



Providing a Voice for Housing Consumers

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Homeswest Under Occupancy Discussion Paper

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1: Introduction

When considering housing occupancy, over crowding is normally considered to be one of our most pressing housing issues but ironically, the Western Australian housing system also suffers from high rates of under occupancy.

The Department of Housing and Works is concerned about under occupancy within its housing stock, not because they are doing badly in comparison to the private sector, in fact Homeswest are efficient managers, but because Homeswest's waiting list for large family housing could potentially be cleared if all one, two and three person households occupying four plus bedroom properties were to relocate into more appropriately sized dwellings.

The HOSC has formed a working party to undertake research into under occupancy, consult with the community and develop the HOSC's recommended response to DHW. The Working Party includes representatives from Shelter WA, Department of Housing and Works, Tenants Advice Service and Department of Employment and Consumer Protection.

Section two presents the Terms of Reference guiding the work of the Under Occupancy Working Party established by the Homeswest Operational Standing Committee (HOSC). The HOSC developed these Terms of Reference in order to investigate the extent of under occupancy both in the broader community and within Homeswest, identify its impacts and to recommend actions to address the level of under occupancy.

Section three looks at under occupancy in a broad community context and uses the Canadian Occupancy National Standard (CONS) to measure the extent of under occupancy for all dwellings in Western Australia and its distribution by Region.

Section four identifies the extent of under occupancy within Homeswest's housing stock. It also quantifies the proportion and location of stock being under occupied along with the level of demand (wait list) for larger dwellings.

Section five presents the results of interviews with key policy personal located in other State Housing Authorities (SHA) and explores their use of operational policy to manage under occupancy within their housing stock.

Section six investigates the legality of DHW utilising the Residential Tenancies Act to require under occupying tenants to relocate to more appropriately sized dwellings.

2: Terms of Reference

Homeswest have identified that a significant proportion of their four, five and six bedroom dwellings are being under occupied. This under occupancy has occurred as a result of the changing bedroom requirement of some Homeswest tenants and the lack of terms within the Homeswest Tenancy Agreement and Rental Policy Manual, to allow Homeswest to require under occupying tenants to relocate to more appropriately sized dwellings.

At the same time Homeswest has a significant waiting list of large families, whom in some zones are waiting in excess of 4 years for an allocation.

Homeswest wishes to develop operational policies that will allow them to relocate tenants that are under occupying large dwellings to more appropriately sized dwellings. While the Homeswest Operational Standing Committee (HOSC) supports the efficient use of Homeswest stock, it is concerned about the impact of the proposed policy changes on security of tenure and whether in fact it is legal for Homeswest to require existing tenants to relocate to another dwelling or face termination proceedings.

The HOSC formed a working party and developed terms of reference in order to investigate the extent of under occupancy, its impacts and to recommend actions to reduce the level of under occupancy.

Membership of the Under Occupancy Working Party

- Shelter WA, Paul Pendergast;
- Homeswest, Sean Daffin;
- TAS, Rob Spinks; and,
- DOCEP, Tim Banfield.

Terms of Reference

The Under Occupancy Working Party will develop draft under occupancy policy and guidelines for inclusion in the Homeswest Policy Manual (Tenancy Management Policy) that will allow Homeswest to better match under occupying tenants with appropriately sized dwellings. The Working Party will report against the following Terms of Reference:

- 1) Investigate the broader community context in which Homeswest is operating and in particular, the extent of under occupancy.
- 2) Establish the impact of under occupancy on Homeswest, those on the waiting list and Homeswest tenants likely to be effected by any proposed policy changes.
- 3) Investigate the legality of Homeswest utilising the Residential Tenancies Act to require existing tenants to relocate and/or to terminate tenancy agreements for under occupying their dwellings.
- 4) Identify the location and extent of under occupancy within Homeswest and quantify:
 - the proportion and location of stock effected;
 - identify the level of demand (wait list) for larger dwellings; and
 - identify Homeswest's ability to address the problem through stock acquisition and transfers.
- 5) Propose incentives and policies to facilitate the continued match of households and dwellings, these proposals should allow consistent application across Homeswest Offices.
- 6) Conduct consultations on the Working Parties findings and make recommendations to address the above to HOSC and DHW Executive.

3: Overview of Housing Occupancy in Western Australia

This section gives an overview of housing occupancy across all tenures in Western Australia, as measured against the Canadian National Occupancy Standard. Using this Standard as the measure, the extent of over and under occupancy is identified by dwelling type and by Region. Finally, under occupancy within Homeswest housing stock is assessed and the rate is compared by Region.

The Canadian National Occupancy Standard can be used to measure the extent of over and under occupancy of dwellings, based on the number of people in the household and comparing this to the appropriate number of bedrooms required to adequately house this household type.

Generally, under occupancy effects dwellings with three or more bedrooms and in Western Australia, is highest in Perth, then declining with remoteness, the lowest rate being in Kununurra.

Canadian National Occupancy Standard

In order to measure under occupancy it is necessary to agree on how to measure adequate, under and over occupancy. While there is no universally accepted occupancy measure, this section of the report refers to the Canadian National Occupancy Standard (Standard), which is also used by the Australian Bureau of Statistics. This Standard specifies that there should be no more than two persons per bedroom, with the provisos that:

- ❑ children between 5 and 18 years of age cannot reasonably be expected to share a bedroom if they are of different sexes, and
- ❑ single household members 18 years or over should have a separate bedroom, as should parents or couples.

Application of the standard results in the following bedroom requirements:

- | | |
|---|---------------------|
| ❑ single adult: | 0-2 bedrooms |
| ❑ single adult (group): | 1 bedroom per adult |
| ❑ couple with no children: | 2 bedrooms |
| ❑ sole parent or couple with 1 child: | 2 bedrooms |
| ❑ sole parent or couple with 2 or 3 children: | 3 bedrooms |
| ❑ sole parent or couple with 4+ children: | 4 bedrooms |

The extent of under and over occupancy in WA

Applying the Standard to Western Australian housing reveals that only about half of the States occupied dwellings contain the appropriate number of people for the number of bedrooms. Table 1 (over the page) presents Census 2001 data for dwellings where both the number of people usually resident and the number of bedrooms was known, it reveals that nearly half (46%) of WA's dwellings are under occupied, increasing to 55% of four bedroom and 61% of five plus bedroom dwellings. While at the opposite end of the spectrum, 4% of dwellings are over crowded, the worst effected being one bedroom dwellings (18%).¹

¹ The data presented in Table 1 is for all households and the results would be quite different for Indigenous households, see Shelter WA, Indigenous Housing in Regional Areas Forum.

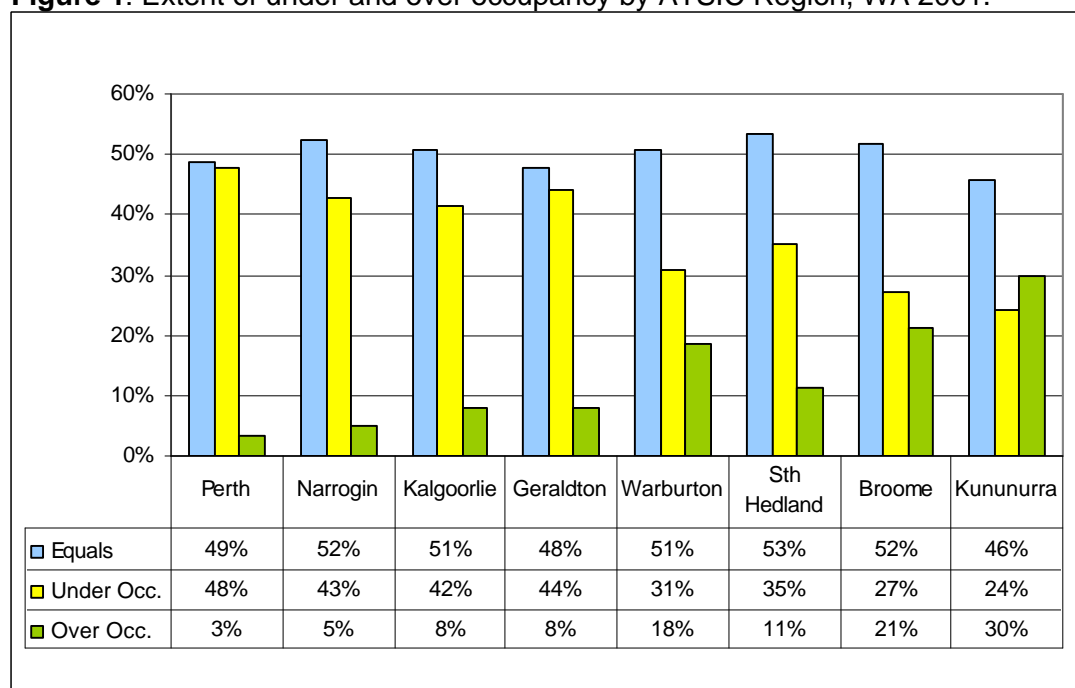
Table 1: The extent of under and over occupancy by bedroom number, WA 2001

No. Bedrooms	Occupancy Standard			Total	Occupancy Standard			Total
	Equals	Under	Over		Equals	Under	Over	
Western Australia								
None	9,969	0	868	10,837	92%	0%	8%	100%
One Bedroom	22,614	0	5,042	27,656	82%	0%	18%	100%
Two Bedroom	89,285	0	3,820	93,105	96%	0%	4%	100%
Three Bedroom	95,243	169,079	15,491	279,813	34%	60%	6%	100%
Four Bedroom	89,155	109,339	2,073	200,567	44%	55%	1%	100%
Five Plus	13,046	20,532	0	33,578	39%	61%	0%	100%
Total Households	319,312	298,950	27,294	645,556	49%	46%	4%	100%

Data Source: ABS, Census of Population and Housing 2001: Indigenous Community Profile.

The level of under occupancy is not evenly distributed across the State, generally there are higher levels of under occupancy in Perth and declining levels corresponding with remoteness from Perth. Figure 1 provides details on regional WA by ATSI Region (each region contains a number of local government areas) and reveals that under occupancy ranges from a low of 24% of dwellings in Kununurra to a high of 48% in Perth. Kununurra, Broome and Warburton all have extremely high rates of overcrowding, 30%, 21% and 18% respectively.

Figure 1: Extent of under and over occupancy by ATSI Region, WA 2001.



Data Source: ABS, Census of Population and Housing 2001: Indigenous Community Profile.

1. The data presented in Figure 1 is for all dwellings where both the number of occupants and the number of bedrooms was known.
2. Total number of dwellings: Perth (499,843); Narrogin (95,414); Kalgoorlie (15,113); Geraldton (18,403); Warburton (1,725); South Hedland (9,500); Broome (3,442); and, Kununurra (2,116).

Location and extent of under occupancy within Homeswest

As identified above at least 46% of all dwellings in Western Australia are under occupied when measured against the Occupancy Standard and this proportion increases to 55% of four bedroom dwellings and 61% of five bedrooms plus dwellings. In addition, the rate of under occupancy is not uniformly distributed across the State, the highest rate being in Perth (48%) and then falling with remoteness from Perth. Under occupancy in South Hedland was 35%, Broome 27% and Kununurra 24%.

Homeswest data presented in Table 2 demonstrates a similar pattern but at much lower rates than for all tenures. The highest rate of under occupancy is in Mirrabooka (39%), followed by Fremantle (36%) and Cannington (32%). As in the broader housing system, the rate of under occupancy in Homeswest declines with remoteness from Perth. Kalgoorlie, Geraldton and South Hedland all have significantly lower rates of under occupancy than Mirrabooka but Broome sets the bench with only 20% of large family houses under occupied.

Table 2: Extent of under occupation of Homeswest four plus bedroom dwellings by Region, December 2004

Homeswest Region	Under Occupied				Stock 4+ Beds	
	4 bed	5 bed	6 bed	Total	Total	% U/O
Mirrabooka	287	52	6	345	883	39%
Freamntle	176	24	6	206	567	36%
Cannington	187	31	2	220	677	32%
Albany	39	0	0	39	117	33%
Bunbury	48	4	2	54	170	32%
Kalgoorlie	26	1	0	27	113	24%
Northam	33	0	1	34	109	31%
Geraldton	46	5	0	51	197	26%
Sth Hedland	25	1	0	26	103	25%
Broome	23	0	0	23	115	20%
All Regions	890	118	17	1025	3051	34%

Data Source: Homeswest internal data December 2005 and Homeswest Waiting Times, Allocation and Housing Stock as at 30 September 2004.

Conclusion

Under occupancy is an issue that effects the entire Western Australian Housing System, nearly half of all dwellings are being under occupied and this increases to over half of all four bedroom dwellings and two thirds of five plus bedroom dwellings. The Perth Housing System has the highest rate of under occupancy, while, Kununurra has the lowest and at the same time, is the only Region with a higher rate of overcrowding than under occupancy.

While Homeswest performs much better than the Western Australian Housing System as a whole, about one third of its large family houses are under occupied. Under occupancy is not evenly spread throughout the State, the highest rate is in the Mirrabooka Region followed by Fremantle and Cannington. Outside the Perth Metropolitan area, under-occupancy declines with remoteness, the highest rate is in Albany Region and the lowest in Broome

Consultation Questions

- 1) Do you consider the current level of under occupancy within Homeswest's large family housing stock to be problematic?
- 2) What level of under occupancy is acceptable?
- 3) If you believe under occupancy is a problem, where do think Homeswest should focus its efforts to reduce under occupancy?

4: Impact of under occupancy on Homeswest and its Applicants

This section identifies the level of demand for Homeswest's stock of housing for large families. It also quantifies demand for this type of housing by location and explores some of the impacts of under occupancy.

Demand for Homeswest Housing

The primary tool utilised by Homeswest to assess demand for its rental housing is the wait turn list. This list provides information on the number and types of households with current applications for Homeswest rental along with the locations these applicants are waiting for.

Homeswest wait list all dwelling types

In September 2004 Homeswest had 13,198 applicants registered on its wait list. About two thirds of these were waiting for housing in the Perth metro and about half of the Perth Metro demand is for housing within the Mirrabooka Region, the remainder are divided between Fremantle and Cannington. About a third of applicants are waiting for housing in non-Metro areas, the highest demand being for Bunbury and Broome. In addition, Homeswest's strongest demand is from small households who are waiting for one and two bedroom dwellings.

Table 3 demonstrates that demand for four plus bedroom housing accounts for 5.7% of the Homeswest wait list and the bulk of this demand is for four bedroom dwellings. Demand for large family housing ranges from a low of 3.8% of the wait list in Fremantle to a high of 7.3% in Cannington and Geraldton.

Table 3: Applicants for Homeswest housing by dwelling required and Region

Homeswest Region	Family					Pensioner		Singles		Total	
	2 BD	3 BD	4 BD	5/6 BD	4+ BD	1 BD	2 BD	1 BD	2 BD	%	No.
Mirrabooka	29.6%	19.8%	5.2%	1.0%	6.2%	10.2%	3.9%	29.5%	0.9%	100%	4,501
Fremantle	28.5%	17.6%	3.6%	0.2%	3.8%	16.0%	6.4%	26.4%	1.2%	100%	2,512
Cannington	30.9%	20.6%	6.4%	1.0%	7.3%	9.0%	3.4%	28.4%	0.5%	100%	2,408
Albany	30.8%	22.3%	5.5%	0.3%	5.8%	14.0%	6.3%	20.5%	0.5%	100%	400
Bunbury	30.9%	25.0%	4.6%	0.4%	5.0%	12.5%	5.5%	20.5%	0.5%	100%	937
Kalgoorlie	28.0%	22.8%	5.5%	0.3%	5.8%	12.7%	3.8%	25.1%	1.7%	100%	346
Northam	19.1%	15.4%	5.0%	0.4%	5.4%	22.0%	10.0%	26.1%	2.1%	100%	241
Geraldton	31.4%	20.6%	6.2%	1.1%	7.3%	11.4%	7.5%	21.8%	0.0%	100%	545
Sth Hedland	27.2%	22.1%	6.3%	1.0%	7.2%	1.0%	0.0%	42.5%	0.0%	100%	416
Broome	30.7%	32.6%	3.8%	0.3%	4.1%	4.0%	2.8%	24.9%	0.8%	100%	892
State Total	29.6%	20.9%	5.0%	0.7%	5.7%	11.0%	4.5%	27.4%	0.8%	100%	13,198

Data Source: Homeswest Waiting Times, Allocation and Housing Stock as at 30 September 2004.

Homeswest Wait List 4+ bedroom dwellings

Table 4 demonstrates that in September 2004 about two thirds of the 762 applicants for large family dwellings were located within the Perth Metro. The Mirrabooka Region accounts for 37%, followed by Cannington (23%) and Fremantle (12.5%). The larger Regions outside the Metropolitan area are Bunbury (6%), Geraldton (5%) and Broome (5%). In addition, most of the demand in this category is for 4 bedroom dwellings (87%).

Table 4: Homeswest wait list for four plus bedroom dwellings by Region.

Homeswest Region	Dwelling type required			Total	%
	4 BD	5 BD	6 BD		
Mirrabooka	233	43	4	280	37%
Fremantle	90	5	1	96	13%
Cannington	153	22	1	176	23%
Albany	22	1	-	23	3%
Bunbury	43	4	-	47	6%
Kalgoorlie	19	1	-	20	3%
Northam	12	1	-	13	2%
Geraldton	34	6	-	40	5%
South Hedland	26	4	-	30	4%
Broome	34	3	-	37	5%
Total	666	90	6	762	100%

Data Source: Homeswest Waiting Times, Allocation and Housing Stock as at 30 September 2004.

Ratio of Homeswest applicants to appropriately sized stock

Ratios provide a method for comparing need between different sized Regions and between different dwelling types. The applicant to stock ratio is generated by dividing the number of applicants in a particular category by the number of appropriately sized dwellings.

Table 5 clearly demonstrates that singles are Homeswest's most pressing demand problem, with an average of 1.73 applicants for every appropriately sized dwelling. In other words, there are almost two singles households on the wait list for every singles dwelling.

With regard to large families, there is a State wide ratio of .24 applicants for every large family dwelling or one large family applicant to every four large family dwelling. The ratio varies from a low of .12 in Geraldton to a high of .31 in Mirrabooka and Broome.

Table 5: Homeswest applicant to stock ratio: September 2004.

Region	Applicants to stock ratio			
	Seniors	Singles	Fam 2/3	Fam 4+
Mirrabooka	0.14	1.90	0.43	0.31
Fremantle	0.23	2.38	0.36	0.16
Cannington	0.14	1.20	0.39	0.25
Albany	0.33	1.94	0.99	0.16
Bunbury	0.27	1.72	0.38	0.29
Kalgoorlie	0.38	1.09	0.23	0.17
Northam	0.56	1.84	0.14	0.12
Geraldton	0.33	2.33	0.24	0.21
Sth Hedland	0.16	1.50	0.15	0.28
Broome	0.35	2.01	0.46	0.31
Western Australia	0.19	1.73	0.36	0.24

Data Source: Homeswest Waiting Times, Allocation and Housing Stock as at 30 September 2004.

Ratio of Homeswest applicants to occupations

Occupations refer to applicants who have moved off the waiting list, signed a tenancy agreement and moved into Homeswest housing during the quarter. Occupations have become one of the most reliable measures of Homeswest's ability to respond to demand.

Again, singles present a major problem for Homeswest, with a ratio of 14.7 applicants to every occupation, increasing to 53.25 in Broome.

Table 5 demonstrates that the State ratio is 5.49 large family applicants to every occupation. The strongest demand from large families is in the Mirrabooka with a ratio of 10.88 applicants to every occupation, followed by South Hedland (9.67) and Broome (9).

Table 5: Homeswest applicants to occupations ratio: September 2004.

Region	Applicants to occupations ratio			
	Seniors	Singles	Fam 2/3	Fam 4+
Mirrabooka	5.45	10.11	10.11	10.88
Fremantle	5.02	19.34	12.15	3.87
Cannington	5.19	15.37	6.33	3.73
Albany	7.80	46.50	8.48	4.75
Bunbury	6.11	44.75	18.63	5.56
Kalgoorlie	10.80	11.00	3.73	3.80
Northam	5.75 *		1.33	2.60
Geraldton	8.50	40.33	4.32	3.73
Sth Hedland	3.00	11.00	2.81	9.67
Broome	6.67	53.25	14.08	9.00
Western Australia	5.62	14.72	8.47	5.49

Data Source: Homeswest Waiting Times, Allocation and Housing Stock as at 30 September 2004.

Homeswest Wait Times

To assist applicants with estimating how long they can expect to wait before being allocated housing, Homeswest publishes the date when the last household allocated a tenancy for the period first applied. This information is available by zone and household type. Taking the application date and calculating how many months the applicant spent on the waiting list before being allocated housing begins to reveal some very significant differences between zones and household types.

The median waiting period for all zones only varies by five months across each of the each of the household types: 31 months for large families to 36 months for singles. However, Table 6 (below) demonstrates that large families are waiting as long as 90 months (7.5 years) in Mirrabooka's North Central Zone, this period is nearly three times the median for this household type. All Metro zones exceed the median wait time except for Peel (28 months). The non-Metro Zones of Southern, Bunbury, Geraldton, Broome and Kununurra, all equal or exceed the median.

Table 6: Homeswest wait times by household type and zone, September 2004.

Region	Zone	Wait time (months)				Rank			
		Sen's	Sing's	Fam 2/3	Fam 4+	Sen's	Sing's	Fam 2/3	Fam 4+
Mirrabooka	Nth Central	48	58	84	90	5	4	1	1
	Nth Coastal	59	59	62	59	1	2	3	2
	Nth East Metro	20	59	56	33	17	2	6	11
Fremantle	Kwinana	35	38	59	57	11	13	4	3
	Fremantle	44	51	69	41	6	7	2	8
	Peel	36	63	36	28	10	1	13	15
Cannington	Sth City	34	46	54	55	13	9	9	4
	Sth Central	40	40	43	43	9	10	11	6
	Sth East Metro	58	40	40	50	2	10	12	5
	Sth Districts	35	40	51	39	11	10	10	9
Albany	Southern	42	34	56	31	8	14	6	13
Bunbury	Bunbury	43	57	59	43	7	5	4	6
	Busselton	n/a	n/a	n/a	n/a	n/a	n/a	n/a	
Kalgoorlie	Esperance	24	25	32	25	15	20	16	16
	Kalgoorlie	19	23	22	14	18	22	19	20
Northam	Merredin	17	9	15	10	19	26	25	24
	Narrogin	9	15	20	12	23	25	21	22
	Northam	11	34	10	18	21	14	26	19
Geraldton	Carnarvon	52	29	22	19	4	16	19	18
	Geraldton	23	24	32	33	16	21	16	11
	Meekatharra	n/a	n/a	6	n/a	n/a	n/a	27	
Port Hedland	Karratha	12	23	16	10	20	22	23	24
	Port Hedland	7	18	16	11	25	24	23	23
	Roebourne	n/a	29	20	14		16	21	20
Broome	Broome	53	57	55	31	3	5	8	13
	Derby	9	49	35	25	23	8	14	16
	Halls Creek	11	28	26	9	21	18	18	26
	Kununurra	28	26	33	35	14	19	15	10
All Zones	Median	34	36	35	31	More than twice median			
	Max	59	63	84	90	Equals/exceeds median			
	Min	7	9	6	9	Less than median			

Data Source: Homeswest Waiting Times, Allocation and Housing Stock as at 30 September 2004.

1. The rankings are assigned in order of length of wait for the particular dwelling type, with 1 being the longest and 26 the shortest.

Conclusion

Families requiring 4 bedrooms plus dwellings account for 5.7% of applicants on the Homeswest waiting list and concentrations vary between 3.8% in Fremantle to 7.3% in Cannington and Geraldton. Two thirds of the State's demand is located in the Perth Metro and about half of this is in the Mirrabooka Region. Outside the Perth metro, Bunbury, Geraldton and Broome all have significant waiting lists for large families.

In the Perth Metro, Mirrabooka has the highest need for large family housing in terms of its applicants to stock ratio, applicants to occupations ratio and wait times, including the North Central Zone, with a 7.5 year wait. Fremantle has the second highest applicant to occupation ratio and has the zone with the third longest wait time. Cannington has the second highest applicant to stock ratio and four zones in the top ten for long wait times.

In the non-Metropolitan Regions, South Hedland, Broome, Bunbury and Albany have high applicant to occupation ratios. In terms of applicants to stock, the Bunbury, Broome, South Hedland and Geraldton Regions all have high ratios. While, the Kununurra Zone in the Kimberley has a wait time at the top end of long waiting times.

Consultation Questions

- 4) Actions that reduce under occupancy in family houses will also increase pressure on the wait list for small dwellings, is this type of approach appropriate for Homeswest?
- 5) In your experience, what are the affects on Homeswest applicants of long waiting long wait times?
- 6) When addressing under occupancy, should all Homeswest Regions be treated the same?

6: Over view of Policy Approach Utilised by Interstate Housing Authorities

This section presents the results of interviews with key policy personal located in other State Housing Authorities (SHA). It explores the use of operational policy utilised by these SHAs to manage under occupancy within their housing stock.

Table 7: Overview of operational policy utilised by interstate SHAs to manage under occupancy.

South Australia	<p>In SA about 60% of our stock is 3 bedroom but about 60% of tenants and applicants are single. We have very limited stock of 4 or more bedrooms and competition for these can be difficult for the larger families. We try to encourage transfers from the larger stock and have made under occupation a feature of our Housing Needs Assessment to enable those prepared to transfer to be given priority. In regular Home Visits to households we would discuss the issue if the household was significantly under occupying (eg single, couple beyond child-rearing years in a 4 bedroom home).</p> <p>Our Conditions of Tenancy provide some scope for us to insist that under occupying households move on if we desired. But in the absence of definitive household occupation standards enforcement is not considered viable given the Residential Tenancies Tribunal would be the arbitrator. Generally though we haven't seen the problem significant enough to pursue more formal policy intervention.</p>
ACT	<p>ACT does not have a policy of requiring tenants to move to smaller accommodation if they no longer qualify for the size of housing that they currently occupy. If tenants prefer to stay in oversized housing, then they are able to do so. We pursue a policy of security of tenure.</p> <p>At the same time, we might encourage tenants to move to smaller if we believe that they may have difficulty maintaining a property adequately, or if the particular size and location are in high demand. However, the final decision is theirs. For tenants moving to smaller properties, we can waive all usual eligibility requirements (transferees must normally meet all standard eligibility conditions in the same way as housing applicants), and we can also grant a higher than usual level of priority for the transfer.</p>
Victoria	<p>Victoria does not actively relocate tenants who are 'under occupying'. However, where a tenant in a larger property agrees to relocate to something smaller, then they are placed on the waiting list ahead of wait turn applicants (but after other early housing applicants). Because we have an oversupply of larger family homes and less 1 & 2 bed general stock (apart from elderly persons accommodation) this would generally only be offered to older tenants who are eligible for the EP accommodation.</p>
New South Wales	<p>The NSW Department of Housing has an underoccupancy policy, which I have attached. At this stage, our policy is primarily based upon the tenant requesting a transfer, more so than the Dept requesting that the tenant move due to underoccupancy, though it is covered in the policy.</p> <p>In our more recent tenancy agreements, we have inserted a clause regarding underoccupancy, which basically provides for the Dept to be able to offer alternative accommodation and, upon the client's refusal, issue a Notice of Termination on grounds of breach of the agreement.</p> <p>Any subsequent tribunal hearing for possession of the premises is, however, still subject to the Swain precedent established in the NSW Supreme Court, whereby the tenant's circumstances will be considered.</p>

Queensland	"See Newspaper article."
Northern Territory	
Tasmania	<p>It would be correct to say that Housing Tasmania recognises that a number of larger properties are underoccupied at a time when there are a number of families requiring larger accommodation. However in many cases, the tenant/s are on a non-fixed term lease, have resided long-term, raised their family at the property and now view it as 'their home' ... and are reluctant to move.</p> <p>Although we haven't a 'formal policy' we now put tenants at certain types of properties (i.e. larger homes/multi purpose units) on fixed term leases. As their lease expires, should they continue to have the same level of need it will be renewed however if they no longer need such a large property we would talk to them about transferring to a smaller property. If they refused to consider this then we have the option of not renewing their Lease.</p> <p>One of the advantages of this is that it also reinforces to the tenant that the home is theirs as long as they need it (providing there are no breaches of the lease) but not necessarily 'forever' as has perhaps been the expectation. As this is a relatively new procedure I can't really comment on the success of it but at least it gives us some room to negotiate. Just for your information, we haven't any hard and fast rules about the length of the lease. I have known one to be 5 years (for a multi-purpose unit). Possibly the length could be decided taking into account the number and ages of the children etc. (Generally new tenants are just signed up for 6 months).</p>

Data Source: Telephone interviews with interstate SHA Policy Officers conducted by Sean Daffin (DHW).

Consultation Questions

- 7) Which States approach do you think Homeswest should follow when addressing under occupancy?
- 8) What approach do you think Homeswest should take toward security of tenure?

7: Legality of Homeswest utilising the Residential Tenancies Act

This section investigates the legality of DHW utilising the Residential Tenancies Act to require under occupying tenants to relocate to more appropriately sized dwellings.

Department of Consumer and Employment Protection's Legal Position on Under-Occupation

At the request of the Chairperson HOSC, the Department of Consumer and Employment Protection (DOCEP) reviewed the legal issue of Homeswest restricting the maximum and minimum number of people through its various tenancy agreements.

The first element examined is whether the first paragraph in the agreements are legally binding or whether it is redundant. In our view there is nothing which would prohibit Homeswest from including this clause in the Tenancy Agreement.

The second element examined is whether a Tenancy Agreement can legally stipulate a maximum/minimum number of people that reside at the premises. The Residential Tenancies Act 1987 is silent as to whether a maximum or minimum number of residents can be set. However our enquiries have indicated that the Local Government does set a maximum level of residents per premises to two residents per room.

In our view **if** there is nothing in any statute which prohibits the lessor from stipulating the maximum or minimum number of residents for a particular premises (which as far as we are aware there is not), then the issue is determined by contract law. Unless the stipulation for the maximum or minimum number of people that reside at the premises is precluded by contract law then the lessor is entitled to impose such a covenant.

Homeswest will need to obtain its own legal opinion in relation to whether this issue offends any provision of contract law.

Consultation Questions

- 9) Is it appropriate for Homeswest to use the RTA to require tenants that are under occupying large family houses to relocate to smaller dwellings?
- 10) What process should be followed by Homeswest if they are planning to use the RTA to require a tenant to relocate?
- 11) What is your response to the draft Tenancy Management Policy Attached as Appendix 1? What changes are required?
- 12) What else needs to be considered when developing Homeswest's approach to under occupancy?

Appendix 1: Draft Tenant Eligibility Policy

TENANCY MANAGEMENT POLICY



TENANT ELIGIBILITY POLICY

PREAMBLE

Homeswest has strict eligibility criteria for all applicants for public rental housing. These are based on an applicant's income, assets (property/land and cash assets), citizenship and residency status, age, family size and subject to proof of identity. (See **Error! Reference source not found.**)

An eligibility check is undertaken at application and at allocation, to ensure that public housing is only occupied by eligible persons.

While not all applicant criteria will be applicable to tenants, criteria relating to income, cash assets, ownership of property and land and family size/number of bedrooms continue to apply. Therefore, after occupation, Homeswest reviews ALL tenancies on an annual basis, to ensure continuing eligibility. Homeswest takes the view that where a tenant's circumstances have changed and they no longer have a need for public housing or the number of bedrooms allocated at occupation, the right is reserved to take action to ensure public housing is utilised for those in greatest need.

Since 1996, the Homeswest Tenancy Agreement has included a clause relating to continuing eligibility of tenants. This states:

A tenant must during the period of tenancy remain eligible for assistance as determined by Homeswest from time to time.

Therefore, tenants who become ineligible after occupation will be regarded as in breach of tenancy.

In July 1998, Homeswest strengthened this clause and added an addendum to the tenancy agreement, by which tenants acknowledged that in the case of an increase in income making them ineligible for assistance, they may be required to move out.

For those tenants who have signed a tenancy agreement prior to 1996, Homeswest will negotiate to try to resolve a mutually agreeable solution by which the tenant will move and free up a unit of public housing for allocation to eligible applicants.

Income eligibility for Homeswest rental accommodation must be demonstrated and proven at the time of:

- (1) Application for rental assistance
- (2) Allocation of a property
- (3) For the purpose of calculating and providing a rental subsidy and
- (4) Annually, for the purpose of proving ongoing eligibility for public rental housing

Applicants and tenants must also immediately declare to Homeswest any change in their financial circumstances as they occur.

In such situations an applicant or tenant **must** disclose and provide details of all sources of wage or salary income, statutory income, assets, shares or bonds, chattels, real property, assets held in corporate trust, inheritances, family trusts and any other income sources to which they are beneficially entitled. Failure to disclose all sources of income will result in the withdrawal of an application/allocation and recovery action in the case of an existing tenant.

Applicants or tenants who are unsure of what they are required to declare should discuss the matter with a Homeswest Regional Officer.

Tenants in occupation who become ineligible based on family size only, may be requested to relocate to alternate public rental housing accommodation.

Tenants in occupation who become ineligible for continued public rental housing assistance will be offered the options of:

- Purchase of their rental dwelling or similar at market value
- Relocating to the private rental market

Homeswest will only allow a period of 6 months from the date ineligibility is established for the tenant to comply with either option. Should a tenant not pursue these options, Homeswest will seek vacant possession of the premises at the expiry of the 6-month period – Where difficulties are experienced in arranging either option the Regional Manager may make a discretionary decision. See also **Error! Reference source not found.** and **Error! Reference source not found.**

See also **Error! Reference source not found.**

POLICY

34. Tenants must remain eligible for assistance during their tenancy.

35. *Homeswest will negotiate with tenants who have signed the pre 1996 tenancy agreement, to attempt to meet an acceptable solution to move out. During the life of a tenancy, should the tenant become no longer eligible for that property's bedroom entitlement as determined in the tenancy agreement or under the Allocations Policy (3), Homeswest reserves the right to pursue action under the Residential Tenancies Act 1987.*

GUIDELINES & PRACTICES

34.1 Tenants must

- Not acquire property or land
- Not acquire cash assets in excess of \$36,400 (single) or \$60,600 couple, seniors 60 years plus \$80,000 (singles or couple) People with Disabilities refer to Disability policy AND
- Remain eligible for the number of bedrooms allocated

35.1 *For example, the offer of homeownership if cash assets are involved. Where under occupancy is a factor, the tenant may be offered a transfer to an area of choice. Consideration will be given to the length of tenancy, the time frame of under occupation, connection with the property, medical circumstances and the family history whilst in occupation. Any action has the proviso that throughout the recovery process Homeswest will have an alternative property available to the tenant and will agree to meet any reasonable costs in line with the New Living Tenant Relocation Policy. The action will only be taken after all efforts to encourage the tenant to relocate willingly have been exhausted.*

POLICY

36. Tenants with property or land will be required to pay an Individual Property Market Rent for the property. Tenants who already pay a market rent, will be required to pay the current private market rent for the property.
37. Tenants who have signed the 1996 tenancy agreement will be in breach of tenancy and may be required to move out. Homeswest reserves the right to pursue action under the Residential Tenancies Act 1987.

GUIDELINES & PRACTICES

- 36.1 Homeswest will give 60 days notice of an increase in rent, as required by the Residential Tenancies Act.
- 36.2 Both will be backdated to the purchase of the property.
- 37.1 Under S 62 of the RTA
- 37.2 If the ineligibility is due to acquisition of cash assets, whether the tenant is required to move out will be dependent upon the amount of money. The guiding factor in making this assessment will be, whether the money is sufficient to house themselves and any special needs.
- 37.3 Where the tenant owns property or land, they will be required to either sell the property or to move out of their tenancy. A reasonable time frame will be negotiated with the tenant to facilitate either option. The sale price of any property must not be unreasonable.
- 37.4 Where the tenant is under occupying accommodation for which there is demand, they may be required to transfer to alternate accommodation for which they are eligible. as contained in the agreement by the minimum number of persons that may reside at the premises, consideration will be given to the length of tenancy, the time frame of under occupancy, connection with the property, medical circumstances and the family history whilst in occupation. Any action has the proviso that throughout the recovery process Homeswest will have an alternative property available to the tenant and will agree to meet any reasonable relocation costs in line with the New Living Tenant Relocation Policy. The action will only be taken after all efforts to encourage the tenant to relocate willingly have been exhausted.

The 1996 Tenancy Agreement states

A maximum and minimum of people may reside at the premises.

(This is defined in the agreement)