 30 2003: 6).

The TAS repeated some of the above concerns, “Homeswest’s redevelopment projects... have had a significant impact on waiting lists as people with urgent housing needs (most Aboriginal applicants) must compete with project imperatives” (written submission 44, May 30 2003: 87).

In 1996, the Aboriginal and Torres Strait Islander Social Justice Commissioner relayed concerns about the commercialisation of public housing in Western Australia. He warned that the prioritisation of economic imperatives would result in greater homelessness, “If the maintenance of Homeswest as a viable economic entity becomes the cornerstone of public housing provision, those most in need of public housing in West Australia will inevitably be excluded from it” (written submission 23, May 30 2003: 14).

Similarly, Shelter WA expressed the opinion that, “…the emphasis on capital growth in both the private sector and government sector sits very uncomfortably with the Government’s stated intent of increasing affordable housing and reducing homelessness, especially for Indigenous people” (written submission 42, May 30 2003: 3).

Many submissions commented on the negative impact of redevelopment programs on Aboriginal people. Of particular concern was the relocation of Aboriginal people away from family, support networks and services. The ATSIC stated:

There is a tendency for the housing provider to house people in a different location. As we know 41% of Aboriginal people occupying public housing is below the poverty line. This means when these people are relocated away from their relatives and extended families they would be faced with further hardship. This goes against the underlying role for public housing in preventing further hardship. ‘It is certainly not an adequate solution to relocate families away from services that they should be receiving, for example from metropolitan Perth to regional or rural towns (written submission 30, June 11 2003: 3).
An Aboriginal woman expressed her concerns, "Homeswest is separating families so we can’t live near each other and support each other. It’s a big struggle. They separate and segregate us on purpose. They know what they’re doing" (written submission 12, February 28 2003: 5). A further submission added, “Aboriginal people are viewed as undesirable neighbours, and so are allocated housing in areas where they are expected to have less of an impact on their neighbours” (written submission 30, June 11 2003: 4). A Homeswest officer advised that residents in newer suburbs would ring Homeswest and complain if too many Aboriginal people were being allocated properties in redevelopment areas. This officer stated, “Private owners and people even ring up and say, ‘I’ve just bought a block out there, and I’m not going to build a house if you’re moving Aboriginal people out there’” (oral submission 191, Homeswest officer, undisclosed location).

The same officer said:

> Private owners have called and said, ‘Oh I’ve heard you’re moving all the Aboriginal people out. I’m not going to build my property out there if you’re moving all of them out here.’ Its simply the thing that, ‘Oh, an Aboriginal person came and looked at this house today. Are you moving Aboriginals into this house?’ You know, so that would affect it straight away for that person (oral submission 191, Homeswest officer, undisclosed location).

Co-ordinated Approach

Some organisations recognised that a co-ordinated approach to delivering support programs to Aboriginal people was required. Homeswest stated:

> Overall, it is the Department’s view that many of the social support programs operating across Government, including those listed above, have been developed in an ad hoc and unilateral way and as a result there are instances of duplication and over servicing of certain families. In order to ensure effective and efficient service delivery and to improve across government collaboration to improve outcomes for families the Department believes there needs to be across government rationalisation and restructuring of some of these programs. The Department has put forward this issue for consideration by Government (written submission 35, May 29 2003: 10).

Similarly, the DCD asserted:

> There is also a great need for partnership arrangements between Indigenous families and Homeswest and other government agencies. Government agencies and the indigenous community need to have the opportunity to work collaboratively to ‘get it right.’ This can only be effective and outcomes achieved if all parties are included in the negotiation and decision making process (written submission 34, June 13 2003: 7).

The ATSIC also commented:

> Assistance should take the form of both Homeswest provided support and of assistance from other State Government departments such as the Departments for Community Development, Justice, Education and Training. Of these, the Strong Families program from the DCD in particular should be built into the way at-risk families are managed by Homeswest. In general, as has been noted by others, there is a definite need for a co-ordinated approach to the way Government departments deliver services to Aboriginal families (written submission 30, June 11 2003: 6).

The Strong Families Program appears to offer some attempt at the co-ordination required. According to a former Strong Families Program Co-ordinator, the program is designed to offer a co-ordinated approach to dealing with the multitude of issues facing some families:

> Strong families is an interagency, collaborative case management project designed for families with multiple issues who are or should be involved with a number of different government agencies. It was designed as a one stop shop for clients so that they didn’t have to go and tell their story to ten different agencies on ten different occasions. The focus being ease for the customer and co-ordination and
effectiveness of government agency services. Trying to stop duplication, trying to stop the silo mentality of agencies where they only looked at the particular little sector of that person’s life that they were funded to provide services for. So rather than the agency being the centre of the universe the client is the centre of the universe.

In order for the program to be successful in addressing the needs of clients it was suggested that the Strong Families staff must be able to build good relationships and strong links with the Aboriginal community as well as effective relationships with other agencies’ staff.

“It requires a general interest in the client, and a genuine commitment from agency staff to see Aboriginal people as people. It requires the ability of agency people to think outside the square and get creative about the solutions they offer” (oral submission 194, male, advocate, Great Southern).

Summary

This chapter has explored the major issues and themes that emerged from written, oral and video submissions from Aboriginal people and organisations, government officials and agencies regarding the provision of public housing by Homeswest in policy and practice throughout metropolitan and regional Western Australia. The issues and themes identified comprised: Awareness of Policy; Eligibility; Waiting List; Allocation; Priority Assistance; Emergency Housing; Rent to Income; Transfer; Tenancy Management; Maintenance; Evictions; Tenant Liability; Appeals Mechanism; Anti Social Behaviour; Family and Domestic Violence; Relationship with Homeswest Staff; Aboriginal Staff; Staff Training; and Programs. According to the lived experiences documented in the submissions in relation to each of these issues and themes, details of Homeswest policy do not always correspond with the practice, and in the operation of policy there is a sense that the Aboriginal population is disadvantaged and treated less favourably. This chapter has given a voice to these concerns.
Conclusion:

This Inquiry has examined the existence of systemic discrimination in the provision of public housing and associated services to Aboriginal people by Homeswest, within the Department of Housing and Works (DHW). The Inquiry has documented the disadvantage, impairment and damaging consequences that some housing policies and practices can have on Aboriginal people residing in regional and metropolitan Western Australia as detailed in submissions to the Inquiry.

The development of this Inquiry initially involved the response of the Equal Opportunity Commission (EOC) to previous reports which examined the provision of public housing by Homeswest, and to the 237 complaints received by the EOC in the year ending June 30 2002 from Aboriginal people regarding Homeswest housing and services. In recognition of the statutory responsibilities of the EOC as set out in the Equal Opportunity Act 1984 (EOA) (sections 3, 80 and 82), the EOC, various advocacy organisations and individuals collaborated to construct the draft terms of reference of the Inquiry.

It was considered essential that the establishment of the Terms of Reference was done through consultation with various relevant bodies, including Aboriginal organisations, government departments, individual advocates and community groups. Overall, the Terms of Reference have informed the methodology and conduct of this Inquiry.

To investigate, research and make inquiries relating to Department of Housing and Work’s policies or programs, practices, guidelines, directions, training, decisions and/or decision making, review and appeal processes that may directly or indirectly discriminate against Aboriginal persons in Western Australia in the provision of accommodation and/or related services, because of their race or characteristics of their race or the race of any associate or relative or because of any other ground of unlawful discrimination or harassment of the kinds rendered unlawful under the Equal Opportunity Act 1984 (EOC, 2002:2)

In terms of the content, this Inquiry has examined various international human rights treaties together with Commonwealth and State legislation relating to discrimination. The legal concept of direct and indirect discrimination have been examined and juxtaposed against the lived experiences of Aboriginal tenants and prospective tenants.

A person who believes he/she has been unlawfully discriminated against faces many difficulties in obtaining relief under equal opportunity law, specifically in relation to the requirement to establish the discrimination to the standard required by law. This is made more difficult where necessary data or information required to ‘prove’ the discrimination is solely in the possession of the alleged discriminator.
Between 1996 and 2004, the Western Australian Equal Opportunity Commission (EOC) received over 400 complaints from Aboriginal tenants and applicants for housing against the Department of Housing & Works (DHW), trading in the name of Homeswest. These complaints alleged that Homeswest had directly or indirectly discriminated against Aboriginal people on the basis of race and/or sex, impairment and marital status. Out of these 400 plus complaints, only 4 have gone before the Equal Opportunity Tribunal (EOT) (See Section Two – Proving Race Discrimination)

In addition, this Inquiry has considered the historical policies, practices and literature relating to public housing provision for Aboriginal people in regional and metropolitan Western Australia. Following World War II, the development and implementation of housing policy was largely influenced by the Commonwealth State Housing Agreement (CSHA) and the original State Housing Act 1946. These led to increasing awareness of the segregation and poverty that characterised the rudimentary settlements designated for Aboriginal people on the outskirts of towns, and the drive for transition and the assimilation of Aboriginal people in metropolitan and regional communities through public housing provision. This was arguably realised through the scattering of housing for Aboriginal people within communities, and through the emphasis upon land development, re-development and home ownership by the Aboriginal Housing Board (AHB), the Aboriginal Housing Directorate and Homeswest.

...current Homeswest policies regarding the provision of housing are characterised by an even and objective application to all tenants regardless of differentiating characteristics, for example, race, gender or age. Homeswest requirements are commonly summed up in three points: the payment of rent, living in harmony with neighbours and maintenance of the property to an acceptable standard. Thus, Aboriginal households are subject to the same policies as other tenants:

...[and] are expected to maintain accepted standards of domestic hygiene, social behaviour and credit worthiness and to these ends assistance is given by officers of the Commission with the cooperation of the Community Health Services the Department for Community Welfare and the latter Department’s Home-maker Service’ (Furnell, 1974: 222-223) (See Section Three - History of Housing).

In recent times, the policies and practices of Homeswest and alleged less favourable treatment in the provision of housing by Homeswest, particularly in relation to Aboriginal people, have become the subject of increasing concern by the EOC, Aboriginal organisations and referred to in various other recent enquiries.

In terms of the research, this Inquiry has presented a quantitative analysis of the assertion that in the provision of public housing Homeswest, within the DHW, serves the societal groups that are most in need, Aboriginal and non Aboriginal people. These groups were statistically and graphically compared utilising four main indicators, namely overcrowding, housing affordability, children living in poverty and accessibility to services. Overall this analysis showed that Aboriginal people experience disproportionate disadvantage in each indicator.

In addition, this Inquiry has conducted a qualitative analysis based upon a methodology involving the guided collation of oral, written and video recorded individual and group submissions from Aboriginal people and advocates. These submissions outlined the experiences of Aboriginal people’s access to housing through Homeswest services. In total, the Inquiry received 50 individual and group written submissions, and 526 individual and group oral submissions from regional and metropolitan Western Australia. Of these a significant majority, 90% of written submissions and 85% of oral submissions were contributed by women. This Inquiry has given voice to the many personal issues and experiences that Aboriginal people, Aboriginal housing and community organisations, government agencies, and former/current Homeswest staff from
regional and metropolitan Western Australia, have encountered and witnessed in relation to the provision of public housing by Homeswest. The Inquiry has concluded that Aboriginal people experience disadvantage and less favourable treatment in relation to many aspects of public housing access, services and residence.

A Homeswest officer commented:

*The properties they offer out to some people, the windows are jarred, and you can’t open them and these woman are coming from domestic violence and stuff. In some circumstances it’s going to take another six months for them to wait for something, so in the last stance they’ll take it* (confidential oral submission 191, Homeswest Officer, undisclosed location)

In many cases, Aboriginal tenants advised they simply accepted they must take what was offered to them or remain homeless. As one advocate advised:

*They know people need a roof over their head, because they have no other alternatives. If it was you or me, I won’t accept that, you can stick that house. But the blackfellas, no hassles, I’ve got a roof over my head, the kids, thirteen or fourteen of my family will be able to sleep here and we’ll be nice and warm through winter.* (confidential oral submission, male, advocate, Midwest) (See Section Five – Lived Experiences).

It is the hope of the Equal Opportunity Commission (EOC) that the Implementation Group including Homeswest will work to implement the recommendations and in the process restore relationships with Aboriginal people and advocates who have detailed their experiences of Aboriginal disadvantage in the provision of public housing.
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# Appendix A
## Equal Opportunity Commission
### Terms of Reference
Investigation into the Provision of Public Housing to Aboriginal¹ People in Western Australia

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¹ For the purposes of this Investigation, the term ‘Aboriginal’ also includes people of Torres Strait Islander descent.
TERMS OF REFERENCE

1. CONTEXT OF THE INVESTIGATION

The Commissioner for Equal Opportunity is appointed to administer the Equal Opportunity Act 1984.

The purposes of the Act are set out in Section 3 as:

“to eliminate, so far as is possible, discrimination against persons on the ground of sex, marital status or pregnancy, family responsibility or family status, sexual orientation, race, religious or political conviction, impairment, age or, in certain cases, gender history in the areas of work, accommodation, education, the provision of goods, facilities and services and the activities of clubs”.

In the exercise of the Commissioner’s powers in Section 80 of the Equal Opportunity Act 1984, an Investigation into the provision of public housing to Aboriginal people in Western Australia was commenced with the release of preliminary Terms of Reference in September 2002 and a request for submissions on the final Terms of Reference.

The full context of the Investigation is described in the Consultation Paper and includes the following issues:

• well-documented social, economic, health and educational disadvantage of Aboriginal people disproportionate to their relative numbers within the population of Western Australia; Aboriginal people constitute approximately 18% of users of public housing in the State;

• many years of persistently heavy rates of complaints by Aboriginal people to the Commissioner for Equal Opportunity relating to the provision of public housing by the Department of Housing and Works (DHW) 2; in the past financial year more than 37% of all complaints received by the Commissioner were against DHW;

• concerns about whether the complaints process is a suitable way to address any underlying causes of complaints about DHW, including the apparent abandonment of such complaints by 59% of the complainants in recent years as well as relatively low rate of conciliated settlements and no findings of discrimination by the Equal Opportunity Tribunal; and

• several attempts by the Commissioner and DHW to address the underlying causes of such complaints between 1988 and 2002.

2. TERMS OF REFERENCE

The Terms of Reference of the Investigation are as follows:

1. To investigate, research and make inquiries relating to DHW’s policies or programs, practices, guidelines, directions, training, decisions and/or decision-making, review and appeal processes that may directly or indirectly discriminate against Aboriginal persons in Western Australia in the provision of accommodation and/or services, because of their race or characteristics of their race or the race of any associate or relative or because of any other ground of unlawful discrimination or harassment of the kinds rendered unlawful under the Equal Opportunity Act 1984.

2. To consult with government, business, industry and community groups in order to ascertain the means of improving any services and conditions of Aboriginal persons who may be subject to discrimination on any ground rendered unlawful under the Act.

3. The Investigation will take into account such matters as may appear to become relevant during the Investigation. The Investigation will include but will not be limited to:

(a) statutory responsibilities of DHW to provide accessible, affordable and appropriate accommodation and services

2 The Department of Housing and Works was formerly known as the State Housing Commission for Western Australia and its tenancy services are commonly described as ‘Homeswest’.
to Aboriginal persons having regard to its function, powers and duties;

(b) funding and resources reasonably available to DHW;

(c) responsibilities and relationships of DHW with other Western Australian, Commonwealth and Local government agencies, Ministers, and non-government agencies, that may affect the scope of the Department’s responsibilities and performance of its functions;

(d) evidence and findings of other relevant reviews and inquiries including *Putting the Picture Together: Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*, 2002 (the ‘Gordon Report’) and the State Homelessness report, *Addressing Homelessness in Western Australia*, 2001;

(e) special programs for the accommodation of, and services to, Aboriginal, persons in Western Australia;

(f) Aboriginal person’s access to housing in the private rental market and community housing;

(g) trends, significant or recurring issues and matters documented in complaints and inquiries to the Commission since 1989;

(h) adequacy of the provision of advice, advocacy and support services to Aboriginal persons with respect to public housing and related services; and

(i) the role of advocates seeking to review or appeal against or complain about the provision of public housing to Aboriginal persons.

In the event of receiving substantial evidence that may indicate indirect discrimination, the Commissioner will enquire into the reasonableness of the relevant requirement or condition.

4. To publish a report on the Investigation, including making recommendations for the development of any programs and policies, including structural, functional or procedural changes that might be made by DHW, to promote the achievement of the Objects of the Act and the functions of the Commissioner.

3. **CONDUCT OF THE INVESTIGATION**

The Investigation will be conducted by Officers of the Commissioner for Equal Opportunity.

The Investigation will seek submissions and carry out consultations.

The Investigation is not about resolving individual cases (although persons can quote their own experiences as an example), nor about issues that are outside the jurisdiction of the Commissioner for Equal Opportunity and the scope of the Terms of Reference.

Individual complaints will continue to be received and investigated by the Commissioner and completed in a reasonable time (within a target of six months) either through conciliation or other powers of the Commissioner, including referral to the Equal Opportunity Tribunal for hearing.

The Commissioner has wide powers under the Act including Sections 86, 87 and 88 which enable the Commissioner to obtain information and documents relevant to an Investigation; and to direct a complainant, a person who is alleged to have contravened the Act, and any other person who, in the opinion of the Commissioner, is likely to be able to provide information relevant to the Investigation or whose attendance is likely to be conducive to resolving a complaint, to attend a conference and produce documents.

Section 167 of the Act prohibits the disclosure of personal information by the Commissioner and her officers. The Commissioner will not publicly identify parties to a complaint except where a complainant has given written consent and the Commissioner is satisfied that such identification is appropriate in the circumstances, necessary for the Investigation and does not contravene the confidentiality requirements of the Act, or any other statutory or other legal or equitable duty of confidentiality.
4. MAKING A SUBMISSION

To help persons make a Submission, a Consultation Paper and Submission Forms have been developed.

Consultation Paper

The Consultation Paper is prepared as a reference guide. It should not be assumed that the Commissioner does not wish to receive information or evidence in relation to any of the statements already in it. You may raise any other matter relevant to the Investigation in your Submission.

Submission Forms

A ‘Submission Form for Individuals’ and a ‘Submission Form for Organisations’ contain questions that cover the core of the Investigation. You may choose to focus on one or more of the questions covered in the Submission Forms.

If you do not wish to use the Submission Forms, you can present your Submission in any way you choose (e.g. by writing a letter or orally by contacting the Commission and presenting your Submission or attending a Consultation Forum). The questions in the Submission Form may help you to organise your Submission.

If you can provide an electronic copy of your Submission, it would be appreciated, but it is not essential.

How can I get a Submission Form?

You can obtain a Submission form:

- by downloading it from the Commission’s website located at www.equalopportunity.wa.gov.au;
- by contacting the Commission by telephone on 9216 3900 or 1800 198 149 (free call outside the Perth metropolitan area) and asking for either Debra or Pauline; and/or
- by sending an email to eoc@equalopportunity.wa.gov.au.

How can I make an oral Submission?

You can make a Submission:

- by contacting the Commission by telephone on 9216 3900 or 1800 198 149 (free call outside the Perth metropolitan area) and asking to make an oral Submission to Commission staff; and/or
- by taking part in the Consultation Forums we will be holding.

Closing date for Submissions

The deadline for receiving written and oral Submissions has been extended to close of business on Friday 30 May 2003.

5. TIMETABLE

Deadline for receiving written Submissions

Extended to 30 May 2003

Consultation Forums

To be advised in April 2003

Draft report

June 2003

Consultation with stakeholders

July 2003

Final report

31 August 2003

6. CONSULTATION FORUMS

As part of the Investigation, the community can tell their stories in private forums planned for the Perth metropolitan area as well as South West, Goldfields/Mid West, Kimberley and Pilbara regions.

The dates and venues for these Consultation Forums will be announced in April 2003 and posted on the Equal Opportunity’s website located at www.equalopportunity.wa.gov.au and in other media.

If you wish to participate in a Consultation Forum but have missed the announcement and have not heard about the dates by the end of April 2003, please contact the Commission.
7. CONTACT DETAILS
For further information, you can contact staff at the Equal Opportunity Commission:
by telephone: (08) 9216 3900
           1800 198 149
           free call outside
           the Perth metropolitan area)
by TTY 3: (08) 9216 3936
by email: eoc@equalopportunity.wa.gov.au
by facsimile: 9216 3960
by mail: Commissioner for
         Equal Opportunity:
         Aboriginal Housing Investigation
         PO BOX 7370
         Cloisters Square
         PERTH   WA  6850.

8. SECTION 3 EQUAL OPPORTUNITY ACT - OBJECTS

Objects
S.3 The objects of this Act are -
(a) to eliminate, so far as is possible, discrimination against persons on the ground of sex, marital status or pregnancy, family responsibility or family status, sexual orientation, race, religious or political conviction, impairment, age or, in certain cases, gender history in the areas of work, accommodation, education, the provision of goods, facilities and services and the activities of clubs;
(b) to eliminate, so far as is possible, sexual harassment and racial harassment in the workplace and in educational institutions and sexual harassment and racial harassment related to accommodation;
(c) to promote recognition and acceptance within the community of the equality of men and women; and
(d) to promote recognition and acceptance within the community of the equality of persons of all races and of all persons regardless of their religious or political convictions or their impairments or ages.

9. SECTION 80 EQUAL OPPORTUNITY ACT - GENERAL FUNCTIONS OF THE COMMISSIONER

General functions of Commissioner
S.80 For the purposes of eliminating discrimination on the ground of sex, marital status, pregnancy, family responsibility or family status, sexual orientation, race, religious or political conviction, impairment or age, eliminating discrimination against gender reassigned persons on gender history grounds, as far as possible, sexual harassment and racial harassment at work, in educational institutions or related to accommodation, and promoting recognition and acceptance within the community of the principle of equality of men and women and of persons of all races and of all persons regardless of their religious or political conviction, the Commissioner may -
(a) carry out investigations, research and inquiries relating to discrimination or sexual or racial harassment of the kinds rendered unlawful under this Act;
(b) acquire and disseminate knowledge on all matters relating to the -
(i) elimination of discrimination on the ground of sex, marital status or pregnancy, family responsibility or family status, race, religious or political conviction, impairment or age and eliminating discrimination against gender reassigned persons on gender history grounds;
(ii) elimination of sexual harassment and racial harassment at work, in educational institutions or related to accommodation; and

3 Telephone Typewriter.
(iii) achievement of the principle of equality of men and women and of persons of all races and all persons regardless of their religious or political convictions, their impairments or their ages;

(c) arrange and co-ordinate consultations inquiries, discussions, seminars and conferences;

(d) review, from time to time, the laws of the State;

(e) consult with governmental, business, industrial and community groups in order to ascertain means of improving services and conditions affecting a person or persons who are subject to discrimination on the ground of sex, sexual orientation, marital status or pregnancy, family responsibility or family status, race, religious or political conviction, impairment or age or who being a gender reassigned person or persons are subject to discrimination on gender history grounds or who are subject to sexual or racial harassment;

(f) develop programmes and policies promoting the achievement of the principle of equality between men and women, persons of all races and all persons regardless of religious or political conviction, impairment or age;

(fa) subject to section 167, publish any written reports compiled in the exercise of the powers conferred on the Commissioner by this section and section 82;

(g) perform -

(i) any function conferred on the Commissioner by any other written law;

(ii) any function conferred on the Commissioner under any arrangement in force under section 7;

(iii) any function conferred on the Commissioner under any Act of the Commonwealth, being a function that is declared by the Minister, by notice published in the Gazette, to be complementary to other functions of the Commissioner; and

(h) do anything conducive or incidental to the performance of the functions conferred or imposed on the Commissioner under this section.
# Appendix B

Equal Opportunity Commission Consultation Paper

Investigation into the Provision of Public Housing to Aboriginal People in Western Australia

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4 For the purposes of this investigation, the term ‘Aboriginal’ also includes people of Torres Strait Islander descent.
CONSULTATION PAPER

1. PURPOSE AND TERMS OF REFERENCE

This Consultation Paper is meant to help you think about the issues and make your response to the Investigation into the provision of public housing by the Department of Housing and Works (DHW) to Aboriginal and Torres Strait Islander people in Western Australia. Nothing in it should suggest whether the Commissioner is or is not satisfied that there has been or still is, discrimination against Aboriginal people relating to public housing provided by DHW. The Investigation is limited as many areas important to Aboriginal people’s access to housing (such as income inequalities, Commonwealth funding arrangements and legislation) and other services (such as child protection, family support, education and healthcare) are beyond the Terms of Reference of this Investigation. The Commissioner cannot affect them.

Terms of Reference

The Terms of Reference of the Investigation are as follows:

3. To investigate, research and make inquiries relating to DHW’s policies or programs, practices, guidelines, directions, training, decisions and/or decision-making, review and appeal processes that may directly or indirectly discriminate against Aboriginal persons in Western Australia in the provision of accommodation and/or services, because of their race or characteristics of their race or the race of any associate or relative or because of any other ground of unlawful discrimination or harassment of the kinds rendered unlawful under the Equal Opportunity Act 1984.

4. To consult with government, business, industry and community groups in order to ascertain the means of improving any services and conditions of Aboriginal persons who may be subject to discrimination on any ground rendered unlawful under the Act.

3. The Investigation will take into account such matters as may appear to become relevant during the Investigation. The Investigation will include but will not be limited to:

(j) statutory responsibilities of DHW to provide accessible, affordable and appropriate accommodation and services to Aboriginal persons having regard to its function, powers and duties;

(k) funding and resources reasonably available to DHW;

(l) responsibilities and relationships of DHW with other Western Australian, Commonwealth and Local government agencies, Ministers, and non-government agencies, that may affect the scope of the Department’s responsibilities and performance of its functions;

(m) evidence and findings of other relevant reviews and inquiries including Putting the Picture Together: Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities, 2002 (the ‘Gordon R report’) and the State Homelessness report, Addressing Homelessness in Western Australia, 2001;

(n) special programs for the accommodation of, and services to, Aboriginal, persons in Western Australia;

(o) Aboriginal person’s access to housing in the private rental market and community housing;

(p) trends, significant or recurring issues and matters documented in complaints and inquiries to the Commission since 1989;

5 The Department of Housing and Works was formerly known as the State Housing Commission for Western Australia and its tenancy services are commonly described as ‘Homeswest’.

6 For the purposes of this Investigation, the term ‘Aboriginal’ also includes people of Torres Strait Islander descent.
(q) adequacy of the provision of advice, advocacy and support services to Aboriginal persons with respect to public housing and related services; and

(r) the role of advocates seeking to review or appeal against or complain about the provision of public housing to Aboriginal persons.

In the event of receiving substantial evidence that may indicate indirect discrimination, the Commissioner will enquire into the reasonableness of the relevant requirement or condition.

4. To publish a report on the Investigation, including making recommendations for the development of any programs and policies, including structural, functional or procedural changes that might be made by DHW to promote the achievement of the Objects of the Act and the functions of the Commissioner.

2. BACKGROUND TO THE INVESTIGATION

The Equal Opportunity Commission’s Vision is to ensure Western Australia, as part of the international community, becomes a more just and equitable society, by advancing human rights and not tolerating discrimination.

The Commissioner for Equal Opportunity is appointed to administer the Equal Opportunity Act 1984. The purposes of the Act are set out in Section 3 as:

“to eliminate, so far as is possible, discrimination against persons on the ground of sex, marital status or pregnancy, family responsibility or family status, sexual orientation, race, religious or political conviction, impairment, age or, in certain cases, gender history in the areas of work, accommodation, education, the provision of goods, facilities and services and the activities of clubs”.

The Commissioner’s power to conduct this Investigation includes the detailed provisions of Section 80 of the Act.

Reasons for the Investigation

Aboriginal people are a tiny proportion of Western Australian society but make up 18% of tenants of public housing provided by the DHW. Aboriginal people are severely disadvantaged in terms of their socio-economic status, health and education. Access to affordable and appropriate housing has been related to cycles of disadvantage, particularly in recent reports to the West Australian government including the Homelessness Report, and the Gordon Inquiry. The Gordon Inquiry report identified poor housing as a factor that both causes and results from family violence and child abuse. It also stated that many government departments (i.e. DHW, Department for Community Development, Department of Justice) provide services for Aboriginal communities and there was an identified need for these services to focus on the perspectives of Aboriginal communities. The report recommended improvements in integrating and co-ordinating service provision for Aboriginal communities.

Since 1985 the Commissioner has received persistently heavy rates of complaints by Aboriginal people about their access to public housing. In the year ending 30 June 2002, the Commissioner received 232 race and impairment complaints (more than 37% of all complaints received) from 91 Aboriginal complainants against DHW about accommodation and services. No other respondent has had anything like as many complaints lodged against it.

More than 40% of all complaints handled by the Commissioner’s staff that year were about public housing, yet 59% of those complaints ‘lapsed’ after the complainants lost contact with the Commissioner.

Over 17 years only one complaint by an Aboriginal person resulted in a judicial finding of discrimination; on appeal it was later overturned. However the Commissioner considered many complaints sufficiently substantial to be referred for conciliation, and last year 39 complaints were resolved either through conciliation or administratively by DHW. Seven complaints against DHW were referred to the Equal Opportunity Tribunal for a public hearing last year.
The vast majority of complaints made to the Commissioner by Aboriginal people over the last two years were by women responsible for family members with impairments. About 40% of complainants told the Commissioner they were homeless. The rate of complaints has risen steadily over the years since 1985. The complaints dealt with significant common issues from concerns about inadequacy of housing stock, delays or denial in providing housing, priority transfers or relocation, the raising and recovering of debts, maintenance needs and grievances about the quality of Aboriginal housing stock as well as particular words or acts.
Many efforts have been made to address the underlying causes of these complaints since 1988, including an independent report on Discrimination by Homeswest (1988); the establishment of a tripartite working party (1996); an internal review by the Commissioner into Homeswest’s practices (1997); a review of priority housing to Aboriginal applicants in one region that documented disparities in delays, referrals, age of housing and ‘Aboriginal’ suburb allocations (2000); the Commissioner’s review of Aboriginal participation in the complaints process (2001); and the conduct of anti-racism workshops for DHW by the Commissioner’s officers in 2001-2002.
Conduct of the Investigation
The Investigation will be conducted by Officers of the Commissioner for Equal Opportunity. The Investigation will seek submissions and carry out consultations.

The Investigation is not about resolving individual cases (although persons can quote their own experiences as an example), nor about issues that are outside the jurisdiction of the Commissioner for Equal Opportunity and the scope of the Terms of Reference.
Individual complaints will continue to be received and investigated by the Commissioner and completed in a reasonable time (within a target of six months) either through conciliation or other powers of the Commissioner, including referral to the Equal Opportunity Tribunal for hearing.
The Commissioner has wide powers under the Act including Sections 86, 87 and 88 which enable the Commissioner to obtain information and documents relevant to an Investigation; and to direct a complainant, a person who is alleged to have contravened the Act, and any other person who, in the opinion of the Commissioner, is likely to be able to provide information relevant to the Investigation or whose attendance is likely to be conducive to resolving a complaint, to attend a conference and produce documents.
Section 167 of the Act prohibits the disclosure of personal information by the Commissioner and her officers. The Commissioner will not publicly identify parties to a complaint except where a complainant has given written consent and the Commissioner is satisfied that such identification is appropriate in the circumstances, necessary for the Investigation and does not contravene the confidentiality requirements of the Act, or any other statutory or other legal or equitable duty of confidentiality.

3. MEANING OF ‘RACE DISCRIMINATION’
‘Discrimination’ of race may be direct, or indirect.
Direct Discrimination
Direct discrimination is defined in Section 36 of the Equal Opportunity Act 1984 as occurring if on the ground of:
“(a) the race of the aggrieved person;
(b) a characteristic that appertains generally
to persons of the race of the aggrieved person; or

(c) a characteristic that is generally imputed to persons of the race of the aggrieved person,

the discriminator -

(d) treats the aggrieved person less favourably than in the same circumstances or circumstances that are not materially different, the discriminator treats or would treat a person of a different race; or

(e) segregates the aggrieved person from persons of a different race.”

An example of direct discrimination would be if an agent or accommodation manager:

• refused a tenancy application by a person because of the person’s race; or

• assumed that a person of that race would be a ‘bad tenant’, unable to keep the property in reasonable condition or pay rent, or likely to fight with neighbours or have police visits; or

• imposed special conditions on the tenancy - higher rent than would be asked of a person of a different race, or offered a more limited range of options from available rental stock, or different and less favourable terms and conditions of a tenancy, because of their race, characteristics or assumed characteristics of their race, or the race of an associate or relative of the person.

An example of indirect discrimination would be if an agent or accommodation manager made a tenant provide evidence of a particular rate of income, or references from private landlords or evidence of a history of employment that a person of that race is unable to provide because of a characteristic of, or attributed to, their race.

**Racial Discrimination**

Section 36(1a) further defines racial discrimination as occurring if on the ground of:

“(a) the race of the aggrieved person;

(b) a characteristic that appertains generally to persons of the same race as the aggrieved person; or

(c) a characteristic that is generally imputed to persons of the same race as the aggrieved person as any relative or associate of the aggrieved person, the discriminator -

(d) treats the aggrieved person less favourably than in the same circumstances or circumstances that are not materially different, the discriminator treats or would treat persons; or

(e) segregates the aggrieved person from persons, who are not of that race.”

**Indirect Racial Discrimination**

Indirect racial discrimination is defined in Section 36(2) as occurring if the discriminator requires the aggrieved person to comply with a requirement or condition:

“(a) with which a substantially higher proportion of persons not of the same race as the aggrieved person comply or are able to comply

(b) which is not reasonable having regard to the circumstances of the case; and

(c) with which the aggrieved person does not or is not able to comply.”

**Areas where Discrimination is Unlawful**

The areas covered by these provisions of the Act include:

• Section 46 - goods, services and facilities: a refusal to provide goods, services and facilities; the terms or conditions on which they are provided or made available, and the manner in which they are provided or made; and

• Section 47 - accommodation: a refusal of an application for accommodation; in the terms or conditions on which it may be offered, or deferring the person’s application for accommodation or according to the other person a lower order of precedence in any list of applicants for that accommodation. The Section also provides that it is unlawful to discriminate by
denying access or limiting the person’s access to any benefit associated with accommodation occupied by the other person, evicting the person, or subjecting them to any other detriment in relation to accommodation occupied by the person.

**Other Unlawful Discrimination**

The Act separately defines discrimination on other grounds in the Act including sex, marital status, impairment, sexual orientation and religion.

The Act also prohibits victimisation of any person seeking to make a complaint on any ground under the Act.

**4. THE DUTY TO PROVIDE HOUSING TO ABORIGINAL PEOPLE IN WESTERN AUSTRALIA**

Powers and functions of the Department of Housing and Works

*The Housing Act 1980* outlines the powers and functions of DHW. Its objects are the improvement of existing housing conditions, the provision of housing and land for housing, the provision of assistance to enable persons to obtain accommodation or improve the standard of their accommodation, the encouragement of the development and redevelopment of, and for, housing and related purposes, and the carrying into effect of agreements and arrangements entered into with the Commonwealth with respect to housing.

DHW describes its own role as providing housing for Western Australians who cannot otherwise afford their own homes by arranging affordable home finance, rental housing and land. In addition, the DHW’s role is to build homes, develop land and undertake joint-venture projects with other housing providers. DHW’s programs are aimed at low-income homebuyers and renters, disadvantaged groups and people with special housing needs (e.g. Homeswest, Aboriginal Housing, Keystart Home Loan Scheme).

**State Homelessness Inquiry**

The Western Australian Government established a State Homelessness Taskforce in July 2001 to develop a Homelessness Strategy. In the State Homelessness Taskforce’s report *Addressing Homelessness in Western Australia*, January 2001, it was stated that there was a need for:

- more public housing;
- help to people undergoing life transitions; and
- support to keep people housed.

The report defined someone as ‘homeless’ if they had inadequate access to safe and secure housing and were therefore disadvantaged. Inadequate housing was linked with likely damage to health, threat to personal safety, and restricting access to essential personal amenities as well as the economic and social support that a home normally affords.

The Taskforce made sixty-eight recommendations across key policy priorities and the following thirteen strategic areas:

1. State Housing Strategy to include the development and retention of affordable housing;
2. increased Commonwealth and State Housing funding for social housing;
3. broadening opportunities for increasing the amount, durability and type of affordable housing;
4. optimise the access and use of existing housing for people on low incomes;
5. addressing income support issues;
6. support and advocacy to prevent homelessness;
7. leaving institutional and long term care;
8. long term accommodation with support;
9. support for people who are homeless;
10. establish an implementation committee;
11. legislation;
12. community education; and
13. working together.
Commonwealth/State Housing Agreement
The Commonwealth State Housing Agreement, authorised under the *Housing Assistance Act 1996*, between the Commonwealth and States/Territories provides funding to assist those whose needs for appropriate housing cannot be met by the private market.

Bilateral Agreement between the Commonwealth and Western Australia
A Bilateral Agreement between the Commonwealth [Department of Family and Community Services] and Western Australia [Ministry of Housing] 1999/00 - 2002/03 to address homelessness problems in Western Australia as a priority issue provided for:

- increasing resources for Aboriginal crisis accommodation and transitional housing accommodation so that intensive culturally appropriate support services and assistance can be provided to families with a history of social problems;
- improving the capacity of Aboriginal tenants to maintain their tenancies through the provision of culturally appropriate advice, advocacy and other support services;
- increasing home ownership opportunities for Aboriginal people;
- improving Aboriginal people’s access to the private rental market; and
- better meeting the needs of Aboriginal people in order to receive equitable access to mainstream public housing as well as a range of other assistance and increase efforts to address rural and remote housing needs.

ATSIC/Western Australian Government Agreement
A ‘Statement of Commitment to a New and Just Relationship’ between ATSIC (Aboriginal and Torres Strait Islander Commission) and the Western Australian government aims “to enhance negotiated outcomes that Australians protect and respect the inherent rights of Aboriginal people and to significantly improve the health, education, living standards, and wealth of Aboriginal people”.

Establishment of New Aboriginal Housing and Infrastructure Council
The Minister for Housing and Works announced the new Aboriginal Housing and Infrastructure Council on 25 November 2002, chaired by Mr Peter Yu. The Council is established under the Agreement for the provision of Housing and Infrastructure for Aboriginal People in Western Australia July 2002 - July 2007 to provide advice on policies and strategies to improve housing outcomes for Aboriginal people in Western Australia. Other parties to the Agreement are ATSIC and the Commonwealth Department of Family and Community Services.

International Covenant on Economic, Social and Cultural Rights (ICSECR) and United Nations Convention on the Rights of the Child (UNCROC)
Australia has ratified international treaties that commit government to respect fundamental rights. Article 11 of the ICSECR asserts the right of everyone to an adequate standard of living for their families, including adequate food, clothing and housing, and the continuous improvement of living conditions. Article 27 of UNCROC recognises the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development. Australia is required to take appropriate measures to assist parents and others responsible for the child to implement this right and in case of need provide material assistance and support programs, particularly with regard to nutrition, clothing and housing.

Aboriginal Homelessness
In 1998, a report into *Homelessness in the Aboriginal and Torres Strait Islander Context and its Possible Implications for the Supported Accommodation Assistance Program* for the Commonwealth Department of Family and Community Services, reviewed the cultural context of homelessness amongst Aboriginal people.

Some of its suggested options and strategies included:
• improving access to, and maintenance of, public housing;
• improving access to, and maintenance of, community living;
• improving access to the private rental market;
• developing the AHL Hostel System further to meet temporary accommodation needs and/or support to move to independent living; and
• improving the living conditions and options available to Aboriginal people living in the open on the fringes of the town, in or around parks and riverbeds.

5. THE COMMISSIONER’S POWERS

Section 80 of the Equal Opportunity Act 1984, provides the Commissioner with broad powers, including the powers to:
• carry out investigations, research or inquiries relating to discrimination;
• acquire and disseminate knowledge on all matters relating to elimination of discrimination;
• develop programs and policies promoting the achievement of the principle of equality between people of all races;
• publish any written reports compiled in the exercise of the Commissioner’s powers; and
• undertake a review of government policies and practices with a view to identifying circumstances where discrimination on a ground such as race occurs and provide a report of the findings of the review to the Minister.

6. SUBMISSIONS

The Commissioner seeks Submissions on the following specific matters relating to DHW:
(a) policies;
(b) programs;
(c) practices;
(d) guidelines and/or directions;
(e) staff training and development; and
(f) decisions and/or decision-making processes.

These include but are not necessarily limited to:

Policies
• eligibility;
• tenant liability;
• anti social behaviour;
• property maintenance;
• tenancy management;
• privacy, confidentiality and duty of care;
• appeals and reviews;
• property condition reports;
• domestic violence;
• rent/income;
• recoveries of premises and debt;
• terms and conditions in tenancy agreements;

Programs
• Supported Housing Assistance Program (SHAP);
• Aboriginal Tenant Support Service (ATSS);
• Fund 1 (mainstream) and Fund 6 (Aboriginal specific);
• construction (size, design, location);
• redevelopment;
• Crisis Accommodation Program (CAP);
• Headleasing;
• Community Housing;
• Homeless Helpline;
• Derbarl Yerrigan Priority 1;

Practices
• round management (e.g. an Accommodation Manager’s responsibilities);
• use of legal processes as a management tool;
• job order issues;
• response to alleged breaches;
• correspondence;
• inspections;
• waiting list management;
• Aboriginal staffing rates, seniority and turnover;
• procedures and manuals;
• file management
• documentation;
• data collection;

Guidelines and Directions
• the adequacy or lack of relevant guidelines or directions (in terms of transparency and accountability);
• discretion policy;
• directives;
• procedural fairness;

Adequacy or Provision of Staff Training
• anti racism;
• cultural awareness;
• domestic violence;
• internal policy and procedures;
• legislation including the Residential Tenancies Act and the Equal Opportunity Act;
• Public Sector Standards;
• staff, appeals representatives, agents trained;
• frequency and consistency, mandatory training;

Decisions and/or Decision-Making Processes
• assessment of applications;
• assessment of tenant liability;
• documentation of reasons for decision;
• procedural fairness; and
• termination of tenancies.

You may raise any other matter relevant to the Investigation in your Submission.

Analysis of Complaints and Enquiries Received by the Commissioner for Equal Opportunity

A content analysis of complaints and inquiries by Aboriginal people against DHW from 2000 to May 2002 (2.5 year period) indicates the following issues:
• 196 complaints and enquiries were analysed of which 193 (over 98%) of complainants were Aboriginal people;
• 176 (over 89%) of the complainants were Aboriginal women;
• 83 (over 42%) of the complainants said they were homeless;
• 185 (over 94%) of the complainants were from the Perth metropolitan area;
• 81 (over 41%) of the complaints related to transfers;
• 34 (over 27%) of the complaints related to priority listings;
• 34 (over 27%) of the complaints related to housing;
• 65 (over 33%) of the complaints lapsed;
• 46 (over 23%) of the complaints were conciliated/resolved.
APPENDIX C
Submission form for individuals
Investigation into the Provision of Public Housing to Aboriginal\(^8\) People in Western Australia

This form has been designed to help you make your Submission to the Commissioner for Equal Opportunity’s Investigation into the Provision of Public Housing to Aboriginal people in Western Australia. Refer also to the Terms of Reference and Consultation Paper.

Name of person completing Submission:
Name of organisation (if applicable):
Position in organisation (if applicable):
Postal Address: ________________________________________________
Contact Person: ___________________ Contact No:_______________________
Email Address: ________________________________________________

We are concerned about your confidentiality, so please indicate which of the following applies to this Submission:
☐ This Submission is to remain strictly confidential and is not to be shared/distributed to anyone outside of the Investigation.
☐ This Submission may be shared/distributed to any other party, if my personal details are removed and kept confidential.
☐ This Submission is public information and may be freely shared/distributed to anyone interested.
☐ I am happy to be contacted by the Commission for further information about my Submission.
☐ Other, please specify: ________________________________________________

Signature: ___________________ Date: ____________________________

CLOSING DATE
The closing date for all Submissions has been extended to the close of business Friday 30 May 2003. Please send your written Submission:

By Mail: Commissioner for Equal Opportunity: Aboriginal Housing Investigation
PO Box 7370, Cloisters Square, PERTH WA 6850

\(^8\) For the purposes of this Investigation, the term ‘Aboriginal’ also includes people of Torres Strait Islander descent.
SUBMISSION QUESTIONS

BACKGROUND INFORMATION

To help you with your Submission, a brief working definition of ‘Direct’ and ‘Indirect Discrimination’ affecting Aboriginal people is provided.

**Direct Discrimination** is when someone treats a person less favourably than they would treat another person in the same or similar circumstances because of a ground, such as the other person’s (or a relative or associate’s) race, impairment, marital or family status, pregnancy, family responsibility, age, sex, sexual orientation, religion or politics.

**Indirect Discrimination** is when the less favourable treatment because of a ground, as described above, is a result of a policy, practice or program that appears to apply to everyone in the same way, but when in practice sets up a requirement or condition with which far more Aboriginal people than non-Aboriginal people cannot comply, or have greater difficulty in complying; and the requirement or condition is unreasonable.

In the case of race discrimination, the ‘less favourable treatment’ can include acts, omissions, requirements or conditions that segregate a person from people of another race.

QUESTIONS

These questions are meant to support your response, but we welcome any suggestions, ideas and contributions you wish to make about the provision of public housing for Aboriginal people in Western Australia.

It would be helpful if, when you respond, you write the answers to each question on a separate sheet of paper. Attach extra sheets to your Submission, if you need to.

Relevant Policies

Q1. Are you aware that the Department of Housing and Works (DHW) has written policies in relation to:

Please respond by ticking ✓ in the appropriate box below.

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<th>Yes</th>
<th>No</th>
<th>Not sure</th>
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<tr>
<td>a. eligibility for housing</td>
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<td>b. priority housing</td>
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<td>c. domestic violence</td>
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<tr>
<td>d. rent payment</td>
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<tr>
<td>e. tenant liability</td>
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<td>f. maintenance and repairs</td>
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<td>g. inspections</td>
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<td>h. anti-social behaviour</td>
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9 Telephone Typewriter
Q2. Have you had any experience with DHW in relation to any of these policies (Q1 a-j). If so, please describe your experiences in detail for each of the relevant policies, including any decision made by DHW that affected you.

Relevant Programs

Q3. Are you aware of any of DHW’s programs listed below:

Please respond by ticking ✓ in the appropriate box below.

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<td>a. Supported Housing Assistance Program (SHAP)</td>
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<td>b. Aboriginal Tenant Support Service (ATSS)</td>
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<td>c. Fund 1 (mainstream) &amp; Fund 6 (Aboriginal)</td>
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<td>d. construction (size, design, location)</td>
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<td>e. redevelopment</td>
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<td>f. Crisis Accommodation Program (CAP)</td>
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<td>j. other (please specify)</td>
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Q4. Did any of these programs (Q3 a-j) meet the housing needs of Aboriginal people? Please provide details of your experience for each of the relevant programs.

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</tbody>
</table>
Q5. What improvements, if any, could be made to any of these program(s) (Q3 a-j). Please provide details for each of the relevant programs.

____________________________________________________________________________________

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Relevant Practices

Q6. Do any of DHW’s practices listed below meet the housing/tenancy needs of Aboriginal people? Please respond by ticking ✓ in the appropriate box below.

<table>
<thead>
<tr>
<th>Practice</th>
<th>Met</th>
<th>Not met</th>
<th>Not sure</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. responsiveness of DHW staff (i.e. Homeswest)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>b. waiting list management</td>
<td></td>
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<td>c. letters and notices</td>
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<td>e. maintenance and repairs</td>
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<td>g. record keeping</td>
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<tr>
<td>h. inspections</td>
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<td></td>
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<tr>
<td>i. other (please specify)</td>
<td></td>
<td></td>
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</tbody>
</table>

Q7. What improvements, if any, could be made to any of these practices (Q6 a-i). Please provide details for each of the relevant practices.

____________________________________________________________________________________

____________________________________________________________________________________

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____________________________________________________________________________________
Q8. Please describe your experiences with DHW’s practices (Q6 a-i), including any decision made by DHW that affected you.

________________________________________________________________________
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________________________________________________________________________

Relevant Guidelines/Directions

Q9. Are you aware of any DHW guidelines or directions (e.g. discretion policy, directives, procedural fairness). [ ] Yes [ ] No

If yes, please identify and describe the guidelines or directions you consider are of benefit or problematic to the housing and/or tenancy needs of Aboriginal people.

DHW Training and Development

Q10. Based on your experience, do you consider that DHW staff are knowledgeable and adequately trained in the following areas:

Please respond by ticking ✓ in the appropriate box below.

<table>
<thead>
<tr>
<th>Area</th>
<th>Yes</th>
<th>No</th>
<th>Not sure</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. anti-racism</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>b. cultural awareness</td>
<td></td>
<td></td>
<td></td>
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<td>c. domestic violence</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>d. internal policy and procedures</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>e. relevant law</td>
<td></td>
<td></td>
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<tr>
<td>f. Public Sector Standards</td>
<td></td>
<td></td>
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<tr>
<td>g. ongoing training</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>h. other (please specify)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Q11. Based on your experience with staff, appeal representatives and other agents, please provide comments relating to the quality, relevance and requirements for DHW Training and Development (Q10 a-h)).

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

Appendix C  page 265
Decisions and/or Decision Making

Q12. Based on your experience, do you consider that DHW’s decision-making processes:

Please respond by ticking ✓ in the appropriate box below.

<table>
<thead>
<tr>
<th>a. are transparent (i.e. clear &amp; understandable)</th>
<th>Yes</th>
<th>No</th>
<th>Not sure</th>
</tr>
</thead>
<tbody>
<tr>
<td>b. are accountable (i.e. responsible &amp; answerable)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>c. were properly explained to you, when asked</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>d. are fair</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>e. other (please specify) _____________________</td>
<td></td>
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</tbody>
</table>

Q13. Based on your experience with DHW’s decisions and decision-making processes, please provide details of your experience, including what happened when a decision was made affecting you (Q12 a-e).

__________________________________________________________________________________________________________________________________________________________
__________________________________________________________________________________________________________________________________________________________
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Any other issues

Q14. Based on your experience with DHW, do you have any other issues to raise or comments you would like to make?

__________________________________________________________________________________________________________________________________________________________
__________________________________________________________________________________________________________________________________________________________
__________________________________________________________________________________________________________________________________________________________
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Q15. In your experience with DHW, are you aware of where you can get help, if required?

Yes ■ No ■ If Yes, please provide details below.

__________________________________________________________________________________________________________________________________________________________
__________________________________________________________________________________________________________________________________________________________
__________________________________________________________________________________________________________________________________________________________
__________________________________________________________________________________________________________________________________________________________
Q16. We welcome any suggestions, comments or any other relevant information.

Please use and attach extra pages if required.

**COMPLETED SUBMISSIONS**

After you have completed your Submission you can return it to the Equal Opportunity Commission as follows, by close of business on Friday 30 May 2003:

- **By Mail:** Commissioner for Equal Opportunity: Aboriginal Housing Investigation
  PO Box 7370, Cloisters Square, PERTH WA 6850
- **By Email:** eoc@equalopportunity.wa.gov.au
- **By Fax:** (08) 9216 3960
- **By TTY:** (08) 9216 3936
APPENDIX D

Submission form for organisations

Investigation into the Provision of Public Housing to Aboriginal People in Western Australia

This form has been designed to help you make your Submission to the Commissioner for Equal Opportunity’s Investigation into the Provision of Public Housing to Aboriginal people in Western Australia. Refer also to the Terms of Reference and Consultation Paper.

Name of person completing Submission: 

Name of organisation (if applicable): 

Position in organisation (if applicable): 

Postal Address: 

Contact Person: ________________________ Contact No: ________________________

Email Address: _____________________________________________________________

We are concerned about your confidentiality, so please indicate which of the following applies to this Submission:

☐ This Submission is to remain strictly confidential and is not to be shared/distributed to anyone outside of the Investigation.

☐ This Submission may be shared/distributed to any other party, if my personal details are removed and kept confidential.

☐ This Submission is public information and may be freely shared/distributed to anyone interested.

☐ My organisation is happy to be contacted by the Commission for further information about my Submission.

☐ Other, please specify: 

Signature: ________________________ Date: ________________________

CLOSING DATE

The closing date for all Submissions has been extended to the close of business Friday 30 May 2003.

Please send your written Submission:

By Mail: Commissioner for Equal Opportunity: Aboriginal Housing Investigation

PO Box 7370, Cloisters Square, PERTH WA 6850

8 For the purposes of this Investigation, the term ‘Aboriginal’ also includes people of Torres Strait Islander descent.
By Email:  eoc@equalopportunity.wa.gov.au
By Fax: (08) 9216 3960
By TTY 11: (08) 9216 3936
By Phone: (08) 9216 3900 or 1800 198 149 (free call outside the Perth metropolitan area).

SUBMISSION QUESTIONS

BACKGROUND INFORMATION

To help you with your Submission, a brief working definition of ‘Direct’ and ‘Indirect Discrimination’ affecting Aboriginal people is provided.

**Direct Discrimination** is when someone treats a person less favourably than they would treat another person in the same or similar circumstances because of a ground, such as the other person’s (or a relative or associate’s) race, impairment, marital or family status, pregnancy, family responsibility, age, sex, sexual orientation, religion or politics.

**Indirect Discrimination** is when the less favourable treatment because of a ground, as described above, is a result of a policy, practice or program that appears to apply to everyone in the same way, but when in practice sets up a requirement or condition with which far more Aboriginal people than non-Aboriginal people cannot comply, or have greater difficulty in complying; and the requirement or condition is unreasonable.

In the case of race discrimination, the ‘less favourable treatment’ can include acts, omissions, requirements or conditions that segregate a person from people of another race.

QUESTIONS

These questions are meant to support your response, but we welcome any suggestions, ideas and contributions you wish to make about the provision of public housing for Aboriginal people in Western Australia.

It would be helpful if, when you respond, you write the answers to each question on a separate sheet of paper. Attach extra sheets to your Submission, if you need to, along with any relevant supporting documentation or statistical data. Please also provide detailed references for any relevant documents (e.g. research, reports).

**Relevant Policies**

Q1. Are you aware that the Department of Housing and Works (DHW) has written policies in relation to:

Please respond by ticking ✓ in the appropriate box below.

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Not sure</th>
</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
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<td>b.</td>
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<td>c.</td>
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<td>d.</td>
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<td>e.</td>
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<td>f.</td>
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<tr>
<td>g.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

11 Telephone Typewriter
Appendix D  page 271

h. anti-social behaviour
i. evictions
j. other (please specify) ________________

Q2. Have you had any experience with DHW in relation to any of these policies (Q1 a-j). If so, please describe your experiences in detail for each of the relevant policies, including any decision made by DHW that affected your organisation.

Relevant Programs

Q3. Are you aware of any of DHW’s programs listed below:

Please respond by ticking ✓ in the appropriate box below.

<table>
<thead>
<tr>
<th>Program</th>
<th>Yes</th>
<th>No</th>
<th>Not sure</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Supported Housing Assistance Program (SHAP)</td>
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<tr>
<td>b. Aboriginal Tenant Support Service (ATSS)</td>
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<tr>
<td>c. Fund 1 (mainstream) &amp; Fund 6 (Aboriginal)</td>
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<td>d. construction (size, design, location)</td>
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<tr>
<td>e. redevelopment</td>
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<td></td>
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<tr>
<td>f. Crisis Accommodation Program (CAP)</td>
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<tr>
<td>g. Community Housing</td>
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<tr>
<td>h. Homeless Helpline</td>
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<tr>
<td>i. Derbarl Yerrigan Priority 1</td>
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<tr>
<td>j. other (please specify)</td>
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</tbody>
</table>

Q4. Did any of these programs (Q3 a-j) meet the housing needs of your Aboriginal clients? Please provide details of your experience for each of the relevant programs.

Q5. What improvements, if any, could be made to any of these program(s) (Q3 a-j). Please provide
details for each of the relevant programs.

<table>
<thead>
<tr>
<th>Relevant Practices</th>
<th>Met</th>
<th>Not met</th>
<th>Not sure</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. responsiveness of DHW staff (i.e. Homeswest)</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
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<tr>
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<td>f. use of legal action to manage tenant behaviour</td>
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<td>☐</td>
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<tr>
<td>g. record keeping</td>
<td>☐</td>
<td>☐</td>
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</tr>
<tr>
<td>h. inspections</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>i. other (please specify)</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

Q7. What improvements, if any, could be made to any of these practices (Q6 a-i). Please provide details for each of the relevant practices.
Q8. Please describe your experiences with DHW’s practices (Q6 a-i), including any decision made by DHW that affected your organisation.

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Relevant Guidelines/Directions

Q9. Are you aware of any DHW guidelines or directions (e.g. discretion policy, directives, procedural fairness).

■ Yes ■ No

If yes, please identify and describe the guidelines or directions you consider are of benefit or problematic to the housing and/or tenancy needs of your Aboriginal clients.

DHW Training and Development

Q10. Based on your experience, do you consider that DHW staff are knowledgeable and adequately trained in the following areas:

Please respond by ticking ✓ in the appropriate box below.

<table>
<thead>
<tr>
<th>Area</th>
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</table>

Q11. Based on your experience with staff, appeal representatives and other agents, please provide comments relating to the quality, relevance and requirements for DHW Training and Development (Q10 a-h)).

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Appendix D page 273
Decisions and/or Decision Making

Q12. Based on your experience, do you consider that DHW’s decision-making processes:

Please respond by ticking ✓ in the appropriate box below.

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
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<tr>
<td>a. are transparent (i.e. clear &amp; understandable)</td>
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<tr>
<td>d. are fair</td>
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</tr>
<tr>
<td>e. other (please specify)</td>
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<td></td>
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</tbody>
</table>

Q13. Based on your experience with DHW’s decisions and decision-making processes, please provide details of your experience, including what happened when a decision was made affecting your organisation (Q12 a-e).

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Any other issues

Q14. Based on your experience with DHW, do you have any other issues to raise or comments you would like to make?

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Q15. In your experience with DHW, are you aware of where you can get help, if required?

Yes ■ No ■ If Yes, please provide details below.

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Appendix D  page 274
Q16. We welcome any suggestions, comments or any other relevant information.

Please use and attach extra pages if required.

**COMPLETED SUBMISSIONS**

After you have completed your Submission you can return it to the Equal Opportunity Commission as follows, by close of business on Friday 30 May 2003:

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**By Email:** eoc@equalopportunity.wa.gov.au
**By Fax:** (08) 9216 3960
**By TTY:** (08) 9216 3936
APPENDIX E

S80 Inquiry- Private Forum Oral Submissions Confidentiality

CONTACT DETAILS

Name ____________________________

__________________________________

Address __________________________

__________________________________

Phone ____________________________

CONFIDENTIALITY

We are concerned about your confidentiality, so please indicate which of the following applies to this Submission:

■ This Submission is to remain strictly confidential and is not to be shared/distributed to anyone outside of the Investigation.
■ This Submission may be shared/distributed to any other party, if my personal details are removed and kept confidential.
■ This Submission is public information and may be freely shared/distributed to anyone interested.
■ I am happy to be contacted by the Commission for further information about my Submission.
■ Other, please specify: ____________________________

__________________________________

Signature:

Date:
APPENDIX F
Investigation into the Provision of Public Housing to Aboriginal People in Western Australia

CONSENT FORM - VIDEO RECORDING

There are two reasons why the Commission wants to do a video recording of your experiences with Homeswest.

1. As a part of taking your story the Equal Opportunity Commission wants to produce a video recording that will form part of or accompany (in whole or in part) the written report of the Investigation.

2. The other reason for making a video recording is to give people who tell us their stories a choice about how they want to receive information about the Investigation. By video recording your stories you will have a choice to receive the information in vision and sound, as well as in print.

3. I also understand that my story may not be included in whole or in part in the final video and that Murdoch University will oversee the editing of the video. The resulting video may be used for educational purposes as well as forming part of the outcome of the Investigation.

I __________________________________________________________________________

Hereby give my consent to be filmed by the Equal Opportunity Commission.

Please indicate if there are any conditions upon which you agree to be filmed
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________

Signed: ________________________________
Date: ________________________________

Name & Address________________________  Contact Details: __________________________
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________

Appendix F  page 279


Department of Native Welfare (1967b). *A place in the sun*. Perth, Western Australia: Department of Native Welfare (DNW).


Furnell, L.C. (QC) (1974). Report of the Royal Commission upon all matters affecting the well being of persons of Aboriginal descent in Western Australia (with particular reference to their health, education, housing, social welfare, economic and group cultural needs) and to recommend such legislative, administrative, or other changes as are thought necessary. Perth: Government of Western Australia.


Hansard. (28.06.95)


House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (HORSCATSIA). (2001). We can do it!: The needs of urban dwelling Aboriginal and Torres Strait Islander
peoples. Canberra, Australian Capital Territory: House of Representatives.


www.austlii.edu.au/databases.html


An Inquiry into
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in Western Australia

December 2004
ISBN 0 7307 2625 8

Finding a Place