



Providing a Voice for Housing Consumers

Final Report

HOMESWEST'S DEBT POLICY

Review by the Rental Sector Standing Committee

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Contents

Introduction _____	2
General Recommendations _____	3
Bankruptcy Policy _____	4
Statute Barred Debt Policy _____	5
Transfer Policy _____	6
Debt Recovery Policy _____	8
Domestic Violence Policy _____	13
Debt Discount Scheme Policy _____	14
Eligibility Policy _____	15
Tenancy Management Policy _____	16
Improvements / Additions Policy _____	18
Heating Policy _____	20
Tenant Liability Policy _____	21
New Living – Tenant Relocation Policy _____	36
Housing Access Loan (Bond Assistance) Policy _____	38
Water Consumption Policy _____	40
Acknowledgements _____	41

Introduction

In July 2000, the Rental Sector Standing Committee (RSSC) established a working group to review the Homeswest Bankruptcy Policy. The RSSC informs the Minister for Housing on issues affecting public and private renters through the Housing Advisory Committee. The outcome of the review was a report written by Shelter WA in May 2001.

On evidence provided by a literature review and a survey, the review concluded that the Bankruptcy Policy had a range of negative effects on low income tenants, including exacerbating homelessness. The prime recommendation of the review was therefore for Homeswest to abolish its Bankruptcy Policy. This recommendation was partly implemented, in that the policy has been suspended.

In addition, the review raised "a much broader issue about the legal and moral implications of requiring an applicant to repay a debt prior to being provided with housing assistance. However, given the terms of reference of the current review, this report only refers in passing to issues regarding further assistance for applicants with a debt. This issue warrants a more detailed exploration". (p.12) The review recommended that "there be a full review into Homeswest's debt management policies and practices." (p.24)

As a result, the RSSC established a second working group with a brief to conduct a full review of Homeswest's debt policies. The working group had representation from the Department of Housing and Works, along with the Tenants Advice Service, Community Legal and Advice Centre and Shelter WA. Two members of the working group were qualified Financial Counsellors with many years of experience dealing with Homeswest tenants.

At the group's first meeting on 22 June 2001, Terms of Reference were developed and agreed to. These were a) to consider the impact of all policies related to debt management on Homeswest tenants and applicants, and b) to ensure the internal consistency of these policies. At the June meeting, the following policies were identified as being relevant:

- Allocations Policy
- Bond Assistance Policy
- Debt Recovery and Debt Discount Scheme Policies
- Domestic Violence Policy
- Eligibility Policy
- Heating Policy
- Improvements / Additions Policy
- New Living Transfer Policy
- Priority Policy
- Tenancy Management Policy
- Tenant Liability Policy
- Transfer Policy

The Water Consumption Policy was added to this list at the meeting of 24 October. Finally, the group identified a need for a new policy, the Statute Barred Debt Policy.

It became apparent at an early stage that there was a large number of policies to be examined and a wide range of issues associated with these policies. However, the working group had limited time and resources. It was therefore decided to rely on evidence provided by the two tenancy advocates and the Homeswest representative to identify problem areas and potential solutions and identify areas for further research as required.

The recommendations below are listed by policy. It should be noted that many of the recommendations do not involve substantive policy changes, but refer to inconsistencies between policies. The policies are listed in the order in which the working group examined them. Rather than a full overview of the discussion, the reasons for each recommendation are listed briefly.

General Recommendations

A recurrent theme at several working group meetings was the value of the preambles contained throughout Homeswest policy. The legal status of the preambles was considered unclear and at times preambles contradict policy, causing confusion. In some sections of the manual, sections marked 'preamble' occurred in the middle of policies, causing further confusion. Finally, the group found some preambles patronising, eg. the preamble to the Debt Recovery Policy.

After much debate, the group decided unanimously that all preambles should be deleted from policy.

Recommendation 1

That all preambles be removed from the Rental and Maintenance Policy Manuals.

However, should it not be possible to implement Recommendation 1, all preambles that do not occur at the start of a policy should be integrated with the preamble at the beginning of the policy. All remaining preambles should then be reviewed.

Recommendation 2

If Recommendation 1 is not enacted:

- That all sections marked "preamble" that occur within policies be removed from the Rental and Maintenance Policy Manuals.
- That the wording of the remaining preambles be reviewed for consistency with policy.
- That the legal status of the preambles be clarified in the Rental and Maintenance Policy Manuals.

Another recurring theme was that the group identified a number of policies that impacted on tenant debts but were outside of its Terms of Reference. For instance, under the Job Order Policy and Property Condition Report Policy it can be difficult for tenants to trace job orders, which in some cases makes it difficult to prove that they were not responsible for damage to their property. Another example was the issue of fair wear and tear, of which there is at present no definition in policy.

The group decided that a broader review of Homeswest policy was required with a view to investigate the impact of all policies on tenant debt.

Recommendation 3

That a broad review of Homeswest policy be conducted in order to minimise the impact on tenant debt.

Bankruptcy Policy

The group commended the Department of Housing and Works for suspending the Bankruptcy Policy. However, in order to provide clarity for the longer term this policy should be abolished, as recommended by the Bankruptcy Policy Working Group in its Final Report (April 2001).

Recommendation 4

That the Bankruptcy Policy be abolished.

Statute Barred Debt Policy

The ACT Housing Authority has had a legal opinion stating that it is bound by the Limitation Act 1985 and the Bankruptcy Act 1996. Given that the Bankruptcy Act is Commonwealth legislation and that Western Australia has a similar Limitation Act (1935) to the ACT, it is likely that Western Australia must also comply with the legislation. In order to demonstrate best practice in dealings with disadvantaged citizens, it is recommended that debts more than six years old or covered under a bankruptcy become "Statute Barred", and payment is not requested.

Recommendation 5

That a new Statute Barred Debt Policy be adopted, with the following Clauses:

- 1. Under the Limitation Act 1985 the period for a tenancy debt is 6 years. Expiration of the period does not expunge the debt as if it had never existed but once this period has elapsed, the debt becomes "Statute Barred" and repayment cannot be requested.*
- 2. Under the Bankruptcy Act 1996, where a client declares bankruptcy, the debt becomes "Statute Barred", Subsequent discharge of the bankruptcy relieves the customer of the legal liability to repay the debt, but it does not expunge the debt as if it had never existed.*
- 3. Repayment of statute barred debts can not be pursued however, Homeswest will accept any payments offered by the customer against the debt as long as this is entirely voluntary and the customer is notified that they do not legally have to repay.*

Transfer Policy

Clause 2 A transfer application can be withdrawn at any time during the waiting period if a tenant breaches conditions of the Tenancy Agreement or Residential Tenancies Act.

Rationale:

This clause does not give the tenant requesting a transfer any notice or opportunity to rectify any "substantial breaches".

Recommendation 6

That Clause 2 of the Transfer Policy be changed as follows:

If a tenant breaches conditions of the Tenancy Agreement or Residential Tenancies Act a letter will be sent to the tenant advising of the breach and its consequences and giving an opportunity to rectify the breach if appropriate. If the breach has not been rectified within a reasonable amount of time the transfer application may be withdrawn.

Clause 9 All tenants, except tenants transferring at Homeswest's request, will be required to pay all costs associated with the transfer.

Example 1.1 A tenant must ... not have a debt.

Rationale:

Clause 9 and Example 1.1 do not allow for any flexibility in case a tenant has made an arrangement to repay these debts under the Debt Discount Scheme. The group agreed that tenants should not bear any transfer costs if this was done at Homewest's request, because of a breach on the part of Homeswest, or in situations where tenants are initially relocated to interim accommodation.

Recommendation 7

That Clause 9 of the Transfer Policy be changed as follows:

All tenants, except tenants transferring at Homeswest's request or because of a breach on the part of Homeswest, will be required to pay all costs associated with the transfer except where alternative arrangements have been made and are being maintained. In situations where tenants are first relocated to interim accommodation Homeswest will pay all additional costs the tenant faces due to having to relocate twice.

Recommendation 8

That Example 1.1 of the Transfer Policy be changed as follows:

A tenant must ... make arrangements to pay any debts.

Clause 16 *Special Transfer Policy*

Tenants transferring under a 'special' transfer will be required to pay the full market rent for the property, forgoing a rental subsidy, for the time taken to accrue additional rental payments of \$200 for a senior and \$250 for a family.

Rationale:

A range of concerns about the Special Transfer Policy were identified, including the fact that prepayment of fees for transfer is illegal under Section 27 of the Residential Tenancies Act. Also, it was unclear what the status of Special Transfer applicants was compared to priority and wait-turn applicants. Most importantly there were issues around the fairness of the policy as it allowed tenants with money to transfer but denied this right to others. There was some discussion about the possibility of having a special transfer policy without a fee, but the consensus was that it would be better to abolish the policy altogether.

Recommendation 9

That the Special Transfer Policy be abolished and that Clause 16 of the Transfer Policy be removed.

Debt Recovery Policy

Clause 2 All accounts will be finalised within six weeks of vacation of the property.

Clause 2.1 This includes the bringing to account of Bond

Rationale:

There is insufficient detail about the process to be followed in these Clauses. In particular, tenants should be informed about job numbers and the appeals process. The tenant advocates noted that copies of job had proved difficult to obtain in many instances. The group agreed that the Job Order Policy should be part of a broader review of the impact of Homeswest policies on tenants debts as per Recommendation 3.

Recommendation 10

That new Subclauses 2.2 and 2.3 be added to the Debt Recovery Policy:

2.2 Accounts will have details of the work done and the job order number.

2.3 A letter will accompany the account explaining the appeals process and where to get assistance and information.

Clause 3 Tenants in Occupation

Tenants with a debt to Homeswest, either current or relating to a previous tenancy or Housing Access Loan, will have no maintenance undertaken above what is required under Health and Safety regulations.

Rationale:

This clause does not allow for any flexibility in case a tenant has made an arrangement to repay these debts under the Debt Discount Scheme. In addition, it is questionable whether not performing maintenance on properties beyond Health and Safety regulations contravenes the requirement to perform maintenance to keep the tenancy to a reasonable standard as specified in s42 of the RTA.

Recommendation 11

That Clause 3 of the Debt Recovery Policy be changed as follows:

Tenants with a debt to Homeswest, either current or relating to a previous tenancy or Housing Access Loan, will have no maintenance undertaken above what is required under section 42 of the Residential Tenancies Act, unless alternative arrangements to repay the debt have been made and are being maintained.

Clause 5 An arrangement to repay a debt from a previous tenancy is a private arrangement between Homeswest and the tenant/ applicant debtor and cannot be reflected in the Tenancy Agreement.

Rationale:

There was some discussion about tenant debts to Homeswest where tenants had gone bankrupt and subsequently accumulated more debt. Since the suspension of the Bankruptcy Policy, this means that there were tenants who would be eligible for the

cancellation of the part of their debt incurred before they went bankrupt. It is possible to track this back through Homeswest records, even in cases where pre- and post-bankruptcy debts had been integrated. A sentence should be added to the Debt Recovery Policy to ensure that Homeswest officers ascertain that no part of a debt repayment agreement pertains to debts covered by bankruptcy.

Recommendation 12

That Clause 5 of the Debt Recovery Policy be changed as follows:

An arrangement to repay a debt from a previous tenancy is a private arrangement between Homeswest and the tenant/ applicant debtor and cannot be reflected in the Tenancy Agreement. Homeswest will ascertain that no part of the debt to which the repayment agreement refers is related to a bankruptcy.

Clause 5.4 Previous Tenancy at Same Address

Once a Magistrate has authorised a court order terminating the tenancy, the Tenancy Agreement becomes obsolete and a new agreement must be signed. Any outstanding arrears will therefore relate to the previous tenancy and must be treated as a vacated debt.

In such instances, the tenant must also be requested to sign a formal proposal document agreeing to pay these arrears in regular installments at the same time they complete the new Tenancy Agreement. Failure to maintain the agreement to clear the debt will result in Homeswest taking action under Section 15 of the RTA.

Prior to taking this step however, the tenant must be formally advised of the debt and of Homeswest's intentions should the account not be cleared.

In order to maintain continuity of the tenancy, the new Tenancy Agreement should be dated the day after the termination date in the court order. This also alleviates the necessity to complete a new Property Condition Report.

Tenants will pay rent at 25% of gross assessable income as for tenants transferring at own request (See RENT TO INCOME POLICY).

This must be explained to the tenant.

Rationale:

There was some discussion about the reasons for having this Clause listed in bold print. For the sake of clarity, this section should have a separate heading directly under the policy.

In addition, there were a number of concerns about the Clause itself. Firstly, there was some debate about the need to have new tenancy agreements at the same address. Kathy clarified that in some cases this can be necessary. Secondly, Jo said that the second paragraph might breach s27 of the RTA, because it requires tenants to make payments that are unrelated to the current tenancy. This could be resolved by changing the word 'must' to 'will'. Thirdly, it was agreed that the reference to s15 of the RTA in the section was redundant and possibly inaccurate. It was agreed to remove this reference. Finally, Kathy said that the Debt Discount Scheme would not apply if tenants were rehoused at the same location in order to avoid abuse of the scheme. This should be included in section 6.

Finally, it was agreed that the use of sub-headings would make the section clearer.

Recommendation 13

That Clause 5.4 of the Debt Recovery Policy be removed and re-inserted as Clause 6. Clauses 6 through 17 should be renumbered Clauses 7 through 18.

Previous Tenancy at Same Address

6. *Once a Magistrate has authorised a court order terminating the tenancy, the Tenancy Agreement becomes obsolete and a new agreement must be signed. Any outstanding arrears will therefore relate to the previous tenancy and must be treated as a vacated debt.*
- 6.1 *In such instances, the tenant will be requested to sign a formal proposal document agreeing to pay any debts in regular instalments at the same time they complete the new Tenancy Agreement. The Debt Discount Scheme will not apply if tenants are rehoused at the same location.*
- 6.2 *Prior to taking this step however, the tenant must be formally advised of the debt and of Homeswest's intentions should the account not be cleared. In order to maintain continuity of the tenancy, the new Tenancy Agreement should be dated the day after the termination date in the court order. This also alleviates the necessity to complete a new Property Condition Report.*
- 6.3 *Tenants will pay rent at 25% of gross assessable income as for tenants transferring at own request (See RENT TO INCOME POLICY).*
- 6.4 *This must be explained to the tenant.*

Clause 6.1 Where debts exceed \$300, a 50% up front payment is to be sought from the client. Where debts do not exceed \$300, payment in full is required. Where there is a demonstrated inability to repay in full, a proposal to repay may be signed. For all debts, Homeswest should seek an arrangement so that the combined total of the tenant's arrears and current rent does not exceed 30% of their total assessed household income.

[Example]

The 30% of total assessed household income must be assessed using the same income exclusions and calculations used when assessing a rent to income subsidy. Tenants paying by proposal to repay may pay amounts in excess of 30% of income on their own volition, but Homeswest must be satisfied of their capacity to repay. Where the agreed repayments are not maintained, termination should recommence and continue unless the arrears are paid in full.

Rationale:

For many tenants, \$300 or 50% of an amount over \$300 is too much to pay. This is particularly true for tenants who face repeated charges under \$300 for broken windows and other minor accidents that are not their fault. In cases like this tenants could spend their entire income for many fortnights on paying for repeated small charges. In other tenancies these accidents would be insured, but not in Homeswest tenancies.

There was also concern about tenants being able to choose to pay in excess of 30% of income. Instead, Homeswest should make arrangements with the tenant to repay these charges within the 30% limit. Finally, there was concern at the lack of contact with the client before termination.

Recommendation 14

That Clause 6.1 of the Debt Recovery Policy be changed as follows:

For all debts, Homeswest will seek an arrangement so that the combined total of the tenant's arrears and current rent does not exceed 30% of their total assessable household income. No tenant may pay amounts in excess of 30% of their assessable income.

[Example]

Where the agreed payments are not maintained, contact should be made with the tenant to ascertain why payments have ceased. Discretion should be exercised where there has been a loss of income, for instance due to a Centrelink payment cancellation, loss of employment, or a cancellation of maintenance payments. The termination process should recommence once a final warning has been sent to the tenant and continue in the absence of a satisfactory response from the tenant.

Clause 9 Tenants signatory to the Tenancy Agreement is jointly and severally liable for any debt.

Clause 9.1 Tenants who jointly sign the Tenancy Agreement are jointly and severally' liable for any debt from the tenancy. This means that a debt is split between all parties signatory to the agreement.

Rationale:

There was concern that in the case of domestic violence, the victim could end up with the entire debt while it was the perpetrator who caused it. Since Homeswest practice is that each signatory is liable for 50% of the debt, policy should be changed to reflect this practice.

Recommendation 15

That Clauses 9 and 9.1 of the Debt Recovery Policy be changed as follows:

9. Tenants signatory to the Tenancy Agreement are jointly liable for any debt.

9.1 Tenants who jointly sign the Tenancy Agreement are jointly liable for any debt from the tenancy. This means that a debt is split evenly between all parties signatory to the agreement.

Clause 14 If the applicant ceases to make payments, or fails to make payments as agreed, the application may be withdrawn.

Rationale:

There was concern about the lack of notification and information provided to tenants.

Recommendation 16

That Clause 14 of the Debt Recovery Policy be changed as follows:

If the applicant ceases to make payments, or fails to make payments as agreed, the application may be withdrawn. Tenants will be given formal written notification of such a decision and information on the appeals process.

Clause 14.1 See 18 to 18.1.

Rationale:

Sections 18 and 18.1 do not exist.

Recommendation 17

That Clause 14.1 of the Debt Recovery Policy be removed.

Domestic Violence Policy

Clause 14 Applicants or tenants, who are approved for priority assistance or emergency housing, will be required to enter in to an agreement to repay the debt in affordable instalments.

Rationale:

In order to provide consistency across policy, the “affordable instalments” should contain a reference to the 30% of income affordability rule mentioned in the Debt Recovery Policy. In addition, Clause 14 might breach s27 of the RTA, because it requires tenants to make payments that are unrelated to the current tenancy. It was agreed that this could be resolved by changing the word ‘required’ to ‘requested’.

Recommendation 18

That Clause 14 of the Domestic Violence Policy be changed as follows:

Applicants or tenants, who are approved for priority assistance or emergency housing, will be requested to enter in to an agreement to repay the debt in affordable instalments. For all debts, Homeswest should seek an arrangement so that the combined total of the tenant's arrears and current rent does not exceed 30% of their total assessable household income.

Debt Discount Scheme Policy

Clause 11 A customer with a debt to Homeswest will be offered credit for monies repaid, in order to facilitate earlier re- entry into public rental housing or homeownership, if they participate in the scheme. To be eligible an applicant must have a current rental application or make application for rental assistance or homeownership when making application to participate in the Debt Discount Scheme.

Rationale:

In order to promote awareness of the Debt Discount Scheme, tenants should be informed about it in all correspondence regarding debt.

Recommendation 19

That Clause 11 of the Debt Discount Scheme Policy be changed as follows:

A customer with a debt to Homeswest will be offered credit for monies repaid, in order to facilitate earlier re- entry into public rental housing or homeownership, if they participate in the scheme. To be eligible an applicant must have a current rental application or make application for rental assistance or homeownership when making application to participate in the Debt Discount Scheme. Applicants should be advised of their right to participate in the Debt Discount Scheme in all correspondence relating to their debts. The information provided will include a debt discount application form.

Clause 11.1 This is not available to customers wanting to secure another Housing Assistance Loan, or tenants with a debt in their current tenancy. (see 15.)

Rationale:

Practice has changed to allow debt discount on Housing Assistance Loan Debts. This should be reflected in policy. However, tenants with a debt in their current tenancy remain ineligible for the Debt Discount Scheme.

Recommendation 20

That Clause 11.1 of the Debt Discount Scheme Policy be changed as follows:

This is not available to tenants with a debt in their current tenancy. (see 15.)

Clients may feel that they cannot sign on to the Debt Discount Scheme if they are appealing the decision. This potentially reduces repayments to Homeswest. A solution is to include a new Clause making it clear that signing on to the Scheme does not imply that the client agrees to the debt.

Recommendation 21

That Clause 18 and Subclause 18.1 be added to the Debt Discount Scheme Policy:

18 Homeswest recognises that a customer signing a debt discount scheme may still be eligible to follow the appeals or court process.

18.1 Signing the debt discount form does not necessarily constitute agreement to the debt.

Eligibility Policy

Clause 24 Applicants with a debt to Homeswest, must repay 100% of a rental debt, 100% of a water consumption debt, 100% of a vacated debt (from previous tenancy/ s), 100% of occupied debts (liability incurred while in occupation of a tenancy), 100% of sundry debts (such as bond assistance, legal costs), 50% of post occupancy debt (liability assessed after vacation).

Rationale:

Repayments should always be subject to the tenant's capacity to pay. In order to provide consistency across policy, the "affordable instalments" should contain a reference to the 30% of income affordability rule mentioned in the Debt Recovery Policy.

In addition, there was a concern that Clause 24 might breach s27 of the RTA, because it requires tenants to make payments that are unrelated to the current tenancy. This can be resolved by changing the word 'must' to 'will be requested to'.

Recommendation 22

That Clause 24 of the Eligibility Policy be changed as follows:

Applicants with a debt to Homeswest will be requested to make arrangements to repay their debt, if applicable under the Debt Discount Scheme policy.

Clause 25 An applicant requiring further public rental housing with a debt to Homeswest, must enter into a proposal to repay the debt on application for assistance registered.

Clause 26 The proposal to repay the debt will be confirmed in writing with the applicant and include an itemised account of the debt.

Clause 27 Any applicant who defaults on a proposal to repay, may have their application for assistance withdrawn and will be required to reapply for further assistance.

Rationale:

These clauses are redundant as the Debt Recovery and Debt Discount Scheme Policies cover the issues. The clauses should be removed in order to avoid confusion and internal contradictions in case of future policy changes.

Recommendation 23

That Clauses 25, 26 and 27 of the Eligibility Policy be replaced with references to the Debt Recovery and Debt Discount Scheme Policies.

Tenancy Management Policy

Clause 9 A tenant is not responsible for damage done by an unknown person or a visitor to the property, if the matter has been reported to the police and the tenant has provided Homeswest with the report number.

Rationale:

This Clause is not implemented consistently. It should also include damage done by children under 12 years old, in accordance with common law. However, tenants should take reasonable precautions to prevent the damage from occurring.

Finally, the interpretation of this Clause had caused some confusion as the police issue various types of Report Numbers (eg. Action Report Number, Police Report Number, etc). It was agreed that any type of report should be acceptable and the wording of the policy should be altered to make this clear.

Finally, the Clause should refer to the Domestic Violence Policy.

Recommendation 24

That Clause 9 of the Tenancy Management Policy be changed as follows:

A tenant is not responsible for damage done by

- *children under the age of 12;*
- *unknown persons, if the matter has been reported to the police and the tenant has provided Homeswest with a report number provided by the police; or*
- *visitors to the property, if the matter has been reported to the police and the tenant has provided Homeswest with the report number and the tenant has taken reasonable precautions to prevent visitors from doing damage.*

The Domestic Violence Policy should be referred to in situations where domestic violence is suspected to have contributed to damage done.

Clause 28 A tenant with a debt to Homeswest must enter into an agreement to repay the debt in affordable instalments and the payments must be maintained until the debt is cleared.

Rationale:

Repayments should always be subject to the tenant's capacity to pay. In order to provide consistency across policy, the "affordable instalments" should contain a reference to the 30% of income affordability rule mentioned in the Debt Recovery Policy.

In addition, there was concern that Clause 28 might breach s27 of the RTA, because it requires tenants to make payments that are unrelated to the current tenancy. This can be resolved by changing the word 'must' to 'will be requested to'.

Recommendation 25

That Clause 28 of the Tenancy Management Policy be changed as follows:

A tenant with a debt to Homeswest will be requested to enter into an agreement to repay the debt in affordable instalments and the payments must be maintained until the debt is cleared. For all debts, Homeswest should seek an arrangement so that the combined total of the tenant's arrears and current rent does not exceed 30% of their total assessable household income.

Clause 29 Tenants with a debt to Homeswest will not be assisted with property maintenance or upgrade above normal health and safety requirements.

Rationale:

There was discussion about the meaning of the phrase "normal health and safety" and the application of the policy with regard to debts under appeal. With regard to the latter, there is a conflict between the period allowed for the appeals process (one year) and the period before matters were referred to a debt agency (six weeks). This means that a debt agency could collect a debt that is later appealed successfully. It was agreed that the policy should reflect this.

Recommendation 26

That a new Sub-Clause 29.1 be added to the Tenancy Management Policy:

In cases where a debt has been referred to a debt agency, once an appeal regarding a debt has been lodged by a tenant, all debt agencies must be notified immediately and collection of these debts suspended until the appeals process has been finalised.

Clause 30 Tenants with a debt to Homeswest who make application for bankruptcy are subject to scrutiny as to whether the application was made to avoid the repayment of a debt to Homeswest. Such tenants are in breach of the terms of the tenancy agreement and where a court order has been obtained prior to the application for Bankruptcy, action to evict may continue.

Rationale:

This Clause is redundant as the Debt Recovery and Debt Discount Scheme Policies cover the issue. The clause should be removed in order to avoid confusion and internal contradictions in case of future policy changes.

Recommendation 27

That Clause 30 of the Tenancy Management Policy be removed.

Improvements / Additions Policy

Clause 2 There will be no reimbursement unless Homeswest plans to carry out the improvement as part of upgrade and then only at a depreciated value, and is subject to the correct approvals being obtained.

Rationale:

Clause 2 is not directly related to debts. However, as sub-clause 2.2 (see below) directly relates any reimbursements to outstanding debts, the group decided to review the clause as a whole. The clause leaves it open to interpretation what the depreciation rate should be. Depending on the rate of depreciation, the depreciated value could be less or more than the actual value of an improvement. It would be better to use the phrase 'estimated value'.

Recommendation 28

That Clause 2 of the Improvements / Additions Policy be changed as follows:

There will be no reimbursement unless Homeswest plans to carry out the improvement as part of upgrade and then only at the estimated value at the time of reimbursement, and subject to the correct approvals being obtained.

Clause 2.2 Any reimbursement must be offset against any outstanding debts to Homeswest at finalisation and funds being available.

Rationale:

There was a lengthy discussion about several aspects of this item:

- It would be unfair to use reimbursement for additions or improvements to offset existing debts, particularly where an agreement to repay had been made and was being maintained.
- There is confusion about the interpretation of the phrase 'at finalisation', ie. whether this should be taken to mean the finalisation of the tenancy or of the construction of the improvement or addition.
- The condition of 'funds being available' is unfair to the tenant when all improvements and additions had been agreed to previously by both parties and Homeswest was able to postpone payment.

Recommendation 29

That Clause 2.2 of the Improvements / Additions Policy be changed as follows:

Any reimbursement must be offset against any outstanding debts to Homeswest unless alternative arrangements to repay these debts have been made and are being maintained.

Recommendation 30

That a new Sub-Clause 2.3 be added to the Improvements / Additions Policy:

Any reimbursements will reflect the estimated value of the improvement at the finalisation of the tenancy.

Recommendation 31

That a new Sub-Clause 2.4 be added to the Improvements / Additions Policy:

Any reimbursements will be made at the finalisation of the tenancy subject to the availability of funds. Where funds are unavailable at the finalisation of the tenancy, reimbursements shall be made as soon as is practicable, but no more than one month after the finalisation of the tenancy.

The Improvements / Additions Policy in the Maintenance Manual was duplicated as sections 17-19 of the Tenancy Management Policy in the Rental Policy Manual. Since the two policies serve different purposes they cannot be removed from either manual. The complete (amended) policy should therefore be included in both manuals. Also, the policy should make reference to the fact that it occurs in both manuals for ease of update.

Recommendation 32

That Clause 17 of the Tenancy Management Policy be replaced with Clause 1 of the Improvements / Additions Policy.

Recommendation 33

That Clause 19 of the Tenancy Management Policy be replaced with Clause 2 of the Improvements / Additions Policy (as amended).

Heating Policy

Clause 1.6 Tenants with a debt to Homeswest may be refused until the debt is cleared.

Rationale:

- The word "heating" has been omitted from the sentence.
- There was concern about the fact that this Clause potentially denies an essential service to tenants who may already be in financial difficulties.
- For the sake of consistency the section should refer to arrangements to pay.

Recommendation 34

That Clause 1.6 of the Heating Policy be changed as follows:

Tenants with a debt to Homeswest may be refused heating unless alternative arrangements to repay the debt have been made and are being maintained.

Tenant Liability Policy

Clause 1.1 Day to day tenant liability is incurred while a tenant is in occupation. When day to day T.L. identified on job order, reason is to be identified by inspecting officer.

Rationale:

There was some discussion about the difference between day to day tenant liability and vacated tenant liability. The group agreed that it would be more consistent and less confusing to refer to 'occupied' tenant liability rather than 'day to day' tenant liability.

Recommendation 35

That Clause 1.1 of the Tenant Liability Policy be changed as follows:

Occupied tenant liability is incurred while a tenant is in occupation. When occupied tenant liability is identified on a job order, the reason is to be identified by the Accommodation Manager.

Clause 2 A Property Condition Report (PCR) will be completed and tenant liability assessed when a property is vacated. This will be undertaken on site with the tenant in attendance where Homeswest receives sufficient notice of intention to vacate.

Rationale:

In order to properly assess any damage done by a tenant, the outgoing PCR referred to in this Clause should be compared with the incoming PCR. However, as not all relevant information is recorded in the PCRs, all other relevant documentation (eg. annual inspection forms, maintenance records) should also be inspected when assessing damage.

Finally, it was agreed that in order to be better able to explain subsequent queries, it was important to take photographs wherever tenant liability occurs. This already occurs where properties are due for redevelopment.

Recommendation 36

That Clause 2 of the Tenant Liability Policy be changed as follows:

A Property Condition Report (PCR) will be completed when a property is vacated. This will be undertaken on site with the tenant in attendance where Homeswest receives sufficient notice of intention to vacate. Tenant liability will be assessed with reference to all relevant documentation, including the incoming PCR, the outgoing PCR, maintenance records, annual inspection forms and any other evidence. In all instances photographs must be taken to validate tenant liability.

Clause 2.1 The PCR should be undertaken within one working day where possible. However where this is not possible, (eg. Country areas), tenant liability should still be identified, where applicable, at the time of inspection, provided vandal damage is not evident. Costs will be apportioned according to the number of tenant signatures on the tenancy agreement.

Examples:

Two signatories - 50% each

Three signatories - 33.3% each.

A tenant who has not given Homeswest the required 21 days notice of intention to vacate, will be responsible for any damage to the property which occurs after the keys have been returned and before the vacating PCR is undertaken.

Clause 2.4 If the tenancy is shared, tenant liability will be assessed on a percentage basis for communal areas, and 100% for individual bedroom areas.

Rationale:

Clause 2.1 contradicts Clause 12 of the Domestic Violence Policy, which states that tenant liability will be pursued with the perpetrator if the damage has been reported to the police. It also breaches common law for Homeswest to charge tenants for damage to the property that occurred after the keys had been returned.

Clause 2.4 is confusing, given the proportional allocations referred to in Clause 2.1. It appears that 2.4 applies to non-related sharers, while Clause 2.1 applies to people living together as families. However, this should be made clear in the policy wording. Finally, there were concerns about key receipts not always being provided, for instance where tenants mailed the keys to Homeswest.

Recommendation 37

That Clause 2.1 of the Tenant Liability Policy be changed as follows:

The PCR should be undertaken within one working day where possible. However where this is not possible, (eg. Country areas), tenant liability should still be identified, where applicable, at the time of inspection. However, see section 2.6 for damage caused by non-household members.

For families, costs will be apportioned according to the number of tenant signatures on the tenancy agreement, although apportionments may vary in cases where domestic violence is involved: see Domestic Violence Policy.

Examples:

Two signatories - 50% each

Three signatories - 33.3% each.

In order to ensure later misunderstandings, tenants should always be provided with a receipt immediately upon returning the keys.

Recommendation 38

That Clause 2.4 of the Tenant Liability Policy be changed as follows:

If the tenancy is shared between tenants who do not live together as a family, tenant liability will be assessed on a percentage basis for communal areas, and 100% for individual bedroom areas.

Clause 2.6 *Damage to the Property*

In the case of damage by non-household members or a household member who is not a signatory to the Tenancy Agreement, if this has been the subject of a Police Report, tenant liability may not be charged. The Police Report number will be required for the purpose of making an insurance claim. If the damage has not been reported to the police, it must be charged to the tenants on a percentage basis. NOTE: The Police do not need to see the damage. A report number is all that is required.

Examples:

- *Vandal damage*
- *Domestic Violence or drunkenness by a defacto partner who is not a signatory to the Tenancy Agreement*
- *Damage by visitors to the property.*

Rationale:

The wording of this Clause is ambiguous. For instance, the phrase “may not” should be changed to “will not”. In addition, children under 12 and unknown persons should be added as examples in order to ensure consistency with other policies. However, in these cases there should be no need to obtain a police report.

Finally, the interpretation of this Clause had caused some confusion as the police issue various types of Report Numbers (eg. Action Report Number, Police Report Number, etc). It was agreed that any type of report should be acceptable and the wording of the policy should be altered to make this clear.

Recommendation 39

That Clause 2.6 of the Tenant Liability Policy be changed as follows:

2.6 Damage to the Property

In the case of damage by non-household members or a household member who is not a signatory to the Tenancy Agreement, if this has been the subject of a Police Report, tenant liability will not be charged. Except in the case of damage by children, a Police or Action Report Number will be required for the purpose of making an insurance claim. If the damage has not been reported to the police, it must be charged to the tenants on a percentage basis. NOTE: The Police do not need to see the damage. A report number provided by the Police is all that is required.

Examples:

- *Vandal damage*
- *Domestic Violence or drunkenness by a partner who is not a signatory to the Tenancy Agreement*
- *Damage by visitors to the property*
- *Damage by unknown persons*

Clause 2.7 In addition to reporting an incident of damage caused by non-household members or non signatories to the Tenancy Agreement to the police and obtaining a police report number, the tenant must supply to Homeswest the name and address of any person/s responsible for the damage for the purposes of making an insurance claim. The cost of repairs will be charged to the tenant until this information is received and verified. (See Maintenance Policy – Recoverable Insurance).

Rationale:

In the case of damage by unknown persons, the tenant will be unable to comply with this Clause. In addition, the first part of the Clause is superfluous since it repeats the requirements of Clause 2.6.

Recommendation 40

That Clause 2.7 of the Tenant Liability Policy be changed as follows:

Where the tenant is aware of the identity or address of any person/s responsible for the damage, these details must be supplied to Homeswest for the purposes of making an insurance claim. The cost of repairs will be charged to the tenant until this information is received and verified. (See Maintenance Policy – Recoverable Insurance).

Clause 2.9 Where a tenant believes that one signatory to the Tenancy Agreement was responsible for damage and therefore should pay for it, an appeal can be lodged through the Homeswest Appeals Mechanism.

Examples:

- *Domestic Violence or drunkenness where it appears that one of the signatories caused a greater portion or all of the damage to the property.*

Rationale:

The example of domestic violence in this Clause contradicts Clause 12 of the Domestic Violence Policy. This example should therefore be removed.

Recommendation 41

That Clause 2.9 of the Tenant Liability Policy be changed as follows:

Where a tenant believes that one signatory to the Tenancy Agreement was responsible for damage and therefore should pay for it, an appeal can be lodged through the Homeswest Appeals Mechanism.

Example:

- *Drunkenness where it appears that one of the signatories caused a greater portion or all of the damage to the property.*

Clause 2.10 *Time Frame*

The report of damage must be made as soon as practicable, but within three days after it has occurred if this is to be used as the basis of an appeal against Tenant Liability. This claim is almost impossible to substantiate in an appeal after some time has elapsed.

Rationale:

The wording of this section does not allow for exceptional circumstances. For instance, a tenant may be in hospital for more than three days or the Homeswest office may be closed over Christmas for more than three days. Although in the latter case tenants could leave a message on the office answering machine, the group agreed that the policy should refer to 'working days' and that discretion should be applied where appropriate.

Recommendation 42

That Clause 2.10 of the Tenant Liability Policy be changed as follows:

2.10 Time Frame

The report of damage must be made as soon as practicable, but within three working days after it has occurred if this is to be used as the basis of an appeal against Tenant Liability. This claim is almost impossible to substantiate in an appeal after some time has elapsed. However, discretion should be exercised in exceptional circumstances, such as:

- *domestic violence*
- *hospitalisation*

Rigid interpretation of the policy could result in tenants being treated unfairly, eg. where tenants wish to dispose of rubbish but are unable to because of the quantity involved, or a bin that has been ordered does not arrive within the specified timeframe.

Recommendation 43

That Subclauses 2.12 and 2.13 be added to the Tenant Liability Policy:

2.12 Tenants must be offered a tip pass where this is used by Council or notified and given enough time for a council bin to be obtained.

2.13 If due to the time frame in moving especially if transferred providing that the bin has been ordered the tenant will not be charged as long as the rubbish has been left in a neat pile ready for the bin.

Clause 4 *Day to day and vacated*

Rationale:

The phrase 'occupied' tenant liability should be used in preference to 'day to day' in line with Recommendation 35.

Recommendation 44

That Clause 4 of the Tenant Liability Policy be changed as follows:

Occupied and vacated tenant liability.

Clause 4.4 Cleaning

All heavy cleaning and rubbish removal will be identified as tenant liability.

NOTE: Trades are responsible for cleaning up after their work is completed. If this is not done, contractors are to be debited for any cost incurred.

Rationale:

There was some discussion about the difference between "medium" and "heavy" clean. Since the difference is mainly one of degree the activities required are very similar. Tenant liability will only apply to those items where a heavy clean was required. However, this is not reflected in the wording of the Clause.

Recommendation 45

That Clause 4.4 of the Tenant Liability Policy be changed as follows:

4.4 Cleaning

Where one or more aspects of a vacated property require heavy cleaning or rubbish removal, the cost of a heavy clean on those aspects will be identified as tenant liability.

NOTE: Trades are responsible for cleaning up after their work is completed. If this is not done, contractors are to be debited for any cost incurred.

Clause 4.5 Glazing

Glazing repairs will be identified as either tenant liability or insurance (recoverable or non-recoverable). Exception: Bathroom mirrors (re poly or beading) which have deteriorated due to age – this will be charged to maintenance.

Rationale:

Shower screens should also be exempted when they crack through no fault of the tenant, eg. due to coming in contact with hot water. While it appears that this situation may be covered anyway, it should be reflected in the wording of the policy.

Recommendation 46

That Clause 4.5 of the Tenant Liability Policy be changed as follows:

4.5 Glazing

Glazing repairs will be identified as either tenant liability or insurance (recoverable or non-recoverable). Exceptions:

- *Bathroom mirrors (re poly or beading) which have deteriorated due to age – this will be charged to maintenance.*
- *Shower screens which have cracked for reasons other than negligence or wilful damage by the tenant.*

Clause 4.7 *Plumbing Blockages*

Blockages to ped pans, waste pipes and sewer lines are to be handled as follows:

- a) *Contractors are requested to report the cause of all blockages. Where such a blockage can be identified as tenant caused, tenant liability will be charged (eg. Toys, hair, soap, cutlery, clothing, sanitary napkins, cans, bottles).*
- b) *Where there is proven excessive overcrowding resulting in regular pump-outs of septic/sullage wells, tenant liability will be charged.*

Rationale:

Blockages due to hair and soap are likely to be accidental and should not be charged as tenant liability. There was a lengthy discussion about the terms "excessive overcrowding" and "regular". If excessive overcrowding is known to Homeswest and rent is being charged accordingly, it would be unreasonable to charge tenant liability on blockages. It was therefore decided to add the word 'unauthorised' to the phrase 'excessive overcrowding'.

Finally, tenant liability should only be charged if the damage was deliberate or due to negligence on the part of the tenant. Since hair blocking the drain is not wilful damage, and toys suggest the involvement of children, it was agreed to delete these examples from the policy.

Recommendation 47

That Clause 4.7 of the Tenant Liability Policy be changed as follows:

4.7 Plumbing Blockages

Contractors are requested to report the cause of all blockages to ped pans, waste pipes and sewer lines. Where such a blockage can be identified as deliberately or negligently caused by the tenant, tenant liability will be charged (eg. cutlery, clothing, sanitary napkins, cans, bottles).

Where there is proven excessive and unauthorised overcrowding resulting in regular pump-outs of septic/sullage wells, tenant liability will be charged.

Clause 4.8 *Water or Gas Pipes*

Any damage to garden taps caused by lawn mowers or vehicles or any puncture of underground water or gas pipes caused by digging etc. will be charged as tenant liability.

Rationale:

This Clause could be interpreted as implying that a tenant would be liable for damage caused by a Homeswest contractor. The wording should be changed to make it clear that tenants are only liable if they deliberately or negligently caused the damage themselves.

Recommendation 48

That Clause 4.8 of the Tenant Liability Policy be changed as follows:

4.8 Water or Gas Pipes

Any deliberate or negligent damage to garden taps or underground water or gas pipes caused by the tenant, for instance with a lawn mower, vehicle, or by digging etc. will be charged as tenant liability.

Clause 4.9 Electrical

- *Where electrical faults are proven to have been caused by tenant's faulty appliances, tenant liability will be charged.*
- *Where unauthorised electrical work has been carried out, tenant liability is charged.*
- *Where faults are found to be caused by a disconnection by Western Power due to non-payment of account, tenant liability will be charged.*
- *Claims for fusion damage are made under the tenant's household contents policy.*

Rationale:

There was some discussion regarding the phrase 'unauthorised electrical work'. It was clarified that this refers to the tradesperson being unauthorised by Homeswest, but authorised by the current tenant (rather than a previous tenant). I.e. the policy does not relate to work not having been done according to the appropriate standards. This should be made clear in the policy wording.

The group expressed concern about the third dot point, as it would be contrary to common law to charge any faults caused by Western Power to the tenant. This dot point should therefore be deleted.

Finally, fusion damage could in some cases be the liability of the landlord instead of the tenant. The policy should reflect this.

Recommendation 49

That Clause 4.9 of the Tenant Liability Policy be changed as follows:

4.9 Electrical

- *Where electrical faults are proven to have been caused by tenant's faulty appliances, tenant liability will be charged.*
- *Where electrical work has been carried out with permission of the current tenant by an unauthorised person without a ticket to do the work, tenant liability will be charged.*
- *Claims for fusion damage are made under the tenant's household contents policy. However, Homeswest will be responsible for fusion damage that occurs as a consequence of faulty wiring or other electrical problems.*

Clause 4.12 Grounds

- Any costs associated with mowing of lawns, slashing of long grass or removal of rubbish, including car bodies, will be charged as tenant liability.
- Where Homeswest has landscaped the property, any replacement or repair, to return to original due to neglect, misuse or willful damage will be charged as tenant liability.

Rationale:

In areas such as the Kimberley, tenants may be required to mow their lawns more than once a week during the wet season. It was agreed that discretion should be applied in regional areas, and that Homeswest should implement an appropriate planting policy.

Recommendation 50

That Clause 4.12 of the Tenant Liability Policy be changed as follows:

4.12 Grounds

- Any costs associated with mowing of lawns, slashing of long grass or removal of rubbish, including car bodies, will be charged as tenant liability. However, discretion may be applied, for instance in regional areas where grass grows very quickly in certain months.
- Where Homeswest has landscaped the property, any replacement or repair, to return to original due to neglect, misuse or wilful damage will be charged as tenant liability.

Clause 4.15 Keys and locks

Lost/stolen keys are tenants' responsibility. Tenant liability will be charged to replace lock, barrel.

Rationale:

In order to ensure consistency with the Domestic Violence Policy, tenant liability should not be charged where domestic violence is a factor.

Recommendation 51

That Clause 4.15 of the Tenant Liability Policy be changed as follows:

4.15 Keys and Locks

Lost/stolen keys are tenants' responsibility. Tenant liability will be charged to replace lock, barrel. The Domestic Violence Policy should be referred to in situations where domestic violence is suspected to have contributed to damage done.

Clause 4.16 Window Cleaning

This item should only be charged as tenant liability in certain cases and should not be an automatic charge, eg:

- *If the windows were cleaned prior to the vacating tenant moving in and required cleaning again on vacation, then tenant liability should be charged.*
- *If the condition of windows is classified as only fair on occupation then tenant liability should not be charged.*

Rationale:

Since Homeswest will be liable for any accidents, tenants should not be required to clean windows above ground level. This Clause should also refer to the incoming Property Condition Report.

Recommendation 52

That Clause 4.16 of the Tenant Liability Policy be changed as follows:

4.16 Window Cleaning

This item should only be charged as tenant liability in certain cases and should not be an automatic charge, eg:

- *If clean windows were noted on ingoing PCR and require cleaning again on vacation, then tenant liability should be charged.*
- *If the condition of windows is classified as only fair on occupation then tenant liability should not be charged.*
- *If the windows are above ground level then tenant liability should not be charged.*

Clause 4.19 Alleged Vandal Damage

In many cases, former tenants claim that the damage is caused by vandals after vacation, but before Homeswest inspection. As such claims tend to be difficult to refute, the PCR has provision for the inspecting officer to indicate his/her response to the following question:

"Are there any signs of vandal caused damage?"

This will also apply to vandal damage in attending day to day maintenance. The tenant will have made a police report and will be required to supply the report number.

NOTE: Where damage of unknown origin occurs following vacation of the property and Homeswest has not received 21 days notice of intention to vacate, the vacating tenant may be held liable for the damage.

Rationale:

Consistency with Clause 9 of the Tenancy Management Policy and Recommendations 1 and 3 requires that this policy should be changed to account for children under 12 and unknown persons. In addition, as per Recommendation 37, no tenant liability can occur after the tenant has handed in the keys to the property. Finally, for the sake of consistency across policies the term 'occupied maintenance' should be used instead of 'day to day maintenance'.

Recommendation 53

That Clause 4.19 of the Tenant Liability Policy be changed as follows:

4.19 Alleged Vandal Damage

In many cases, former tenants claim that the damage is caused by vandals after vacation, but before Homeswest inspection. As such claims tend to be difficult to refute, the PCR has provision for the inspecting officer to indicate his/her response to the following question:

“Are there any signs of vandal caused damage?”

This will also apply to vandal damage in attending occupied maintenance. The tenant will have made a police report and will be required to supply the Police or Action Report Number.

NOTES:

- *Tenant Liability will not be charged on damage caused by children under the age of 12 or unknown persons.*
- *Tenant Liability will not be charged on damage that occurs after the tenant has handed in the keys to the property.*

Clause 4.20 Witnesses

In all instances, where sufficient notice of intention to vacate is given, all property inspections will be on site in the presence of the tenant. Where a current or ex-tenant claims to have witnesses that the property was left in an acceptable condition, documentary evidence from a witness will be considered, particularly:

- a) *Where the PCR is inadequate or ambiguous; or*
- b) *In cases where the tenant has given the required notice and there was a delay of more than one working day between vacation and the PCR being undertaken or where the alleged damage was the subject of a police report.*

Rationale:

In order to obtain a police report after moving out of the property, this Clause requires the ex-tenant to trespass on the property. The reference to the police report should therefore be removed.

Recommendation 54

That Clause 4.20 b) of the Tenant Liability Policy be changed as follows:

- b) *In cases where the tenant has given the required notice and there was a delay of more than one working day between vacation and the PCR being undertaken or where there is alleged damage.*

Clause 4.27 Tenant Liability for Properties Facing Demolition

Where neglect, misuse or willful damage to a property results in a reduction in the price Homeswest would have received for its sale or demolition, regardless of Homeswest's intentions for the property, (ie. Sale, demolition or re-let) the ex tenant will be charged the total amount of tenant liability assessed or the cost of the rent loss, whichever is the lesser.

Rationale:

As there has been a legal decision on this (Attachment 1) this Clause needs to be altered to reflect that and only include rubbish, and leave the premises clean and tidy.

Recommendation 55

That Clause 4.27 of the Tenant Liability Policy be changed as follows:

Tenant Liability for Properties Facing Demolition

The ex tenant will be charged tenant liability for any heavy cleaning and rubbish removal.

There is sometimes a lag between the time tenants alert Homeswest to repairs that are necessary and the time at which repairs are carried out. In some cases, this has resulted in damage to the property occurring in this time, eg water leaks. However, there is currently no requirement in the maintenance policy that dates be recorded when tenants asked for repairs to be done, leading to disputes over responsibility for damage. Finally, the specification regarding information tenants should receive are insufficient.

Recommendation 56

That Clause 5 and Subclauses 5.1, 5.2 and 5.3 be added to the Tenant Liability Policy:

5. *The date must be recorded on the tenant file and property file when a tenant notifies of a repair needing attention and a description of the repairs.*
- 5.1 *Tenants can only be charged once the Job order is completed if it is tenant liability.*
- 5.2 *Tenants must be sent out a letter outlining the work and including the job order number.*
- 5.3 *The letter should also explain the appeals process and details on how and where to get assistance and information.*

Clauses 5 through 7 and their subclauses should be renumbered Clauses 6 through 8.

Tenancy Factors Affecting Tenant Liability Assessment

Clause 5 *The assessments made will be solely on the physical situation encountered. However, factors indicated from 5.4 to 5.7 will be taken into consideration before a bill is issued to the tenant.*

Clause 5.1 *The decision not to charge tenant liability based on tenancy factors can be made by the inspecting officer who must clearly document the reasons for concessions granted and have the decision vetted by an independent officer. These factors are as set out in points 5.4 to 5.7 and do not apply to the repair of willful damage, neglect, misuse, heavy cleaning and rubbish removal.*

Rationale:

The order in which the subsections appear and the heading of the policy are confusing, and it is not made clear that accidental damage and fair wear and tear should be taken into account when assessing tenant liability. The word 'tenancy' should be removed from the policy heading and Subclause 5.1 included under Clause 5. Subclause 5.1 should be replaced with a clarification of fair wear and tear and accidental damage

Recommendation 57

That Clause 5 of the Tenant Liability Policy be changed as follows:

Factors Affecting Tenant Liability Assessment

The assessments made will be solely on the physical situation encountered. The decision not to charge tenant liability based on tenancy factors can be made by the inspecting officer who must clearly document the reasons for concessions granted and have the decision vetted by an independent officer. These factors are as set out in points 5.3 to 5.6 and do not apply to the repair of wilful damage, neglect, misuse, heavy cleaning and rubbish removal.

Recommendation 58

That Subclause 5.1 of the Tenant Liability Policy be changed as follows:

When assessing Tenant Liability, accidental damage and also wear and tear must be considered. Tenant liability will only be charged when there is clear evidence to support the contention that the damage was caused or permitted, deliberately or negligently.

Clause 5.5 *Medical/Compassionate Grounds*

Medical and compassionate considerations should be taken into account in the context of the overall resident and family situation. In general, any tenant liability waived on these grounds will be limited to those areas where a fully able tenant would be capable of rectifying the problem. It should not extend to the repair of willful damage, neglect, misuse, heavy cleaning or rubbish removal.

It is not possible to pre-define all the possible situations that may be encountered under this general heading. However, Homeswest's intention is that consideration should be given to cases where the tenant is unable to maintain the property at an acceptable standard due to a medical condition.

Rationale:

The second paragraph of this policy repeats the first and could be confusing. It should therefore be removed. In addition, it would be unreasonable to expect tenants with a medical condition to do heavy cleaning. This should therefore be removed from the first paragraph.

Recommendation 59

That Clause 5.5 of the Tenant Liability Policy be changed as follows:

5.5 Medical/Compassionate Grounds

Medical and compassionate considerations should be taken into account in the context of the overall resident and family situation. In general, any tenant liability waived on these grounds will be limited to those areas where a fully able tenant would be capable of rectifying the problem. It should not extend to the repair of wilful damage, neglect or misuse.

Clause 5.6 Deceased Estates/Removal of Property

Net debts exceeding \$250 will be considered for recovery from a deceased estate. That is, accrued bond and/or rental credits will be offset against any debt, and where the final debt exceeds \$250 it will be considered for recovery. If it is decided to lodge a claim against a deceased estate, the trustee of the estate must be advised, together with proof of debt.

Co-tenancy: If the estate is part of a co-tenancy, Homeswest will exercise its legal right to pursue joint and several liability, at the discretion of regional management.

Next of Kin: Next of kin are required to remove the personal belongings of a deceased tenant within 14 days. This time may be extended in special circumstances, at the discretion of regional management.

Rationale:

The statement regarding joint and several liability is inconsistent with other policies, notably Clause 9 of the Domestic Violence Policy. The section on co-tenancies is inconsistent with Clause 2.1 and should be altered to reflect current practice, which limits liability for the surviving tenant.

Recommendation 60

That Clause 5.6 of the Tenant Liability Policy be changed as follows:

5.6 Deceased Estates/Removal of Property

Net debts exceeding \$250 will be considered for recovery from a deceased estate. That is, accrued bond and/or rental credits will be offset against any debt, and where the final debt exceeds \$250 it will be considered for recovery. If it is decided to lodge a claim against a deceased estate, the trustee of the estate must be advised, together with proof of debt.

Co-tenancy: If the estate is part of a co-tenancy, Homeswest will only pursue the surviving tenant for 50% of the debt. However, in the case where the deceased co tenant is responsible for more than half of the debt, the debt will be apportioned accordingly.

Next of Kin: Next of kin are required to remove the personal belongings of a deceased tenant within 14 days. This time may be extended in special circumstances, at the discretion of regional management.

Clause 6 Homeswest and tenants are able to initiate any action concerning the tenant liability charged under the Residential Tenancies Act, through the Small Disputes Division of the court nearest the rented property.

Clause 6.5 Other Avenues of Appeal

Tenants are encouraged to attempt to resolve their dispute through Homeswest's Appeal Mechanisms before going through the Residential Tenancies procedure.

Rationale:

It would be preferable to use HAM wherever possible in resolving disputes regarding tenant liability. However, HAM is only mentioned at the end of this Clause. The reference to HAM should occur under the main Clause. In addition, a collection agency should only be used once tenants have had an opportunity to appeal the decision (see also Recommendation 62). Finally, the Debt Discount Scheme should be mentioned.

Recommendation 61

That Clause 6 of the Tenant Liability Policy be changed as follows:

Homeswest will use its Appeal Mechanism (HAM) wherever possible to resolve disputes regarding tenant liability. Tenants are encouraged to attempt to resolve their dispute through Homeswest's Appeal Mechanisms before going through the Residential Tenancies procedure (for more information about HAM: see Appeals Policy).

However, where it is not possible to resolve the dispute through HAM, Homeswest and tenants are able to initiate any action concerning the tenant liability charged under the Residential Tenancies Act, through the Small Disputes Division of the local court nearest the rented property.

Recommendation 62

That Clause 6.5 of the Tenant Liability Policy be changed as follows:

Debts should only be referred to a collection agency after the tenant has an opportunity to appeal. If however the debt has gone to a debt collection agency, the agency will be notified once a customer appeals and debt recovery action to cease while the appeal is in progress. Once a client enters a repayment scheme the debt is to be transferred back to Homeswest and the debt discount scheme applied. See also Vacated Debts.

New Living – Tenant Relocation Policy

Clause 9 Where a tenant has a debt or other tenancy breaches, will be transferred only where the property is crucial to the project.

Rationale:

This contradicts the Tenancy Management Policy. In order to prevent any future changes of the Tenancy Management Policy resulting in further inconsistencies, this Clause should be replaced with a reference to the Tenancy Management Policy.

Recommendation 63

That Clause 9 of the New Living – Tenant Relocation Policy be changed as follows:

Where a tenant has a debt or breaches to Homeswest, please refer to the Tenancy Management Policy.

Clause 10.1 The following items are included and will be indexed. Rates below are at February 2001.

...

Waiving of Rent

As an incentive to relocate, Homeswest may offer tenants up to a maximum of 4 weeks free rent on an alternate Homeswest property Extra Incentives to Relocate Homeswest may offer any, or a combination of the following non- cash inducements up to a maximum value of \$3,000.

- *Floor coverings*
- *Window treatments*
- *Security installation*
- *Landscaping*
- *Ceiling fans*
- *Brick paving*
- *Water allowance*
- *Extra incentives, to be approved by Regional Manager*

Rationale:

The layout of this Clause causes confusion.

Recommendation 64

That Clause 10.1 of the New Living – Tenant Relocation Policy be changed as follows:

The following items are included and will be indexed. Rates below are at February 2001.

...

Waiving of Rent

As an incentive to relocate, Homeswest may offer tenants up to a maximum of 4 weeks free rent on an alternate Homeswest property.

Extra Incentives to Relocate

Homeswest may offer any, or a combination of the following non- cash inducements up to a maximum value of \$3,000.

- *Floor coverings*
- *Window treatments*
- *Security installation*
- *Landscaping*
- *Ceiling fans*
- *Brick paving*
- *Water allowance*
- *Extra incentives, to be approved by Regional Manager*

Housing Access Loan (Bond Assistance) Policy

The group was aware that Homeswest was reviewing this policy and considering rewriting it as a separate manual. Whether or not this occurs, the preamble to the policy should be removed as per Recommendation 1. In addition, the following issues should be considered in the review:

Clause 1. General

Applicants must be offered any vacant Homeswest accommodation considered suitable by Homeswest officers, before a Housing Access Loan is approved.

Under Clause 1 all clients who apply for bond assistance must be offered a Homeswest empty property first. This in effect places them before priority applicants on the waiting list. In order to ensure equity between applicants, this Clause should be removed.

Recommendation 65

That Homeswest consider the following issues in its review of the Housing Access Loan (Bond Assistance) Policy:

That Clause 1 of the policy be removed and Clauses 2 through 26 be renumbered 1 through 25.

Clause 7 Applicants for Community Housing Accommodation Options Funded by the Ministry

Clients of Community Disability Housing Program (CDHP), the Community Housing Program (CHP), the Joint Venture Program (JVP) and the Crisis Accommodation Program (CAP) are not eligible for a Housing Access Loan i. e. Bond Assistance.

Clause 7.1 Community Housing Organisations may still require tenants to pay a bond. Bond payments can be made to these organisations on an accrual basis, as they are for direct tenants of the Ministry of Housing.

Rationale:

While not directly related to debt, this Clause does have the potential to significantly increase debts incurred by community housing tenants. Community housing tenants should be offered bond assistance as the differentiation between private landlords and community housing landlords unfairly disadvantages community housing tenants. In addition, some community housing organisations are now using private funding to purchase stock, making a blanket coverage of community housing unfair to tenants of community housing properties not owned by Homeswest.

Finally, this Clause puts great strain on the financial resources of community organisations if bond is only paid on an accrual basis and does not allow for growth if a tenant leaves before the bond is fully paid and there is no bond to cover debts. It also means that tenants are often asked for higher bond rental payments to get this paid quickly. This clause should therefore be removed.

Recommendation 66

That Clause 7 of the Housing Access Loan (Bond Assistance) Policy and its subclauses be removed. Clauses 8 through 26 and their subclauses should be renumbered Clauses 7 through 25.

Clause 10.4 Sponsored migrants or migrants with assurances of support are not eligible even if in receipt of an income or Centrelink Benefit.

Rationale:

While not directly related to debt, this Clause does have the potential to increase the debts of sponsored or supported migrants. In order to provide consistency across government, any person who receives support from Centrelink should also receive support from other Government agencies, such as Homeswest.

Recommendation 67

That Clause 10.4 of the Housing Access Loan (Bond Assistance) Policy be removed. Subclauses 10.5 through 10.7 should be renumbered Subclauses 10.4 through 10.6.

Clause 13.1 Further assistance where applicants have a previous Bond debt will be considered provided the applicant makes an arrangement to repay the Bond debt/ s.

Clause 13.2 Where a customer with a prior debt to Homeswest has entered and maintained an agreement to repay the debt prior to making a further application, an arrangement can be accepted or an existing arrangement may continue at the discretion of Homeswest. The Manager Customer Service, Assistant Regional Manager, Administration Officer and Area Manager for the Region at which the application is lodged or Manager Bonds has the delegated authority to approve further assistance.

Rationale:

Clauses 13.1 and 13.2 contradict the Debt Discount Scheme Policy. In addition, all tenants should be made aware of the Debt Discount Scheme as per Recommendation 19.

Recommendation 68

That Clause 13.1 of the Housing Access Loan (Bond Assistance) Policy be changed as follows:

Further assistance where applicants have a previous Bond debt will be considered provided the applicant makes an arrangement to repay the Bond debt/s. All agreements to repay debts must include an explanation and offer of the Debt Discount Scheme.

Recommendation 69

That Clause 13.2 of the Housing Access Loan (Bond Assistance) Policy be removed. Subclauses 13.3 and 13.4 should be renumbered Subclauses 13.2 and 13.3.

Water Consumption Policy

Clause 1 *Tenant Responsibility*

The tenant is responsible for the payment of all water consumption charges incurred during the period of occupancy of a Homeswest tenancy.

Clause 1.1 *All tenants will receive an account from Homeswest.*

While not directly related to debt, this Clause does have the potential to increase the debts of Homeswest tenants. Specifically, the Clause does not allow for flexibility in case there is a water leak, which has been reported to Homeswest, but which caused substantial loss of water before it could be repaired.

Recommendation 70

That a new Subclause 1.2 be added to the Water Consumption Policy:

1.2 Water consumption proportioning will be considered if a leak or leaks have been reported to Homewest.

Clause 2 *Water Consumption Debt to Homeswest*

Any water consumption charge paid on behalf of the tenant by Homeswest will be debited to the tenant's rental account. The tenant must reimburse Homeswest within six weeks of receipt of the account.

Water consumption charges should be debited to the tenant on the due date of the account. In addition, this Clause does not allow for tenants to make arrangements to repay the debt by instalments.

Recommendation 71

That Clause 2 of the Water Consumption Policy be changed as follows:

Any water consumption charge paid on behalf of the tenant by Homeswest will be debited to the tenant's rental account on the due date.

Recommendation 72

That a new Subclause 2.1 be added to the Water Consumption Policy:

2.1 The tenant must reimburse Homeswest in full or by affordable fortnightly instalments.

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