

---

# Evictions Report

---

A report into the exploration of early support strategies  
in working towards a reduction in public housing evictions

---

FINAL REPORT OF THE EVICTIONS PROJECT

---

---

OCTOBER 1996

---



# EVICTIIONS REPORT

*A report into the exploration of early support strategies in working towards a reduction in public housing evictions*

**Final Report of the Evictions Project funded by the Commonwealth Department of Social Security and the State Housing Commission**

Project Workers:

Stephen Hall  
Bill Miller (Homeswest)

Prepared by:

Jack Mansveld (Shelter WA)

Shelter WA (Inc)  
First Floor  
Claisebrook Lotteries House  
EAST PERTH WA 6004  
Phone: (08) 9325 6660  
Fax: (08) 9325 8113  
Email: [shelterwa@shelterwa.org.au](mailto:shelterwa@shelterwa.org.au)  
Web: [www.shelterwa.org.au](http://www.shelterwa.org.au)

**October 1996**

*Disclaimer: The opinions and findings of this report do not necessarily represent the views of the Commonwealth Department of Social Security or Homeswest*

## TABLE OF CONTENTS

FOREWARD .....	2
ACKNOWLEDGMENTS .....	3
TERMS OF REFERENCE .....	3
EXECUTIVE SUMMARY .....	4
RECOMMENDATIONS .....	9
<b>1 • INTRODUCTION .....</b>	<b>18</b>
<b>2 • EXAMINATION AND REVIEW OF HOMESWEST PROCEDURE DOCUMENTS, POLICIES AND GUIDELINES .....</b>	<b>20</b>
<b>3 • EXAMINATION AND REVIEW OF HOMESWEST'S CURRENT EVICTION POLICIES AND PROCEDURES</b>	
• EXAMINATION AND CONSIDERATION OF EXISTING PROCESSES FOR IDENTIFYING ISSUES SURROUNDING DEFAULTING TENANCIES, AND OF EXISTING PROGRAMS SUCH AS SHAP, SUPPORT SERVICES, BILL BAYING SCHEMES INCLUDING THE DEPARTMENT OF SOCIAL SECURITY DIRECT DEDUCTION SCHEME AND FINANCIAL COUNSELLING SCHEMES	
• INVESTIGATIONS OF INNOVATIONS NOT OPERATING IN WESTERN AUSTRALIA	
• ARTICULATION OF THE ROLE OF ADVOCACY SERVICES AND GROUPS .....	26
3.1 Framework .....	26
3.2 Statistics .....	26
3.3 Consistent Decision Making .....	27
3.4 Cautious Decision Making .....	30
3.4.1 Commencement of Tenancy .....	30
3.4.1.1 Rehousing	
3.4.1.2 Allocations	
3.4.1.3 Property Condition Report	
3.4.1.4 Method of Payment	
3.4.2 The Current Tenancy .....	34
3.4.2.1 Rental Arrears	
3.4.2.2 Breach/Termination Notices	
3.4.2.3 Other Debt	
3.4.2.4 Method of Payment	
3.4.2.5 Conditions on Debt Repayment	
3.4.2.6 Referral to Local Support Services	
3.4.3 Anti-Social Evictions .....	45
3.4.3.1 Definition	
3.4.3.2 Early Support	
3.4.3.3 Probationary Transfer	
3.4.4 Significant Support Agencies and Programs .....	49
3.4.4.1 Supported Housing Assistance Program (SHAP)	
3.4.4.2 Aboriginal Housing Directorate	
3.4.4.3 State Family & Children's Services	
3.4.4.4 Whole of Government Approach	
3.5 Considered Decision Making .....	58
3.6 Accommodation Managers and Organisational Needs .....	60
<b>4 • CONSIDERATION AND DEVELOPMENT OF AN ONGOING PROCESS FOR ANALYSIS AND EVALUATION ARISING FROM THE PROJECT .....</b>	<b>64</b>
 APPENDIX A                      Terms of Reference	

## **FOREWORD**

The Evictions Project arose out of concerns expressed by a coalition of community groups about the eviction policies and practices of the State Housing Commission of Western Australia, (Homeswest). This group, known as the Anti-Section 64 Coalition, (reference to a section of the Residential Tenancies Act 1987 which allows an owner to terminate a tenancy without reason), had in March 1995 released a report titled “No Just Cause-Homeswest’s Abuse of Western Australian Eviction Laws.”

One of its recommendations was that Homeswest trial an eviction “prevention scheme” (page 25).

The Coalition brought its concerns to the then Commonwealth Housing Minister, Brian Howe in the latter part of 1995 who, with his State counterpart, Kevin Prince, agreed that a short-term project be undertaken to explore the immediate causes of problems leading to eviction and propose strategies to address those problems and reduce the risk of eviction.

The Commonwealth provided grant funding for the three months project and Homeswest seconded an officer to assist the project worker.

The overall management of the project was undertaken by a Working Party comprising representatives of the Commonwealth, Homeswest, Aboriginal Housing Directorate, (Homeswest) and the Anti-Section 64 Coalition.

The day to day management was the responsibility of a Steering Committee consisting of one representative from, the Commonwealth (Chair), Homeswest, the Aboriginal Housing Directorate (Homeswest), the Aboriginal Housing Board, Shelter WA, a SHAP (Supported Housing Assistance Program), service provider, an Aboriginal community organisation and the Anti-Section 64 Coalition.

The administration of the project was carried out by Shelter WA.

## **ACKNOWLEDGMENTS**

The Working Party wish to thank all those who have so willingly contributed to this project. Staff from community agencies, Homeswest and other government departments have been prepared to make their time available, as have a range of interested individuals. We thank them all and acknowledge that this project would not have been possible without their cooperation and goodwill. The Working Party would also like to thank the staff at Shelter WA for their support and encouragement over the last six months.

Finally, recognition needs to be given to the Commonwealth and Homeswest for their preparedness to endorse the project's aim, namely to seek strategies that will reduce the incidence of eviction.

August 1996.

## **TERMS OF REFERENCE (SEE APPENDIX A)**

Any project of this kind is contained within its Terms of Reference. While this provides reference points for the scope of the task and, ultimately, recommendations, it can also be constraining when issues, considered fundamental to the inquiry, fall outside the Terms.

The aim of the project is to identify the immediate causes of problems leading to eviction or threatened eviction, and to propose strategies to address those problems and reduce the risk of eviction. The obvious tension inherent in this statement is that the "immediate causes" most often do not arise spontaneously. Should the preceding "causes" be of such a magnitude as to overwhelm those that follow then the most recent events take the form of symptoms.

Dealing with the symptoms provide short-term solutions at best.

Homeswest has advised that "generally," any recommendations arising out of the project need to be met within existing Homeswest budgets and cannot "result" in any increase in rental arrears or neighbourhood disputes.

This status quo position if interpreted strictly, would seem to severely restrict the scope of the project. Consequently, the Working party has taken a fairly liberal view of the term "generally"; the assumption being that some initial costs will result in future savings. It is reasonable to suggest, that a reduction in evictions benefits Homeswest as well as those directly affected tenants.

## **EXECUTIVE SUMMARY**

Eviction of public housing tenants is a sensitive issue. It is the most potent manifestation of the tension that exists between the dual role of Homeswest as a landlord (manager of a public asset), and the houser of last resort.

It is sensitive also because the impact of eviction on certain tenants is that of homelessness. By that we mean the inability to access long-term private rental and the reliance therefore on crisis accommodation and family networks.

Homeswest reports that most evictions occur for failure to pay rental debts, the balance being the result of so called anti-social behaviour and property damage, (Homeswest Annual Report 1995 page 17). It is probable that in practice the distinctions are not that clear, if a tenancy is facing difficulties it may show as rental arrears but have causal links to a variety of issues.

At one level Homeswest quite reasonably argues that its tenancy requirements are not onerous; rent must be paid, internal and external property "standards" must be maintained and neighbourhood disputes contained. Rents are set by Homeswest at a notional market rate but are rebated so that the actual rent is no more than 25% of household assessable income, (Draft Bilateral Strategic Plan May 1996, page 21).

These requirements on their own are unproblematic, difficulties arise when these simple rules are contextualised over the range of tenancy situations presented to Homeswest at any one time.

There is a further tension, then, in the need to balance the tendency to individualise the problem with the acknowledgment that factors effectively outside a person's "control," influence all aspects of day to day living of which accommodation is only one (though important) part.

For Homeswest this means it must take into account (but not take responsibility for), all the circumstances of a person's situation in the process of making an adverse decision on a tenancy. For the tenant the obligation is to co-operate to the fullest extent with Homeswest in a collective endeavour to maintain secure and appropriate accommodation.

In this regard the Working Party has taken the view that Homeswest is the senior player in the relationship of landlord and tenant. The capacity to remove a housing service is a decisive penalty; the processes that lead to the imposing of such a penalty must therefore be without defect and under all the circumstances be the preferable decision.

For some the Report may seem to have a bias in its expectations of Homeswest but this should not be taken as negating the role of the tenant. It is axiomatic that the conditions of a tenancy must ultimately be fulfilled. It is axiomatic also that

Homeswest (and government agencies generally), have the superior capacity to initiate options and strategies for consideration. The tenant's responsibility when faced with problems that place their accommodation in jeopardy is to fairly confront those issues and to consider the options presented to them.

The reasonable expectation of tenants cooperation fundamentally rests with the presentation of reasonable options. It is accepted that support strategies lie on a continuum of intervention. In this regard the underlying principle should be the maximisation of self determination and the minimisation of offensive interference.

The **Terms of Reference** (Appendix A), has confined the working part of the project to operational matters by directing attention to the "immediate causes of problems leading to eviction....". In their time and resource limited consultations, however, the Project Workers have been consistently faced with what would generally be described as systemic or structural factors that surround the eviction process, from the time tenancy runs into difficulties to the eviction itself.

**Rather than neglect the systemic influences it has been decided to classify the recommendations into two categories; operational and structural.**

The first of these refer to the project's Terms of Reference and therefore are contained within the "immediate" causes of eviction and a generally neutral revenue position, the second addresses some fundamental agency and "whole of government" issues.

The report is organised so as to most effectively deal with the objectives of the Project (Appendix A), and to acknowledge the inevitable overlap inherent in their description.

### **Section one:**

#### **Examination and review of Homeswest procedure documents, policies and guidelines.**

This section undertakes a reasonably detailed discussion of the main policy and procedure documents that impact on the eviction process. It finds there is difficulty in determining the exact policy on termination and eviction from the Policy Manual (Rental), because of a lack of consolidation of policy statements. The "flow" to the procedures manual (Rental Operations Legal Recovery Procedures (hereinafter referred to as the Legal Recovery Manual)), is therefore problematic. The procedures manual itself is a mixture of intent, information and directives missing a coherent structure.

The section concludes by recommending the relevant policies and procedures be rewritten and consolidated. This should be followed by intensive training for Homeswest officers in the areas of tenancy management that relate to breaches and termination.

## **Section two:**

**Examination and review of Homeswest's current eviction policies and procedures, including decision making and reporting processes.**

**Examination and consideration of existing processes for identifying issues surrounding defaulting tenancies, and of existing programs such as SHAP, support services, bill paying schemes including the Department of Social Security Direct Deduction Scheme and financial counselling schemes.**

**Investigation of innovations not operating in Western Australia.**

**Articulation of the role of advocacy services and groups.**

This section comprises the substantive part of the Report. It is here where the "operational" and "structural" issues collide and to varying degrees impact on those tenancies where problems exist. The contentious question of "who's responsibility is it?" is answered ultimately by Homeswest when an eviction decision is made (or not made).

The section continues with an analysis of the Legal Recovery Manual and how the case studies and consultations are informed by it. The framework adopted to acknowledge the rights and responsibilities of all parties relevant to a tenancy is as follows;

Any decision to evict should be seen as the final step in a process that is;

- ◆ **Consistent:** it reflects policy and is a decision that any Homeswest officer would reasonably have made.
- ◆ **Cautious:** it takes all reasonable steps to save the tenancy and includes the tenant and their support systems, and
- ◆ **Considered:** it takes into account all the documents and circumstances that a reasonable person (in a similar situation), would regard as relevant.

**A number of general statements or findings are made in the Report;**

- 1) there is disagreement between the community sector and Homeswest as to what constitutes an “eviction”. The level of evictions remains a contentious issue focusing on the availability of formal statistics and concerns about definitions;
- 2) knowledge of the Legal Recovery Manual by Homeswest officers varies enormously and it seems to have only moderate influence on their day to day practices. There appears to be confusion as to whether the Manual represents best practice or minimum standards;
- 3) Homeswest Accommodation Managers are given too much discretion in their decision making. The lack of policy and procedural constraints means that officers, in their decision to terminate, are often forced to rely on a combination of their perception of the corporate philosophy, their personal opinion and preference (or that of a senior officer);
- 4) while Homeswest’s allocation policy acknowledges equal opportunity requirements, there remains some community sector disquiet that allocations still occur which increase the potential for neighbour disputes and disruptions;
- 5) there is currently insufficient attention given to the need for personal contact to be a critical feature (as part of a supportive framework), of a system where resolution is genuinely sought for tenancies experiencing difficulties;
- 6) local community support services need to be “activated” at the earliest possible time a tenancy faces problems. This may require a limited form of intervention in the tenancy by Homeswest officers to ensure a quick referral;
- 7) the case studies and consultations show that the timing and number of arrangements for tenants to repay debts to Homeswest (current or past), largely fall to the discretion of particular Homeswest officers and is not consistent across regions;
- 8) the Social Security Direct Deduction Scheme is widely accepted as the preferred method for tenants paying rent but variation to the authority without explicit reference to the tenant, is not currently limited to ordinary rent increases;
- 9) there are insufficient Bill Paying Services available for tenants of the type funded by Family & Children’s Services. The latter’s own service is too small and restrictive in its application;
- 10) the definition of “anti-social” behaviour used by Homeswest does not explicitly differentiate types of disputes and relies too heavily on discretionary assessments by Homeswest Accommodation Managers;
- 11) the Supported Housing Assistance Program (SHAP) is a significant and generally supported Homeswest initiative. However, problems remain with the referral process which is not sufficiently formalised and gives too much discretion to Accommodation Managers to determine which tenants “require” the service;
- 12) notwithstanding the work of the Aboriginal Housing Directorate, there does not appear to be a Aboriginal specific mechanism within Homeswest which becomes the focus for tenancy information and decision making once termination is considered;

- 13)the “Dysfunctional Tenancies Program”, a joint initiative between Homeswest and Family & Children’s Services, was found to have almost no recognition at the community level and therefore rarely used. Community workers were, in the main, critical of the lack of support and the crisis response to service provision that seem to inform the role of Family & Children’s Services when evictions occur;
- 14)there was strong support amongst community workers for the need to develop a “whole of government approach” to evictions given the effects across agencies of homelessness;
- 15)there does not appear to be a formal process within Homeswest where, as a matter of course, underlying issues such as health and the availability of alternative accommodation, are explored and a judgement made on their impact on the tenant (and family) when a decision is made to evict; and
- 16)Accommodation Managers, when faced with difficult tenancies, often react negatively towards Homeswest and the tenant. The former is represented by the notion that Homeswest is becoming too “business oriented”, the latter that tenants should be “punished” for not adhering to the tenancy agreement. There is often a sense of hopelessness in having to deal with very difficult situations within a large workload.

### **Section three:**

#### **Consideration and development of an ongoing process for analysis and evaluation of measures arising from the project.**

All of the Report sections will contain recommendations that attempt to respond to the problems the Project has identified, the aim being to propose preventative strategies to reduce the risk of eviction.

When considering the “mechanism” most suitable to enable an ongoing analysis and evaluation of the recommendations implemented, the Working Party was drawn to the Housing Advisory Committee (HAC). This Committee advises the Minister for Housing and is recognised as an independent body. HAC has as its membership, peak community organisations and Homeswest representatives.

# RECOMMENDATIONS

## OPERATIONAL RECOMMENDATIONS

### **Homeswest - Rental Policy Manual.**

- 1.1 All policy dealing with breaches and termination of tenancy agreements be consolidated in a stand alone category within the Policy Manual-Rental titled "Breaches of the Conditions of Tenancy and Termination of the Tenancy Agreement".  
All other policy areas would where necessary refer to this category and not restate policy.
- 1.2 The new policy section state that it must be read in conjunction with the Legal Recovery Manual.
- 1.3 The Preamble to the Policy be consistent with the following;  
"This policy seeks to balance Homeswest's dual role as a landlord (manager of a public asset), and the houser of last resort, and is reflected in the need to act in a compassionate manner towards tenants who are experiencing difficulties whilst acknowledging the requirement of the organisation to operate in a cost effective way."

### **Homeswest - Rental Operations Legal Recovery Procedures.**

- 2.1 The Rental Operations-Legal Recovery Procedures (Legal Recovery Manual), be redrafted in a format similar to the South Australian Housing Trust: Credit Policy-Operating Procedures Manual.
- 2.2 The Manual should incorporate a set of unambiguous and sequential steps that must be taken by officers when dealing with tenancy breaches, contextualised by policy and a clear statement of philosophical position (intent).
- 2.3 The Manual be renamed consistent with the Policy title.

### **Training.**

- 3.1 Intensive tutorial based training take place for Homeswest officers in the area of policy and procedures for tenancy management as it relates to breaches, termination and relevant preventative (support) strategies.
- 3.2 Consideration be given to making the training available to community workers who provide assistance to Homeswest tenants.

### **Eviction Statistics.**

- 4.1 That Homeswest consult with the community sector through the Housing Advisory Committee (HAC), with the aim of developing a statistical data base on evictions that meets the requirements of transparency and that subject to privacy considerations the data be publicly available on a regular basis.
- 4.2 As an indication of when early support may be most useful, the data base show at which point of legal action atenancy ended (that is, when the tenant permanently left the property).

### **Discretionary Power of Homeswest Officers.**

- 5.1 Any discretion given to a Homeswest officer in the making of a decision must have its parameters defined by way of written instructions on what factors to take into account.
- 5.2 The resultant (written) decision would state those factors and the relative weighting to be given.
- 5.3 The amount of discretionary power should be proportional to the seniority of the person within Homeswest with the least discretion being given to the most junior officer.

### **Further Housing Assistance from Homeswest.**

- 6.1 Any application of a person seeking further assistance from Homeswest pursuant to the relevant policy, will undergo an assessment to determine whether support will be required in the new tenancy.
- 6.2 This type of assessment will be undertaken only with the participation of the applicant.
- 6.3 The preferred agency to carry out the assessment is the relevant SHAP agency or in the case of Aboriginal applicants, the Aboriginal Housing Directorate.
- 6.4 The Regional Manager will be bound to take the assessment into consideration in their decision on the application.  
(Under its "further assistance" policy, Homeswest reserves the right to refuse assistance or place conditions upon further assistance, to any applicant or tenant with substantiated breaches of a tenancy agreement or Residential Tenancies Act).

### **Homeswest Allocation Policy.**

- 7 That in the making of a decision to terminate a tenancy (and perhaps to evict), Homeswest take into account the effects of the original allocation as a possible mitigating factor.
- 8 The Aboriginal Housing Directorate enter into a formal dialogue with Homeswest Regional Offices as a means of providing assistance in the allocation of Homeswest properties to Aboriginal families.

### **Property Condition Report.**

- 9.1 The Homeswest Property Condition Report be redesigned to include the following attributes:
  - 1) a statement alerting the tenant to the importance of the document particularly with respect to tenant liability disputes;
  - 2) the general Homeswest descriptions of "good", "fair" and "poor" be further detailed with particular attributes of the item(s), for example, Wall-fair (scratch marks at floor); and
  - 3) a brief history of the major maintenance items, for example, painting last took place on..., flyscreens last replaced on...

- 9.2 The tenant be given the option of receiving assistance from the local SHAP agency or Aboriginal Housing Directorate (which may choose to use the recently piloted Aboriginal Tenancy Advocacy Service), to complete the Property Condition Report and in any case, where a dispute arises, that those agencies conduct an independent assessment.

**Breach of Tenancy Agreement - Personal Contact.**

- 10.1 Personal contact be a feature of the process of dealing with breaches of a tenancy agreement.
- 10.2 The first reminder letter for rental arrears request that the tenant make contact with Homeswest and that after a specified period (should contact not be made), a home visit by the Accommodation Manager be mandatory prior to any further action being taken.
- 10.3 The first letter and home visit should be presented within a supportive framework to maximise the opportunity for tenant response.
- 11 At the initial (and where relevant, subsequent), home visits the Accommodation Manager must explore with the tenant any “extenuating circumstances” contributing to the arrears and these must be clearly noted on the tenant’s file.
- 12 Each Homeswest Regional office make time available for one of its Aboriginal officers to assist Aboriginal tenants who may wish to discuss the particular circumstances of their tenancy that may be causing concerns.

**Breach of Tenancy Agreement - Repayment Arrangements.**

- 13.1 A formal repayment arrangement to be mandatory when a tenant is one full week in arrears (that is, at the time the next rental falls due).
- 13.2 The arrangement is to be in writing, signed by the tenant and to conform strictly to the policy that the total payment (standard rent and arrears payment), not exceed 30% of the tenants assessed income unless a submission is received from a Financial Counsellor. The original decision whether to reduce the payment to be made by the Manager Rental Services (Regional Office).
- 13.3 The policy requiring debts under \$300 to be paid in full (unless there is a demonstrated inability to pay), to be replaced by the new arrangement system.
- 14.1 Prior to the issue of a Breach Notice by Homeswest, tenants in default be allowed at least a minimum number of repayment arrangements within a specified time period.
- 14.2 Homeswest, in consultation with such bodies as WACOSS, the Financial Counsellors Association of WA, the Federation of Community Legal Centres and Aboriginal organisations, develop a model of the arrangement mechanism.
- 15 The policy and procedures for tenancy breaches and terminations clearly state;  
1) how a Breach Notice is to be used and when it should be issued.

2) that a Termination Notice is not to be used as a way of commencing negotiations with a tenant who is alleged to be in default.

16 Both tenant liability (in occupation) and excess water debts be subject to the same repayment arrangement system as rental arrears except that the requirement to make a 50% lump sum payment where the debt exceeds \$300 be removed.

#### **Tenant Liability - Support Referral.**

17.1 When tenant liability (in occupation) is deemed to be excessive (to be defined), Homeswest will initiate a referral to either SHAP or the Aboriginal Housing Directorate to seek support for the tenancy in dealing with any underlying issues.

17.2 Homeswest to consult with SHAP and the Aboriginal Housing Directorate in formalising a referral process.

#### **Excess Water Accounts.**

18.1 The current practice where Homeswest Regional Offices are notified of tenancies with large water-use accounts should remain.

18.2 Homeswest in conjunction with the Water Corporation, initiate a system of more frequent billing for those tenancies that demonstrate a pattern of large water-use.

18.3 If the problem of excessive water use is (in whole or in part), the result of plumbing structures or slow maintenance call-out, the current practice of Homeswest rebating the water account should remain.

#### **Debt Payment Methods (including current rent).**

19.1 Homeswest together with the Department of Social Security, ensure that a data security system is in place to prevent any increase to a Direct Deduction amount other than one directly authorised by the tenant or one representing a general rent increase.

19.2 Homeswest not be able to cancel a Direct Deduction authority of an existing tenant without the written consent of that tenant.

20 Tenants who have entered into arrangements with Homeswest to repay a debt and where a specified number of arrangements have proved unsuccessful within a prescribed period (refer to Operational Recommendations Thirteen and Fourteen), will be required to make further payment by way of either (at the tenant's choice), the Social Security Direct Deduction Scheme, a recognised Bill Paying Service or Bank Direct Debit.

#### **Referral to Local Community Agency.**

21 If it is agreed by the tenant and Accommodation Manager at the time of a home visit that a referral to a community support agency will be beneficial, the

Homeswest officer will seek a limited authority to enable them to initiate referral contact with the agency nominated by the tenant.

- 22 Homeswest initiate a consultative process with peak bodies such as WACOSS, the Financial Counsellors Association of WA, the Federation of Community Legal Centres and Aboriginal organisations to develop a procedure for the limited authority it receives from tenants to refer directly to community support agencies.

**“Anti-Social” (Section 64) Evictions.**

- 23 Any decision to terminate a tenancy by use of Section 64 of the Residential Tenancies Act be approved by the Homeswest Board of Commissioners and, where relevant, by the Aboriginal Housing Board.
- 24.1 The term “anti-social behaviour” be replaced by “neighbour disputes and disruptions”.
- 24.2 The definition of “neighbour disputes and disruptions” be categorised according to the level of seriousness and the action or tasks to be undertaken by the Accommodation Manager be specified and particular to the category.
- 24.3 Consideration be given to the categories and actions adopted by the South Australian Housing Trust.
- 25 All actions and tasks undertaken by the Accommodation Manager with respect to “neighbour disputes and disruptions” be formally authorised and approved by the Manager Rental Services in each Regional Office.
- 26.1 Homeswest consider the adoption of the “probationary transfer” as one means by which certain (defined) neighbour disputes can be resolved.
- 26.2 The parameters of the “probationary transfer” mechanism ensure a balance of the interests of Homeswest and the tenant.

**Supported Housing Assistance Program (SHAP).**

- 27 The referral process for SHAP involvement in a tenancy be formalised and to have the following attributes;
- 1) a set of criteria be developed by Homeswest, SHAP and the community sector the satisfaction of which prompt a SHAP support assessment independent of the view of any Homeswest officer about the referral.
  - 2) the Homeswest Accommodation Manager be the officer who collects this information from the tenant.
  - 3) the extent of SHAP involvement is determined on the basis of a consensus between the tenant, Homeswest and the SHAP agency.
  - 4) at each stage of the process the tenant is made aware of the information being collected and its purpose.
  - 5) each stage of the process to be clearly defined to protect the interests of the tenant and to proceed only with the tenant’s approval.

### **Aboriginal Housing Directorate.**

- 28.1 The Customer Support Officers of the Aboriginal Housing Directorate receive for Aboriginal tenancies, the information sent to a SHAP agency which prompts a SHAP assessment. (See Operational Recommendation Twenty Seven).
- 28.2 A process be developed where the Customer Support Officer participate with the SHAP agency in the support assessment.
  
- 29.1 Homeswest Regional Managers obtain the approval of the Director Aboriginal Housing prior to commencing court action to terminate an Aboriginal tenancy.
- 29.2 Homeswest Regional Managers must, in recommending termination of a Aboriginal tenancy, provide the Aboriginal Housing Directorate with a report detailing the history of the tenancy and the support provided or sought.
- 29.3 The format of the report is to be decided by the Director Aboriginal Housing and the Manager Rental Operations (Homeswest Head office).
  
- 30.1 On receipt of the report and recommendation from a Regional Office, the Aboriginal Housing Directorate in its deliberations, will decide whether it can obtain sufficient support to maintain the tenancy. If this is not considered possible then it will recommend the eviction subject to final approval being obtained by the Aboriginal Housing Board with respect to evictions pursuant to Section 64 of the Residential Tenancies Act (refer to Operational Recommendation Twenty Three).
- 30.2 The role of the Directorate on eviction is to co-ordinate services to ensure the evicted family receives adequate support.
  
- 31 In recognition of the increased role of the Aboriginal Housing Directorate, consideration be given to resource factors such as;
  - 1) the number of Customer Support Officers.
  - 2) additional training requirements, and
  - 3) the location of Customer Support officers (for example, it may be helpful for these officers to spend part of each week at Regional Offices).

### **Local Inter-Agency Working Groups.**

- 32 Homeswest Regional Offices establish inter-agency working groups to ensure better co-ordination of services to tenancies at risk.

### **Consideration of all Circumstances Prior to Eviction.**

- 33.1 Prior to the decision to evict (and after the Court Order for possession has been obtained), the Aboriginal Housing Directorate or relevant Regional Manager (or the Director Rental Operations in the case of a 60 day notice eviction), formally consider all the circumstances of the case and that a written statement be prepared detailing the weight given to the various circumstances and the final decision (that is, the decision still to be approved by the Board of

- Commissioners in the case of Section 64 evictions and the Aboriginal Housing Board for all evictions involving Aboriginal tenants).
- 33.2 For the purposes of the final decision the circumstances be defined to include;
- a) the length of time the tenant has lived at the premises.
  - b) the age and state of health of the tenant.
  - c) reason why the tenant may need to live in a certain area.
  - d) the availability of other suitable accommodation in the area.
  - e) the need to be close to family, friends and employment.
- 33.3 Should the final decision confirm the original decision to evict, then consideration be given to allowing a reasonable time for the tenant, representatives and support agencies of the tenant to arrange for alternative accommodation.
- 34 Prior to a final decision to evict being made, that the tenant and their representative (if any) be notified so as to allow a submission to be lodged speaking to the “all the circumstances of the case”, as defined.

#### **Homeswest Accommodation Managers.**

- 35.1 The following performance indicator for Accommodation Managers be added to those that currently exist with respect to tenancy management and that it be prefaced by a statement that it is to be measured concomitantly with the Manager’s current rental arrears portfolio;
- 1) The number of evictions that have taken place and the reasons for those evictions.
  - 2) The level and type of debt associated with those evictions.
- 35.2 Appropriate benchmarking will need to be developed so as to ensure equity between Accommodation Managers.
- 36 There be a clear separation and detailed description of the two roles undertaken by an Accommodation Manager these being;
- 1) property manager (landlord),
  - 2) tenancy manager (support person).
  - 3) and that those roles be reflected in the job description and performance indicators.

#### **Housing Advisory Committee (HAC).**

- 37.1 The Housing Advisory Committee (HAC), be the mechanism through which an ongoing process for the analysis and evaluation of the recommendations of this Report be developed.
- 37.2 The Committee ensure;
- 1) there is adequate Aboriginal representation in the process; and
  - 2) extensive community input is obtained in the analysis and evaluation.

## STRUCTURAL RECOMMENDATIONS

- 1 A State Government task force be established (with community representation), to explore the effect that public housing evictions has on the services provided by government and community agencies to families made homeless, with the aim of developing a comprehensive support regime for tenancies facing eviction. (*Recommendation 7*)
- 2 The annual budget of Family & Children's Services include an amount allocated to the operation of Homeswest's SHAP program in recognition of the shared responsibility for some of the fundamental needs of families in Western Australia. (*Recommendation 6*)
- 3.1 As a matter of urgency, Homeswest and Family & Children's Services develop inter-departmental protocols to define the type and level of support able to be provided by Family & Children's Services for tenancies facing difficulties and possible termination.
- 3.2 Those protocols be developed with community input. (*Recommendation 5*)
- 4 Notwithstanding the limited authority provided under Operational Recommendation Twenty Three, consideration be given to the Aboriginal Housing Board having the final authority over all decisions to evict Aboriginal tenants. (*Recommendation 4*)
- 5 Homeswest undertake a formal review of the role of the Accommodation Manager with particular emphasis on the examination of;
  - 1) the increased duties of the position since its inception in 1988.
  - 2) the extent to which the position is subject to performance measurement compared with commensurate positions within Homeswest.
  - 3) the dual role of property manager and tenancy support and how the resulting tension affects performance.
  - 4) a proposal that Accommodation Managers work in neighbourhood teams such as in the model developed by the Victorian State Housing Authority. (*Recommendation 7*)
- 6.1 Homeswest to initiate discussions with the Commonwealth government (Department of Social Security), with the aim of enabling people on education support payments to be eligible for the Direct Deduction Scheme.
- 6.2 Homeswest together with Family & Children's Services, initiate discussions with the Commonwealth government with the aim of providing the same scope of entry to people accessing recognised bill paying services (to be determined), as with those able to enter the Direct Deduction Scheme. (*Recommendation 2*)

- 7 The community sector through its representative bodies and Homeswest , initiate discussions with Family & Children’s Services to seek an expansion of the Department’s Bill Paying Service. (*Recommendation 3*)
- 8 Homeswest commence a program of installing “child proof” devices to the external taps in its properties. (*Recommendation 1*)

# 1 INTRODUCTION

The Evictions Project has been presented with a unique difficulty in that it has had to rely in the main on anecdotal evidence to support its findings and recommendations. While limiting, a consistency has been observed in the collection of this evidence which suggests that it is representative of the issues the subject of this Report.

The project consultations incorporated the following;

1. Homeswest Regional Offices - three in the metropolitan area and one each in the north and south of the State;
2. Aboriginal Housing Directorate, (Homeswest);
3. Aboriginal Medical Service (Perth);
4. Community Legal Centres (metropolitan and regional); and
5. Informal discussions with several State Government bureaucracies.

The time and resource constraints imposed on the project prevented an active soliciting of tenants views on evictions. This was accepted by the State and Commonwealth as being an unavoidable limitation. It was discovered, however, that during the course of the project a Homeswest sponsored public consultation was taking place as part of the requirements of the Commonwealth/State Housing Agreement. A report was generated from these consultations; "Homeswest Strategic Plan - The view from the field. Report on consultative workshops" (Tim Muirhead and Associates, March 1996).

Muirhead acknowledged the limitations to his consultations (similar to this Project), but concluded that ".....a reasonably good spread of perspective's was heard from groups and agencies, despite the constraints." (Page 2)

Where appropriate, comments on evictions and recommendations have been drawn from the Muirhead Report.

The Project has relied on extant Homeswest documentation, particularly the "Policy Manual-Rental Operations", "Rental Operations Legal Recovery Procedures" (July 1995), (hereinafter referred to as the Legal Recovery Manual), "Supported Housing Assistance Program-SHAP" (Rental Operations, January 1995), SHAP Review, November 1994, an information circular "Aboriginal Housing Directorate - An outline of changes to the Aboriginal Housing Section of Homeswest" (undated), and the Draft Bi-lateral Strategic Plan (May 1996).

Analysis has also taken place on tenancy management policy and procedure documents from South Australia, Queensland, Victoria and the ACT.

A number of case studies were carried out on evicted tenancies. Five case studies, which accounted for about one quarter of all Homeswest evictions for the month of February 1996, were used. Two of the cases were from country areas and one each

from the Homeswest metropolitan regions. In all other respects the selection was a random one. The information for the case studies was obtained by the Homeswest officer seconded to the Project (to protect the privacy of tenants), from the computer system used to record case notes. The paper files were not necessarily sighted due to logistical problems. The understanding was, however, that the computer information is more complete and current than the paper files.

## **2 EXAMINATION AND REVIEW OF HOMESWEST PROCEDURE DOCUMENTS, POLICIES AND GUIDELINES.**

Homeswest has a formal policy manual for its rental operations. The policies that clearly deal with termination and eviction are:

### *Section 5 - Tenancy Management.*

The preamble to this policy is straightforward equating quiet enjoyment to the responsibility of the tenant to comply with the terms of the Tenancy Agreement.

- \* Under Rental Payments (6), once an account falls into arrears, immediate action needs to be taken by the Homeswest officer to discuss methods of payment and to provide referral information.
- \* Under Ending of Tenancy (17), the policy refers to Sections 62, 64 and 73 of the Residential Tenancies Act. Two letters advising the tenant of Homeswest's intent and reasons are deemed sufficient to observe the principles of natural justice pursuant to Section 64.
- \* Under Tenants with a Debt to Homeswest (25) (26), reference is made to the Debt Recovery policy and also Homeswest's practice in joint tenancies to apportion debt.

### *Section 8 - Breaches of the Tenancy Agreement and Tenant Liability.*

The preamble to this policy is more substantial and acknowledges the difficulty of balancing organisational and tenant needs when breaches occur. The final statement is one where Homeswest believes it has established that balance.

The majority of this policy deals with tenant liability matters. For the Project's purpose there are only brief references (notwithstanding the preamble), to breaches of the Tenancy Agreement/Residential Tenancies Act, further assistance and complaints.

- \* an "acceptable" tenancy is one which maintains a "satisfactory" rental account, maintains property standards, does not cause a nuisance and does not use the premises for illegal acts.
- \* under Complaints (3), "personal antagonism" between neighbours is not considered a Homeswest matter but (4), "Homeswest will evict tenants who are in breach of tenancy with ongoing behaviour that disrupts neighbours." In this instance the "circumstances" determine the Section of the Residential Tenancies Act to use.
- \* under Further Assistance (2), Homeswest reserves the right to refuse assistance to tenants or others with "substantiated" breaches of the Tenancy Agreement.

*Section 10 - Debt Recovery.*

The preamble to this policy states quite clearly that Homeswest pursues debts in accordance with the provisions of the Residential Tenancies Act but “always prefers” to come to an arrangement to repay the debt.

With current tenancy debts, tenants “must” enter into a proposal to pay and maintain those payments (2). The repayment formula (5), is simply that a payment which includes current rent cannot exceed 30% of assessable income and that where the debt exceeds \$300 a 50% lump sum payment is required. Debts below \$300 need to be paid in full unless there is a “demonstrated inability to pay”.

Where the agreed arrangement is broken, it is expected that termination action will commence and continue unless the arrears are paid in full (5), but -

- \* under Default on a Proposal to Repay a Debt (6), a letter is sent and the tenant given 7 days to comply.
- \* under Bankruptcy of a Tenant in Occupation (7) (8), tenants may still be required to repay a debt the subject of a Petition in order to “secure” the tenancy.

The use of Section 64 of the Residential Tenancies Act is detailed under this policy (4); two letters to tenants is again mentioned as is the need to obtain approval of the Director, Rental Operations. Section 64 cannot be used for debts.

A reading of the Policy Manual reveals that pieces of information regarding breaches and termination are scattered across too many policy areas. For purposes of clarity it would be preferable to have all policy dealing with these matters collected under a stand alone policy section titled say “Breaches of the Conditions of Tenancy and Termination of the Tenancy Agreement.” The policy would include debt management and complaints. All other policy areas would simply refer to this section and not restate policy.

The new policy section would state that it must be read in conjunction with the Legal Recovery Manual.

The preamble (which is a short statement of the intent of Homeswest towards the policy), could be as follows;

*“This policy seeks to balance Homeswest’s dual role as a landlord (manager of a public asset), and the houser of last resort, and is reflected in the need to act in a compassionate manner towards tenants who are experiencing difficulties whilst acknowledging the requirement of the organisation to operate in a cost effective way.”*

The Legal Recovery Manual is the required working document for Homeswest officers dealing with tenancies facing termination. In the first instance and at the “lowest” level this means the Accommodation Manager at each Regional or Branch office. Reference to more senior officers has more to do with confirmation of action already initiated or as the final authorities on termination of a tenancy agreement.

The document should therefore be directed towards those who do the work “on the ground”, the Accommodation Managers. The first question to ask is whether the Manual as it exists conforms to policy and further whether it provides a logical process to enable fair and consistent decisions to be made. The question of the procedures themselves is the subject of the remainder of the report.

As earlier stated it is difficult to determine the exact policy on termination and eviction from the Rental Policy Manual because of a lack of consolidation of policy statements. It’s “flow” to the Legal Recovery Manual, is, therefore, problematic.

For example;

- \* policy states (Section 5 (17)), that for a Section 64 termination (one not specifying any grounds), two letters outlining Homeswest’s intent and reasons will “observe” the principles of natural justice. Two letters in this context is not mentioned in any paragraph dealing with Section 64 in the Legal Recovery Manual. There is mention of needing to send a letter after every complaint.
- \* policy states (Section 10 (5)), that where debts do not exceed \$300 payment in full is required unless there is a demonstrated inability to pay. The Legal Recovery Manual does not make such a demand.

The policy on Bankruptcy (when it occurs in occupation), is not further articulated in the Legal Recovery Manual. The Legal Recovery Manual is itself misnamed and with our recommendation that all policy on breaches and termination be consolidated, should be renamed to reflect this connection.

As it stands the Legal Recovery Manual is a mixture of intent, information and directives lacking a coherent structure. It appears on reading to be a simple aggregate of at least two documents, an earlier manual on recovery procedures (including Sections 62 and 64), and a later attachment titled “Use of Section 64 Procedures Document”.

A person approaching the Manual would for instance find -

- ⇒ a section on the use of Section 64 on page 1;
- ⇒ a discussion on Procedural Fairness (which is a Section 64 imperative), on page 5;
- ⇒ a directive on page 8 (Eviction Action-Process); and
- ⇒ the so called Section 64 Procedures Document from pages 13 to the end of the Manual.

Section 11 is titled “Debt Recovery-Weekly Guide” and would seem to have a connection to the next section “Eviction Action-Process.” The latter states at point 4 (in part), “If there is still no measurable improvement ..... seek a Termination Order.” However, the former states at “Week Five”, “If no payment made, issue a Termination Notice.”

*Is “no measurable improvement” the same as “no payment made?”*

In addition, the “Debt Recovery-Weekly Guide” states at weeks two and three the need for the tenant to make contact or a “substantial payment”. This is defined as a minimum of 50% of the debt. Policy, however, makes clear that a 50% payment is required only where the debt exceeds \$300. In any case, does the “substantial payment” equate to “measurable improvement?”

The format of the Manual makes it difficult for a person to know where to “start” and what sequence to follow.

Attention is drawn to the South Australian Housing Trust’s “Credit Policy-Operating Procedures Manual” as a model for the redrafting of Homeswest’s Legal Recovery Manual. The outcome should be a set of unambiguous and sequential steps that **must** be taken by officers dealing with tenancy breaches, contextualised by policy and a clear statement of philosophical position (intent).

The Legal Recovery Manual was a key part of the Project’s consultative process with Homeswest staff in the offices that were visited.

The awareness of the document varied enormously with some staff not seeming to be cognisant of its existence. Given the difficulties it presents as a working manual (expressed above), it is not surprising that, in general, the Project Workers found it to have only moderate influence in the day to day practices of Homeswest officers and there to be confusion as to whether it represents best practice or minimum standards.

One Manager of Rental Services (Regional Office), had “reduced” the Manual to two memos, a practice that has the potential to undermine the detail and flexibility (these do not need to be mutually exclusive), such a document should contain.

The consultations made clear the need for additional training in this area.

#### **OPERATIONAL RECOMMENDATION ONE**

**1.1 All policy dealing with breaches and termination of tenancy agreements be consolidated in a stand alone category within the Policy Manual-Rental titled “Breaches of the Conditions of Tenancy and Termination of the Tenancy Agreement”**

**All other policy areas would where necessary refer to this category and not restate policy.**

**1.2 The new policy section state that it must be read in conjunction with the Legal Recovery Manual.**

**1.3 The Preamble to the Policy be consistent with the following;**

**“This policy seeks to balance Homeswest’s dual role as a landlord (manager of a public asset), and the houser of last resort, and is reflected in the need to act in a compassionate manner towards tenants who are experiencing difficulties whilst acknowledging the requirement of the organisation to operate in a cost effective way.”**

#### **OPERATIONAL RECOMMENDATION TWO**

**2.1 The Rental Operations-Legal Recovery Procedures (Legal Recovery Manual), be redrafted in a format similar to the South Australian Housing Trust: Credit Policy-Operating Procedures Manual.**

**2.2 The Manual should incorporate a set of unambiguous and sequential steps that must be taken by officers when dealing with tenancy breaches, contextualised by policy and a clear statement of philosophical position (intent).**

**2.3 The Manual be renamed consistent with the Policy title.**

**OPERATIONAL RECOMMENDATION THREE**

**3.1 Intensive tutorial based training take place for Homeswest officers in the area of policy and procedures for tenancy management as it relates to breaches, termination and relevant preventative (support) strategies.**

**3.2 Consideration be given to making the training available to community workers who provide assistance to Homeswest tenants.**

- 3** ♦ **EXAMINATION AND REVIEW OF HOMESWEST’S CURRENT EVICTION POLICIES AND PROCEDURES, INCLUDING DECISION MAKING AND REPORTING PROCESSES.**
- ♦ **EXAMINATION AND CONSIDERATION OF EXISTING PROCESSES FOR IDENTIFYING ISSUES SURROUNDING DEFAULTING TENANCIES, AND OF EXISTING PROGRAMS SUCH AS SHAP, SUPPORT SERVICES, BILL PAYING SCHEMES INCLUDING THE DEPARTMENT OF SOCIAL SECURITY DIRECT DEDUCTION SCHEME AND FINANCIAL COUNSELLING SCHEMES.**
- ♦ **INVESTIGATIONS OF INNOVATIONS NOT OPERATING IN WESTERN AUSTRALIA.**
- ARTICULATION OF THE ROLE OF ADVOCACY SERVICES AND GROUPS.**

### **3.1 Framework:**

This part of the Report is informed by the documentation mentioned in the previous section, the case studies and consultations. It is here where the “operational” and “structural” issues collide and to varying degrees impact on those tenancies where problems exist. The contentious question of “who’s responsibility is it?” is answered ultimately by Homeswest when an eviction decision is made (or not made).

It is therefore reasonable to put the proposition that when an eviction decision is made, it is the final step in a process that is;

- 1 Consistent:** it reflects policy and is a decision that any Homeswest officer would reasonably have made.
- 2 Cautious:** it takes all reasonable steps to save the tenancy and includes the tenant and their support system, and
- 3 Considered:** it takes into account all the documents and circumstances that a reasonable person (in a similar situation), would regard as relevant.

It is these factors that provide a frame work for the remainder of the Report.

### **3.2 Statistics:**

The Project was not established to determine the extent of evictions. However, the fact that one of its anticipated outcomes is a reduction in the number of tenancies terminating through eviction, suggests some disquiet over the amount taking place. The “level” of evictions remained an enduring issue throughout the consultations focusing on the availability of formal statistics and concerns about definitions. An example experienced by the Project Workers was one where a tenancy had been “restored” on the same day a bailiff eviction had taken place. This particular eviction was not counted in the statistics for the relevant month.

It is crucial to the discussion of evictions that what is meant by the eviction process is understood by all (is a tenancy abandoned after receipt of a Termination Notice

considered an eviction for example?), and further that the statistics are regularly and readily made available.

In this regard the information should not be restricted to the eviction itself but include the preceding steps and events. It would be appropriate (if only to ensure that Homeswest and the community sector are talking about the same thing), for both parties to consult on the information each considers to be relevant and important and for Homeswest to undertake to structure its statistical collection on the outcome of that consultative process. A worthwhile precedent has been the modification of Homeswest's statistics on its appeals mechanism through the Public Housing Appeals Consultative Committee.

#### **OPERATIONAL RECOMMENDATION FOUR**

**4.1 That Homeswest consult with the community sector through the Housing Advisory Committee (HAC), with the aim of developing a statistical data base on evictions that meets the requirements of transparency and that subject to privacy considerations the data be publicly available on a regular basis.**

**4.2 As an indication of when early support may be most useful, the data base show at which point of legal action a tenancy ended (that is, when the tenant permanently left the property).**

### **3.3 Consistent Decision Making:**

Consistency (as it relates to fairness), is about achieving a balance between direction and discretion in the development of policy and procedures.

- **direction** provides the decision maker with mandatory (non-negotiable), processes that describe particular policies (repayment arrangements not to exceed 30% of a persons income for example), or common standards such as “procedural fairness.”
- **discretion** allows for decisions to be influenced by local or individual factors.

Absolute consistency can only be met by absolute direction. While this is a theoretical option it is plainly not one that is expected to be practised at a local or regional level. The question then becomes *to what extent should discretion be encouraged and how should that discretion be framed.*

The existing Rental Policy Manual is not helpful in this regard. There is mention when dealing with rental arrears that referral information be provided and that Homeswest “always prefers” to come to an arrangement.

The Legal Recovery Manual is ambiguous in that it limits some discretionary phrases but not others. For example:

- a) the introduction states that the procedures should be used as “guidelines”, and that there be “...flexibility to respond to the **individual circumstances** of the case.” (page 1);
- b) “...fails to make **satisfactory** arrangements to pay these debts...” (page 1);
- c) “...**serious intentional** damage caused to the property...” (page 2);
- d) “These guidelines are to be used to assist in negotiating arrangements with the tenant, however any **extenuating circumstances** must be considered.”. (Arrears Repayment pages 3-4);
- e) “**Where appropriate**, the customer should be referred to other agencies who may be able to provide support or counselling.” (page 7);
- f) “If there is still no **measurable improvement**...” (page 8);
- g) “...referral to the Special Housing Assistance Program **if appropriate**...” (page 8);
- h) “...referral to the Aboriginal Housing Directorate **if appropriate**.” (page 8);
- i) “It has been Homeswest’s practice not to proceed with the eviction where the tenant has **demonstrated a commitment** to rectify the breach of agreement.” (page 11);
- j) “**In extenuating circumstances**, the Regional Manager may accept less than 50%, however this is seen to be the exception rather than the rule.” (page 11);
- k) “...**unacceptable** property standards...” (page 12).

**All of the discretions (emphasised), above are not further explained or elaborated in the procedures document.**

- l) “To ensure legal action is ceased only in the event the tenant has made a **genuine attempt** to resolve this matter...” is followed by guidelines approved by the Homeswest Board of Commissioners. (page 11); and
- m) “Action should be ceased only in the event the tenant makes a **clear commitment** to Homeswest.” is followed by some examples of what that commitment could represent. (page 12).

**There is an attempt with these two discretions to set a boundary within which a decision can (must?) be made.**

A Homeswest officer faced with such open ended statements is forced to rely upon a combination of their perception of the corporate philosophy and their personal opinion and preference (or that of a senior officer). That mind-set may be guided by good intentions but will also be **reactive to the situation and pressures faced by the officer from time to time.**

This is not conducive to consistent decision making.

A reading of the **case studies** reveals a lack of consistency congruent with the concerns already raised about the policy and procedures. For example;

- 1) the number of telephone and property calls prior to a Breach Notice being issued varied (in one case no calls were made);
- 2) the time between the issue of Breach and Termination Notices seemed only to conform to the status of the tenancy as determined by the Accommodation Manager;
- 3) there was no discernible pattern to the referral procedure (or involvement), of support agencies; and
- 4) the level of arrears repayment arrangements seemed to be set by the tenants (which were often unmanageably high in response to the pressure on their tenancy).

The discussions with Homeswest staff indicated varying attitudes towards the “difficult” tenancies that result in evictions. This is to be expected, but the lack of policy and procedural constraints means that the decision to terminate a tenancy can be excessively influenced by regional office “culture”. Community workers often made this point.

Although none of the case studies were “anti-social” evictions, the “Use of Section 64- Procedures Document” part of the Legal Recovery Manual requires some comment as it relates to consistent decision making.

This part of the Manual (when read as a stand alone document), does attempt to outline a process where the use of Section 64 is permitted. “Anti-social behaviour” is defined as is the means by which an incident is “substantiated”.

The Accommodation Manager nonetheless is left with the onerous task of deciding whether;

- a) the behaviour fits the definition of “anti-social”;
- b) subsequent behaviours are of a “**severe**” or “**serious**” nature (undefined);
- c) referral to SHAP or DCD Dysfunctional Tenancies Program **is appropriate** (undefined), although in cases of “feuding amongst Aboriginal families”, referral is mandatory to the Police Counselling Unit (Aboriginal Liaison Unit); or
- d) a complainant has a “**justifiable**” reason for not attending court.

The document is silent on the role of other more senior Homeswest Regional Officers in the Section 64 eviction process although no doubt both the Manager Rental Services and Regional Manager are intimately involved at some stage. This undermines consistency by giving too much discretion to a relatively junior officer and not formalising the checks and balances required at a Regional level in such complex and sensitive evictions.

## **OPERATIONAL RECOMMENDATION FIVE**

**5.1 Any discretion given to a Homeswest officer in the making of a decision must have its parameters defined by way of written instructions on what factors to take into account.**

**5.2 The resultant (written) decision would state those factors and the relative weighting to be given.**

**5.3 The amount of discretionary power should be proportional to the seniority of the person within Homeswest with the least discretion being given to the most junior officer.**

### **3.4 Cautious Decision Making:**

#### **3.4.1 Commencement of Tenancy:**

The willingness and capacity to “maintain” tenancies that are in difficulty is the responsibility of all parties; Homeswest, tenants and where relevant, other support agencies, (government and community based).

*“Eviction is a strong remedy for minor amounts.”* (Accommodation Manager).

It is helpful at this stage to “walk through” a tenancy (using the case studies as a guide), to get some focus on the events that take place during the eviction process, the relationship between the parties and possible improvements to the system.

The obvious starting point is at the commencement of the tenancy. Tenancies can be of three types; new to Homeswest, a transferee from another Homeswest property or a former Homeswest tenant being rehoused. The latter two may have existing debts and/or a problematic relationship with Homeswest.

There are many issues that may confront a tenancy when it commences;

- previous Homeswest eviction or difficult tenancy;
- existing debts to Homeswest;
- the allocation (property location and condition);
- the property condition report; and
- the mechanism used to pay the current rent (and existing debts).

#### 3.4.1.1 Rehousing:

The phenomenon of rehousing has relevance to this Project (and hence to evictions), by virtue of the conditions and support provisions placed on the new tenancy and how these impact on the conduct of the tenancy. For example, one of the case studies involved a tenant with a previous difficult tenancy record. The file notes do not indicate any “managed support” being put in place on (or made a condition of) the second tenancy which subsequently failed.

Homeswest has a policy on “further assistance” (Section 2, Category 29 Rental Policy Manual), which gives the Regional Manager authority to insist on conditions or supports. While it is reasonable that the authority remain with the Regional Manager (subject to the decision being appealable through the Homeswest Appeals Mechanism), it would seem more appropriate for the assessment of the need for support to be undertaken by an agency with the relevant expertise and the capacity to put a support programme in place.

### **OPERATIONAL RECOMMENDATION SIX**

**6.1 Any application of a person seeking further assistance from Homeswest pursuant to the relevant policy, will undergo an assessment to determine whether support will be required in the new tenancy.**

**6.2 This type of assessment will be undertaken only with the participation of the applicant.**

**6.3 The preferred agency to carry out the assessment is the relevant SHAP agency or in the case of Aboriginal applicants, the Aboriginal Housing Directorate.**

**6.4 The Regional Manager will be bound to take the assessment into consideration in their decision on the application.**

**(Under its “further assistance” policy, Homeswest reserves the right to refuse assistance or place conditions upon further assistance, to any applicant or tenant with substantiated breaches of a tenancy agreement or Residential Tenancies Act).**

#### 3.4.1.2 Allocations:

**The Homeswest allocation process** was raised by a number of community workers as having a detrimental affect on the outcome of some tenancies with which they had come into contact. Muirhead's consultations, too, recognised this as a concern citing the need for "...an improvement in both assessment (of individual customer needs) and allocation of a home." (page 14).

The scenario most often cited was of Aboriginal families being housed in "inappropriate" locations increasing the potential for neighbour complaints and ultimately the prospect of "anti-social" evictions.

Allocations generally is a very difficult issue for Homeswest determined as much by equal opportunity and broad housing policy as it is by the location and condition of existing housing stock. This is beyond the scope of the Project except to say that the original allocation should be a factor that is "revisited" when tenancies begin to fail and a transfer may be considered. With Aboriginal families it may be helpful for the Aboriginal Housing Directorate to enter into a formal dialogue with Regional Offices and to assist with the allocation process.

**OPERATIONAL RECOMMENDATION SEVEN**

**That in the making of a decision to terminate a tenancy (and perhaps to evict), Homeswest take into account the effects of the original allocation as a possible mitigating factor.**

**OPERATIONAL RECOMMENDATION EIGHT**

**The Aboriginal Housing Directorate enter into a formal dialogue with Homeswest Regional Offices as a means of providing assistance in the allocation of Homeswest properties to Aboriginal families.**

### 3.4.1.3 Property Condition Report:

A significant component of tenant (and particularly former tenant), debt to Homeswest is that defined as “tenant liability”. Simply put, this is the charge raised by Homeswest for the repair and maintenance of properties held to be the responsibility of the tenant due to “neglect, misuse or wilful damage.” It is charged either in occupation or at the end of a tenancy and has ramifications in the decision to terminate a tenancy or in considering an application to rehouse.

The relationship of tenant liability to the commencement of a tenancy manifests through the **Property Condition Report**. If the form is not adequately completed then it may impact on the charging of Tenant Liability in occupation which as a debt could lead to the termination of a tenancy.

During the Project’s consultations, community workers expressed concern at several aspects of the Property Condition Report process.

- 1) the number of tenants not (or only part) completing the report;
- 2) the design of the form; and
- 3) the apparent conflict in the roles of the Accommodation Manager to assess tenant liability and having some responsibility over a “maintenance budget.”

Homeswest Allocation Policy (Section 4, Category 7.8 Rental Policy Manual), states that where possible the Property Condition Report must be completed “on site” (presumably with the tenant), or collected within fourteen days. The problem with this, is the Accommodation Manager has already completed Homeswest’s part of the report and is therefore not in the best position to “help” the tenant. That is, their opinion of the property may already be formed.

It is the responsibility of the tenant to complete their section of the report; when this does not happen it is likely the result of insufficient knowledge, illiteracy or a lack of understanding of the implications of the report. For various reasons, including the excitement at being allocated a house (and the concomitant desire not to complain), it is doubtful whether substantial improvements can be made within the existing process, other than for Accommodation Managers to continue to stress the importance of the report and for the form to be made more “user friendly”.

Homeswest’s interests are “protected” with the Property Condition Report being completed by an officer experienced in these matters. A tenant (unless with similar knowledge), will probably need assistance from a source external to Homeswest to ensure their interest is similarly secure.

## **OPERATIONAL RECOMMENDATION NINE**

**9.1 The Homeswest Property Condition Report be redesigned to include the following attributes:**

- 1) a statement alerting the tenant to the importance of the document particularly with respect to tenant liability disputes;**
- 2) the general Homeswest descriptions of “good”, “fair” and “poor” be further detailed with particular attributes of the item(s), for example, Wall-fair (scratch marks at floor); and**
- 3) a brief history of the major maintenance items, for example, painting last took place on..., flyscreens last replaced on...**

**9.2 The tenant be given the option of receiving assistance from the local SHAP agency or Aboriginal Housing Directorate (which may choose to use the recently piloted Aboriginal Tenancy Advocacy Service), to complete the Property Condition Report and in any case, where a dispute arises, that those agencies conduct an independent assessment.**

### **3.4.1.4 Method of payment:**

The final issue recognised at the commencement of a tenancy is the method of payment to be used for rent. The Legal Recovery Manual acknowledges the method of payment to be the choice of the tenant (although that choice may be lost in applications for rehousing (see Recommendation Six)). Information received from other State Housing Authorities does not indicate any coercive measure adopted at this point of a new tenancy.

### **3.4.2 The Current Tenancy:**

The most problematic period of any tenancy terminated by Homeswest is between the time a breach occurs and the final decision to proceed to an eviction. It is during this time the termination process often becomes externalised (that is parties other than Homeswest and the tenant become involved) resulting in attempts to “save” the tenancy. The problematic nature of this period rests with the generally ad-hoc approach to tenancy management once difficulties arise and the reaction of community advocacy groups to the needs of their clients. It seems that all parties very quickly adopt adversarial positions once a tenancy experiences difficulties and is put in some jeopardy.

This Report has already dealt extensively with the issue of discretion as it appears in Homeswest policy and procedures. Some of this will now be tested in a more practical way in proceeding through a tenancy and utilising the case studies.

As earlier mentioned, the case studies reflect evictions that occurred through rental arrears, discussion about “anti-social” evictions will rely on the consultations that took place with Homeswest officers and community workers.

In dealing with rental arrears and other debt, it is reasonable to suggest that the principle which governs any debt recovery process needs to acknowledge the requirement to keep arrears within manageable limits while providing tenants with ample opportunity to repay a debt. Further there should be some concern to identify issues that may underlie the arrears with a view to making support available.

With “anti-social” tenancies a critical issue is one of definition followed then (as with arrears) by opportunities for resolution and acknowledgment of underlying factors.

The problem which dominates any discussion about evictions is the respective “responsibilities” of Homeswest, the tenant and other support services. It has been earlier mentioned and is inherent in the Terms of Reference, that for Homeswest this means it must take into account (but not responsibility for), all the circumstances of a person’s situation in the process of making an adverse decision on a tenancy. For the tenant the obligation is to co-operate to the fullest extent with Homeswest in a collective endeavour to maintain secure and appropriate accommodation.

#### 3.4.2.1 Rental Arrears:

An amendment to the Residential Tenancies Act (1987), which came into effect on 1 July 1996, sets a minimum requirement in the process for service of Breach and Termination Notices for non-payment of rent. There are now two options available to landlords and Homeswest has indicated it will use the Breach Notice alternative. This allows Homeswest to issue a Breach Notice the day after the rent falls due and a Termination Notice fourteen days after the tenant has received the breach advice and the rent remains unpaid. The **least** amount of time available in this process (from the day the rent is due to an application to the Court for termination and possession), is about thirty days.

The Legal Recovery Manual under “Debt Recovery-Weekly Guide” has a Breach Notice being issued. in “week four”. Weeks one to four include two letters and a final notice, personal calls and referral information being provided to the tenant. Importantly, under “Eviction Action-Process”, the Homeswest officer is expected to “discuss the situation with the customer, counsel them on the problem and identify options to remedy the situation” (page 7).

The case studies reveal an ad-hoc and variable approach to these procedures. Some of the deficiencies were;

- letters sent but not followed-up with personal calls;
- significant periods of time (up to several months), during which no personal calls were made; and
- an apparent lack of a defined process of referral to SHAP, a bill paying service or the Aboriginal Housing Directorate, for example.

When is it appropriate for a Breach Notice to be issued and what should precede it? In South Australia the Housing Trust issues a Final Notice (like a Breach Notice) twenty-one days and two reminder letters after the rent is due.

In Queensland tenants are sent a Notice to Remedy Breach when three weeks in arrears and this appears to be the first communication. The Victorian Housing Authority (its “contractor”), sends the first arrears letter when a tenant is more than \$25.00 in arrears and within ten days a home visit must be made.

Early intervention:

The principle of early (but not invasive) intervention needs to be addressed even at this point. In that regard a **home visit** would seem to be an important strategy at the earliest reasonable stage of an arrears cycle. The first reminder letter would request that the tenant make contact with Homeswest to enter into an arrangement to pay the arrears and if this did not occur the home visit would become mandatory.

Personal contact is a critical feature of a system where resolutions are genuinely sought to tenancies experiencing difficulties (and compliance is expected).

It is imperative therefore that contact is presented as part of a supportive framework. This has implications for the role of Accommodation Managers as well as their training needs and will be dealt with later in the Report.

**OPERATIONAL RECOMMENDATION TEN.**

**10.1 Personal contact be a feature of the process of dealing with breaches of a tenancy agreement.**

**10.2 The first reminder letter for rental arrears request that the tenant make contact with Homeswest and that after a specified period (should contact not be made), a home visit by the Accommodation Manager be mandatory prior to any further action being taken.**

**10.3 The first letter and home visit should be presented within a supportive framework to maximise the opportunity for tenant response.**

Any “extenuating circumstances” (and as earlier recommended, officers should be given direction as to what this means) should be clearly noted on the tenant’s file as they will inform subsequent termination action if the arrangement system breaks down.

*It may be helpful to devise a kit for Accommodation Managers (and other relevant officers), to include forms and checklists that standardise the arrears process.*

The point was made by a representative of the Aboriginal community that there would be value in Homeswest ensuring the availability of an Aboriginal officer in each Regional office to enable Aboriginal tenants to feel more comfortable in discussing concerns about aspects of their tenancy.

#### **OPERATIONAL RECOMMENDATION ELEVEN**

**At the initial (and where relevant, subsequent), home visits the Accommodation Manager must explore with the tenant any “extenuating circumstances” contributing to the arrears and these must be clearly noted on the tenant’s file.**

#### **OPERATIONAL RECOMMENDATION TWELVE**

**Each Homeswest Regional office make time available for one of its Aboriginal officers to assist Aboriginal tenants who may wish to discuss the particular circumstances of their tenancy that may be causing concerns**

#### Repayment arrangements:

It is not unreasonable to expect a tenant to enter into a formal repayment arrangement once they fall into one weeks rental in arrears (that is, the next weeks rent becomes due). All State Housing Authorities contacted stressed the need for a written agreement signed by the tenant. That arrangement would need to be kept strictly within the parameters set by the Homeswest Board of Commissioners (the combined total of the current rent and arrears repayment not to exceed 30% of the tenant’s assessed income). The tenant would not be prevented (at their choice), from paying a greater amount but could “fall back” to the arrangement at any time.

It is important that pressure be taken from a situation where the tenant feels compelled to offer a payment beyond their capacity to pay and because of arrears management issues, the Accommodation Manager feels bound to accept. Ideally this is achieved by “removing” the issue from the parties to the conflict, in this case the tenant and the Accommodation Manager (representing Homeswest). In practice there is only limited potential for this to happen. In the first instance the Accommodation Manager approaches the issue in the conflicting roles of landlord and support worker. This should not prevent, however, the initial exploration of circumstances contributing to the arrears and which the tenant feels is beyond their immediate control.

The number of repayment arrangements allowed and the conditions under which they can be modified pursues a tenancy which has arrears difficulties that are not resolved quickly.

The case studies and consultations show that the timing and number of arrangements seem to be at the discretion of Homeswest officers with the relevant authority. This places too much emphasis on the relationship the tenant or their representative may have with the particular officer. Information received from other State Housing Authorities shows a preference for a fixed number of arrangements available within a specified time period. If this is clearly communicated to the tenant, the process can proceed with some certainty.

The South Australian Housing Trust allows two arrangements in a six month period in relation to a specific level of debt. For this purpose the first six month period is deemed to commence from the due date of the first payment of the first arrangement. As with Homeswest a formula is used to determine the level of repayment but this can be reduced on the submission of an Income and Expenditure Statement by a Financial Counsellor.

#### **OPERATIONAL RECOMMENDATION THIRTEEN**

**13.1 A formal repayment arrangement to be mandatory when a tenant is one full week in arrears (that is, at the time the next rental falls due).**

**13.2 The arrangement is to be in writing, signed by the tenant and to conform strictly to the policy that the total payment (standard rent and arrears payment), not exceed 30% of the tenants assessed income unless a submission is received from a Financial Counsellor. The original decision whether to reduce the payment to be made by the Manager Rental Services (Regional Office).**

**13.3 The policy requiring debts under \$300 to be paid in full (unless there is a demonstrated inability to pay), to be replaced by the new arrangement system.**

### 3.4.2.2 Breach/Termination notices:

Whatever arrangement system is used the question of when a Breach Notice should reasonably be issued currently rests entirely with Homeswest's assumptions about the application of the legal process. As earlier stated, the Residential Tenancies Act now allows landlords to issue a Breach Notice one day after the rent is due and unpaid. It is assumed that Homeswest officers, at times, use the Breach Notice as a "lever" into an arrangement with the tenant, certainly this is the implicit message obtained during the Project consultations. Whether this is appropriate or not is arguable but what should be made clear in the legal process is:

- 1) the use of a Breach Notice and when it can be issued must be specified in policy and procedures; and
- 2) the Termination Notice should **not** be used as a way of commencing negotiations with a tenant who is alleged to be in default.

#### **OPERATIONAL RECOMMENDATION FOURTEEN**

**14.1 Prior to the issue of a Breach Notice by Homeswest, tenants in default be allowed at least a minimum number of repayment arrangements within a specified time period.**

**14.2 Homeswest, in consultation with such bodies as WACOSS, the Financial Counsellors Association of WA, the Federation of Community Legal Centres and Aboriginal organisations, develop a model of the arrangement mechanism.**

#### **OPERATIONAL RECOMMENDATION FIFTEEN**

**The policy and procedures for tenancy breaches and terminations clearly state;**

- 1) how a Breach Notice is to be used and when it should be issued.**
- 2) that a Termination Notice is not to be used as a way of commencing negotiations with a tenant who is alleged to be in default.**

### 3.4.2.3 Other debt:

In an ideal sense the arrangement system would work either directly with the tenant or with the limited support of a local community agency, assuming sufficient effort was made by all parties early in the breach cycle. Rental arrears are unproblematic in this regard given that rents are charged regularly over short periods of time. Community workers expressed concern during the consultations, however, about large debts that crystallise at a particular point in time, these being:

- 1) tenant liability in occupation; and
- 2) excess water (raised twice yearly).

The size of a debt should not have any adverse impact on the arrangement system other than affecting the time required to repay and therefore over time, modifications of the

repayment amount may need to take place. The most important consideration is that the debt be repaid on a regular basis.

The more fundamental relationship raised by community workers was that between the size and nature of the debt. Difficulties occur when charges for tenant liability and excess water significantly exceed the “average”. What needs to be determined in these situations are the circumstances in which the debt arose and whether there is a reasonable expectation that a “pattern” has been established.

**Tenant liability** is a vexed issue and the Project Workers were constantly reminded of its impact; for tenants, concerns over its definition and the effect on the stability of the tenancy, for Homeswest, the problem of cost and asset management. This Report has dealt briefly with the question as it relates to the commencement of a tenancy (refer to Recommendation Nine). If however, it becomes defined as a “problem” during the tenancy (and that definition initially is one that Homeswest makes), then clearly “third party” input is required. In practice that is limited to support for the tenant in the attempt to deal with underlying factors (if any). If indeed there is a “problem” (domestic violence for example), the support needs to be sophisticated. In that regard the supports “attached” to Homeswest (and therefore ostensibly able to deal with the issue as it relates to housing), are SHAP and the Aboriginal Housing Directorate. The point at which these supports should become involved is one for consideration and formalising by Homeswest, SHAP and the Directorate.

**Large water debts** will, by definition, be explained by more prosaic factors, in particular plumbing problems or excessive use. In either case some action is appropriate to avoid the growth of unmanageable debt levels. As an extreme example, the Project Workers when attending a Local Court session, heard an application for termination involving a \$9000 water debt accumulated over an eight year period.

Currently Homeswest Head Office alerts Regional Offices of tenancies where excess water charges display an unusual pattern, for example where the most recent account is substantially higher than average consumption. It then becomes the task of the Accommodation Manager to advise the tenant and to seek some explanation for the differential consumption. This can be a problematic exercise given the difficulty often encountered in separating plumbing and use factors. However, some initiatives can be commenced by Homeswest which will assist in minimising the potential for excess water accounts to become the “trigger” for eventual termination of the tenancy.

**OPERATIONAL RECOMMENDATION SIXTEEN**

Both tenant liability (in occupation) and excess water debts be subject to the same repayment arrangement system as rental arrears except that the requirement to make a 50% lump sum payment where the debt exceeds \$300 be removed.

**OPERATIONAL RECOMMENDATION SEVENTEEN**

17.1 When tenant liability (in occupation) is deemed to be excessive (to be defined), Homeswest will initiate a referral to either SHAP or the Aboriginal Housing Directorate to seek support for the tenancy in dealing with any underlying issues.

17.2 Homeswest to consult with SHAP and the Aboriginal Housing Directorate in formalising a referral process.

**OPERATIONAL RECOMMENDATION EIGHTEEN**

18.1 The current practice where Homeswest Regional Offices are notified of tenancies with large water-use accounts should remain.

18.2 Homeswest in conjunction with the Water Corporation, initiate a system of more frequent billing for those tenancies that demonstrate a pattern of large water-use.

18.3 If the problem of excessive water use is (in whole or in part), the result of plumbing structures or slow maintenance call-out, the current practice of Homeswest rebating the water account should remain.

**STRUCTURAL RECOMMENDATION ONE**

Homeswest commence a program of installing “child proof” devices to the external taps in its properties.

3.4.2.4 Method of payment

There are several means by which Homeswest tenants can make rental and associated payments. Counter payments at Regional Offices and use of a Homeswest Card at Post Offices are the cash choices; a Bank Direct Debit, Social Security Direct Deduction Scheme (DSSDD) and various Bill Payment Schemes are the “at source” choices.

The preferred payment option for Homeswest is undoubtedly the Social Security scheme which was recently expanded to include people receiving an allowance (Newstart, Job Search and Parenting Allowances). Previously, only those in receipt of a pension could use the scheme. Over two-thirds of Homeswest tenants are eligible to

enter the scheme (1994/95 Homeswest Annual Report) but unfortunately, people in receipt of an education support payment (Austudy and Abstudy) are not and this is of some concern to community workers.

The Project Workers found the scheme to have significant support within Homeswest and a range of community based agencies. Community workers commented that for many clients the DSSDD is a useful budgetary device and superior to the Bank Direct Debit for example. One of its strengths is that co-tenants are each able to have their share of the rent deducted from their Social Security payment.

Despite some reservations the scheme's expansion has been favourably accepted and eligible tenants are encouraged to join. A particular concern raised by some community workers during the consultations (the same concern has been noted in Victoria), is the situation where under certain conditions, the bulk of a person's Social Security payment is transferred to Homeswest. This occurs when Homeswest cancels the rent rebate (usually for the non return of a form), and the "full" rent is charged. Tenants give Homeswest a general authorisation for the deduction from their Social Security payment to increase should their rent "change", but it was thought this was meant to cover general rent increases only.

There are a number of Bill Paying services run by community agencies but the most significant (and the one with the most potential for expansion), is that operated by the State Family & Children's Services (formerly Department for Community Development).

Bill Paying services, although a "second best" at source deduction suffer from a number of problems, the two most significant being that Social Security Allowances and Commonwealth education payments cannot be used and the scrutiny of debts (including negotiation with creditors) varies in quality between agencies.

The Project Workers were told that due to funding constraints, community based bill paying services are being reduced (at least in the metropolitan area). This has placed a greater emphasis on Family & Children's Services. It may be possible at senior officer level for Homeswest to initiate discussions with Family & Children's Services with the aim of expanding the bill paying service. Homeswest could expect support from the community sector through representative bodies such as WACOSS and the Financial Counsellors Association of WA.

#### 3.4.2.5 Conditions on debt repayment:

Any condition placed on the method of debt repayment (once an arrangement has been entered into) has, as an explicit rationale, a balance between coercion and a desire to maintain a stable tenancy. In this regard the ACT Housing & Community Services Bureau has as a policy that tenants with arrears on their accounts must undertake payments by direct debit. It would not seem unreasonable under the arrangement system to be developed (refer to Operational Recommendations Thirteen and

Fourteen) to expect tenants after a specified number of arrangements within the prescribed period (that is arrangements that have not worked) to make payments by way of either the Social Security Direct Deduction Scheme, a recognised Bill Paying Service or a Bank Direct Debit.

#### **STRUCTURAL RECOMMENDATION TWO**

**2.1 Homeswest to initiate discussions with the Commonwealth government (Department of Social Security), with the aim of enabling people on education support payments to be eligible for the Direct Deduction Scheme.**

**2.2 Homeswest together with Family & Children's Services, initiate discussions with the Commonwealth government with the aim of providing the same scope of entry to people accessing recognised bill paying services (to be determined), as with those able to enter the Direct Deduction Scheme.**

#### **STRUCTURAL RECOMMENDATION THREE**

**The community sector through its representative bodies and Homeswest , initiate discussions with Family & Children's Services to seek an expansion of the Department's Bill Paying Service.**

#### **OPERATIONAL RECOMMENDATION NINETEEN**

**19.1 Homeswest together with the Department of Social Security, ensure that a data security system is in place to prevent any increase to a Direct Deduction amount other than one directly authorised by the tenant or one representing a general rent increase.**

**19.2 Homeswest not be able to cancel a Direct Deduction authority of an existing tenant without the written consent of that tenant.**

## **OPERATIONAL RECOMMENDATION TWENTY**

**Tenants who have entered into arrangements with Homeswest to repay a debt and where a specified number of arrangements have proved unsuccessful within a prescribed period (refer to Operational Recommendations Thirteen and Fourteen), will be required to make further payment by way of either (at the tenant's choice), the Social Security Direct Deduction Scheme, a recognised Bill Paying Service or Bank Direct Debit.**

### 3.4.2.6 Referral to local support services:

Local community support services need to be “activated” at the earliest possible time. Their role can be crucial for the very fact that clients see them as acting in their interest. These agencies are able to assist in the **co-ordination** of early support strategies but rely on Homeswest to acknowledge their particular role and influence. There is obvious tension as agencies “advocate” for clients and Homeswest officers seek to protect the organisation’s “interests”.

The Project Workers were told that referral information is provided both personally by Accommodation Managers and through written material.

The case studies and the consultations support the view that the current referral process is not working to the benefit of either the tenant or Homeswest, except when SHAP becomes involved at a later stage (see “anti-social” evictions below). It may be worth considering a more “direct” referral strategy. Whilst the decision as to whether referral is required, belongs with the tenant (at least early in the arrears cycle), there may be many reasons why a tenant does not take advantage of the information provided including fear, embarrassment and a lack of understanding of the immediacy of the problem. An option then, would be for the Accommodation Manager to receive a limited authority from the tenant to contact a local agency (nominated by the tenant) to seek support. The local agency would make contact with the tenant offering its services (financial counselling for example), and emphasising its independent status.

Regional Homeswest offices already have significant knowledge about local services but would need to initiate a formalising of the referral process. Community agencies would, for their part, need to accept a more defined relationship with Homeswest. By this it is meant agencies agreeing to Homeswest initiated referrals, which although approved and nominated by the tenant, may in practice have an implicit bias to the tenant conforming to the Accommodation Manager’s recommendation. It means agencies also having some formal links with Homeswest to the extent for example, where Homeswest is able to notify an agency of broken repayment arrangements or other issues that may come to its attention (should the tenant still be a client of the agency). This would not interfere with an agency’s advocacy role (which is paramount), but allow it to remain aware of the situation in which clients find themselves at least from Homeswest’s understanding.

**OPERATIONAL RECOMMENDATION TWENTY-ONE**

**If it is agreed by the tenant and Accommodation Manager at the time of a home visit that a referral to a community support agency will be beneficial, the Homeswest officer will seek a limited authority to enable them to initiate referral contact with the agency nominated by the tenant.**

**OPERATIONAL RECOMMENDATION TWENTY-TWO**

**Homeswest initiate a consultative process with peak bodies such as WACOSS, the Financial Counsellors Association of WA, the Federation of Community Legal Centres and Aboriginal organisations to develop a procedure for the limited authority it receives from tenants to refer directly to community support agencies.**

**3.4.3 “Anti-Social” Evictions:****3.4.3.1 Definition:**

Homeswest reports that most evictions occur for failure to pay rental debts, the balance being the result of so called anti-social behaviour and property damage (Homeswest Annual Report 1995 page 17). It is probable that in practice the distinctions are not that clear, if a tenancy is facing difficulties it may show as rental arrears but may have causal links to a variety of issues.

The recent history of “anti-social” evictions exemplifies the difficulties experienced by Homeswest in dealing with the range of tenancies that can possibly fall within the ambit of any attempted definition. The use of Section 64 of the Residential Tenancies Act (60 day notice of termination of the tenancy by the landlord without specifying any ground) has been restricted to the situation of “...ongoing disruptive behaviour where there are either no corroborating witnesses or any prepared to go to court” (Rental Policy Manual Section 10).

Despite the fact that no Section 64 Notice can be issued without the approval of the Director Rental Operations, the continued use by Homeswest results in a significant division between it and the community sector. Whether Board of Commissioner approval should be obtained prior to eviction is a pertinent issue in this case as it is a means by which public expression is given to the “seriousness” of the decision. Community organisations consulted, voiced strong opinion that approval from the highest level of Homeswest is essential for that reason.

**OPERATIONAL RECOMMENDATION TWENTY THREE**

**Any decision to terminate a tenancy by use of Section 64 of the Residential Tenancies Act be approved by the Homeswest Board of Commissioners and, where relevant, by the Aboriginal Housing Board.**

“Anti-social” evictions are the most contentious of evictions. Their most immediate influences (and therefore not necessarily their structural cause) include:

- what is defined as anti-social by Homeswest (the term itself automatically “labels” behaviour);
- property damage by the tenant or someone outside of the tenancy;
- the behaviour (over time), of the tenant or someone associated with the tenant;
- neighbour perceptions of that behaviour (whether it is “acceptable” or not); and
- the factors affecting those neighbour perceptions including motives.

It is not difficult to define property damage, in most instances it is manifest. There may be some difficulty however, in determining the degree of control the tenant has over the damage sustained even if it is caused by someone the tenant knows.

“Unacceptable behaviour” is a notorious concept unless that behaviour is so extreme and consistent as to offend even the most liberal of sensibilities. As well, the definition of neighbourhood “standards” are often determined by the most vocal neighbours.

Allegations of “anti-social” behaviour continue to be a significant issue for some tenancies, which are then placed under varying degrees of scrutiny and pressure by Homeswest relative to perceptions of severity.

There was general agreement from the Project consultations that in the first instance at least, the level of neighbourhood disruption is not relevant to the **principle** that support be provided to the tenancy. It is axiomatic that early support is crucial to the success of dealing with potentially very complex issues.

What is equally crucial (and prior to any discussion of support), is the need for an unambiguous definition of disruptive behaviour (to the extent that is possible), a clear procedure to deal with complaints and a testing of any discretion used.

The definition of “anti-social” behaviour used by Homeswest is contained in the Legal Recovery Manual (page 13). It is a single definition in that it does not explicitly differentiate types of disputes but instead makes reference to an “ongoing pattern”. There is later direction for Homeswest not to get involved with disputes which are of a “personal conflict nature (ie two neighbours who do not get on)”.

The initial decision on whether certain behaviour is to be considered “anti-social” is made by the Accommodation Manager or Customer Service Officer. It has been previously argued in the Report that the discretion is excessive relevant to the organisational authority of an Accommodation Manager (see Operational Recommendation Five). There needs to be some containment of the discretion whilst acknowledging the Accommodation Manager is most often the first Homeswest officer to be presented with a complaint. Containment in this context can be at the levels of definition and managerial authorisation.

The South Australian and Queensland housing authorities organise neighbourhood disputes into a hierarchy of five categories:

- 1) **minor disputes and disruptions**, which includes activities considered a part of day to day life and within ordinary tolerance levels;
- 2) **neighbourhood disruptions**, which involves those situations where one person (or household) is disrupting neighbours spasmodically but is not behaviour directed at the neighbours;
- 3) **repeated neighbourhood disruptions**, where the behaviour at (2), continues “unabated”;
- 4) **long -term personal conflict**, which relates to a one-to-one conflict between neighbours such as conflicting moral or religious values; and
- 5) **serious cases**, which involves significant danger to the tenant or other people and must be acted on immediately.

The action to be taken by the housing officer is stated and is particular to the category of dispute. In this way the housing officer is bound to consider problematic behaviour beyond a general description underpinned by the trigger of “pattern” or continuation.

#### **OPERATIONAL RECOMMENDATION TWENTY FOUR**

**24.1 The term “anti-social behaviour” be replaced by “neighbour disputes and disruptions”.**

**24.2 The definition of “neighbour disputes and disruptions” be categorised according to the level of seriousness and the action or tasks to be undertaken by the Accommodation Manager be specified and particular to the category.**

**24.3 Consideration be given to the categories and actions adopted by the South Australian Housing Trust.**

Senior officer (managerial) authority is not well articulated in the Section 64 Procedures Document (Legal Recovery Manual pages 13 to 16). The Accommodation Manager (or Customer Service officer) can, if in doubt, seek assistance from the management team or Manager Customer Service. Otherwise the procedure (at least as it is written) is dominated by the Accommodation Manager who defines and substantiates instances of “anti-social” behaviour.

#### **OPERATIONAL RECOMMENDATION TWENTY FIVE**

**All actions and tasks undertaken by the Accommodation Manager with respect to “neighbour disputes and disruptions” be formally authorised and approved by the Manager Rental Services in each Regional Office.**

##### 3.4.3.2 Early support:

The question of early support (or intervention) for tenancies that have had neighbour complaints made against them is dealt with fully in the following part of the Report particularly in the discussion on SHAP and the Aboriginal Housing Directorate. Part of the rationale of the resultant Recommendation Twenty Seven ) is to remove the discretion from the Accommodation Manager to decide whether a referral to SHAP or other services is “appropriate”.

##### 3.4.3.3 Probationary transfer:

Policy information obtained from other State Housing Authorities indicates a general acceptance of the notion of a “probationary transfer” as one means of resolving neighbour disputes. In South Australia this action is available under the categories of:

- repeated neighbourhood disruptions.
- long-term personal conflict and
- serious cases.

In the ACT the availability is restricted to the “...need to resolve a life threatening neighbourhood dispute” (Housing & Community Services Bureau-Management Initiated Transfers).

In the context of neighbour disputes the transfer is presented as a **requirement** and continuing assistance is conditional upon their being no unresolved breaches at the end of the probationary period. Any “success” would no doubt be dependent on the level of support provided during the probationary period.

#### **OPERATIONAL RECOMMENDATION TWENTY SIX**

**26.1 Homeswest consider the adoption of the “probationary transfer” as one means by which certain (defined) neighbour disputes can be resolved.**

**26.2 The parameters of the “probationary transfer” mechanism ensure a balance of the interests of Homeswest and the tenant.**

### **3.4.4 Significant Support Agencies and Programs:**

An assumption underlying the supposed benefits of early support strategies is simply that they have a greater chance of success than later intervention because the situation is not yet perceived as a crisis and as a result the tenant is more likely to play an active role in resolution of the “problem”. It presupposes two things:

- 1) local support is available in a timely manner; and
- 2) once offered, that support will, in the majority of instances, be accessed by the tenant.

The availability of local support is not just a resource issue although it is clear that if prevention of evictions is a genuine concern government is bound to ensure adequate and appropriate support is at hand. The issue is also about the nature of the support services and the relationship between support agencies, the tenant and Homeswest. At what stage does support reasonably (or unreasonably) become intervention?

This point has been earlier explored as it affects advocacy agencies. Its significance becomes more prominent when the early support strategies are not successful. What then can be done?

Some mention has already been made about SHAP and the Aboriginal Housing Directorate particularly in terms of an application for further assistance (Operational Recommendation Six), allocations (Operational Recommendation Eight), Property Condition Reports (Operational Recommendation Nine) and tenant liability (Operational Recommendation Seventeen). What further involvement do and could they play?

#### **3.4.4.1 SHAP (Supported Housing Assistance Program):**

The case studies suggest an apparent lack of a discernible referral procedure (or involvement) of support agencies. This appears to be at odds with information obtained during the consultations. SHAP in particular has widespread support and acceptance within Homeswest. Community sector response is, generally, positive given the intense support able to be provided which can include; financial counselling, family and child support, referral and assistance with neighbourhood and maintenance issues.

SHAP is a significant Homeswest initiative and covers both metropolitan and country Western Australia. It is by its nature resource intensive. Information provided to the Project Workers indicates a 1996/97 budget of about \$800,000 sufficient for 14 workers. SHAP agencies advised that on average a worker can effectively support 10 tenancies which means at most SHAP supporting 140 families at any one time.

SHAP is inevitably a targeted resource although referral can be broadly interpreted. This produces an overemphasised tension in the allocation process and probably

accounts for the apparent incongruence between the case studies lack of referral and general support for SHAP.

Accommodation Managers in the first instance “...identify tenants with specific social problems affecting the tenant’s ability to maintain their tenancy to appropriate standards, including new tenants.” (SHAP-Rental Operations document January 1995). The decision to refer to a SHAP agency is ultimately made by the Manager Rental Services at each Regional Office.

SHAP can, in theory at least, support new tenants (as suggested in Operational Recommendation Six), although Homeswest directs that “...we should concentrate on existing tenants.” (SHAP document page 1).

The obvious question becomes (as it does for any support), at what point in the tenancy is it appropriate that SHAP get “involved”? It has been argued in this report that for tenancies with rental arrears a succinct repayment arrangement mechanism together with local advocacy support should, in most cases, be sufficient. Continuing rental arrears (or other debt), which may be a product of other issues are likely to overwhelm such a system. The same applies at an even earlier stage for so called “anti-social” tenancies.

However difficult the decision, it nonetheless needs to be defined with some certainty and consistency. Discussions with SHAP and other community sector workers suggest some confusion with the referral process. It is not axiomatic that a terminated tenancy would have gone through a detailed SHAP assessment. Some SHAP workers consulted expressed concerns that they became involved “late” in the support process, at a time when the tenancy was in sustained crisis.

A tension inherent in the SHAP system is the problematic distinction between voluntary and involuntary “clients”. There is little doubt that SHAP workers make great efforts to promote the voluntary nature of the scheme but in practice have no control over Homeswest’s interaction with the tenant prior to the referral. It is clear from the consultations that generally Homeswest presents SHAP to tenants as a means of “saving” rather than “maintaining” their tenancy. The distinction may be a fine one but impacts significantly on the “how” and “when” of the referral process. In the current context then, SHAP is most appropriately described as “supported intervention”.

If this is the practical reality of SHAP (and this is not a reflection of its effectiveness in very difficult circumstances), then the referral process needs to become more formalised and less **discretion** given to the Homeswest Accommodation Manager to decide which tenants have “specific social problems”. This is not in contradiction to Operational Recommendation Eleven and is supportive of the Accommodation Manager collecting specific information.

It is not the task of the Project to define the “objective” criteria for SHAP involvement in a tenancy. There is provision in the SHAP guidelines to support applicants yet to be housed and this is consistent with Operational Recommendation Six . Any involvement should clearly be a tripartite decision between Homeswest, the SHAP agency and the tenant. What is important is for SHAP to have greater input in the assessment (referral) phase. This would lessen the role of the Accommodation Manager in the referral decision. For example they would be asked to complete a checklist of items (“extenuating circumstances”), the satisfaction of which would prompt (on the tenant’s approval), a support assessment by the SHAP agency. The final decision on the extent of SHAP involvement would ideally be a consensual one. If Homeswest considered the tenancy problems to be sufficient to demand conditions on its continuation that would need to be raised within the tripartite arrangement.

#### **OPERATIONAL RECOMMENDATION TWENTY SEVEN**

**27 The referral process for SHAP involvement in a tenancy be formalised and to have the following attributes;**

- 1) a set of criteria be developed by Homeswest, SHAP and the community sector the satisfaction of which prompt a SHAP support assessment independent of the view of any Homeswest officer about the referral.**
- 2) the Homeswest Accommodation Manager be the officer who collects this information from the tenant.**
- 3) the extent of SHAP involvement is determined on the basis of a consensus between the tenant, Homeswest and the SHAP agency.**
- 4) at each stage of the process the tenant is made aware of the information being collected and its purpose.**
- 5) each stage of the process to be clearly defined to protect the interests of the tenant and to proceed only with the tenant’s approval.**

#### **3.4.4.2 Aboriginal Housing Directorate (AHD):**

This is a relatively new body (1994), and arose out of the State Government’s endorsement of a framework for progressing a State and Commonwealth Aboriginal Housing Bilateral Agreement (National Indigenous Housing Strategy). It sits within the Homeswest structure as a Directorate but also has a formal relationship with the Aboriginal Housing Board. Its role therefore, combines policy and operational matters. It is with the latter this Project is concerned.

Aboriginal people are disproportionately represented within Homeswest and the rental market generally. Whilst comprising 2.6% of the State’s total population they make up 11% of Homeswest mainstream rental tenants (Homeswest Draft Bilateral Strategic Plan-May 1996 page 43). The unique position of the indigenous people in the Australian social structure and the enormous difficulties they face in securing basic life needs is well documented.

More than half of Aboriginal households who rent, do so from Homeswest (Draft Strategic Plan page 43). Homeswest therefore, assumes a significant responsibility for

the housing of Aboriginal people and given the acknowledged discrimination in the private rental market, does so often as the houser of last resort.

The necessity for a special structure within Homeswest to inform the organisation of the impact of policy on the stability of Aboriginal tenancies is unarguable. The Aboriginal Housing Directorate appears to have been given this operational role.

The Project consultations found (with a sad inevitability) a deep mistrust between Homeswest officers and Aboriginal tenants facing difficulties. A sense of hopelessness pervaded the discussions with Homeswest and community workers to the extent where in many instances communication had completely broken down. The Project Workers in the course of their work were acutely aware of the intense public coverage of the eviction of Aboriginal families and the seemingly intransigent positions being taken.

*“Evictions leave nowhere else for our people to go”.* (Aboriginal Community Worker)

The arguments are in the main, baldly stated. From Homeswest’s perspective the families in question had not fulfilled the basic tenancy requirements and “everything possible had been done”. Community workers on the other hand generally express the view that it is difficult to determine in many instances what support had been attempted (and how co-ordinated the support has been), but in any case eviction is such an extreme response as to be counterproductive. It was put to the Project Workers that when Aboriginal tenants are evicted they overwhelmingly remain homeless until

Homeswest considers them for further assistance. Examples were given of evicted families having no practical option but to stay with relatives indefinitely and this overcrowding putting the relative's tenancy in jeopardy.

There is no doubt that co-ordination is required. It is not uncommon for many government and community agencies to become involved at various stages in the termination process (but mainly at the time of a crisis). The reforms already recommended in this Report should be no less applicable in a "technical" sense, in as far as they attempt to define and constrain the eviction process. Moreover community agencies and SHAP successfully support Aboriginal tenancies.

It is noted that the Aboriginal Housing initiative to pilot Aboriginal Tenancy Advocacy Services in three regions has recently commenced. There is however, no Aboriginal specific mechanism within Homeswest which can become the focus for tenancy information once termination is considered. In South Australia, for example (for matters of debt), prior to the Housing Trust Board considering eviction, the Aboriginal Debt Tribunal and the Manager, Aboriginal Housing must approve the eviction recommendation from the Regional Office.

It has been mentioned that the Aboriginal Housing Directorate has, amongst other things, an operational role. This is largely carried out by three Customer Support Officers, based in Perth and each having responsibility for one metropolitan and two country regions. The dispersal is as follows:

- Mirrabooka, Albany and Pilbara.
- Cannington, Geraldton/Gascoyne and Bunbury.
- Fremantle, Kimberley and Kalgoorlie.

Discussions with the Customer Support Officers revealed a frustration at the perceived inadequate impact of their work particularly when help is sought by community agencies on tenancies facing termination. The Project case studies show little or no involvement by the Directorate which indicates a lack of recognition by the Regional Offices and more importantly, **a lack of Directorate authority.**

For the Customer Support Officers to be effective, Regional Offices need to keep them informed of Aboriginal tenancies facing difficulties. This can be achieved by the Officers receiving (for Aboriginal tenancies) the information going to the SHAP agency and which prompts a SHAP assessment (see Operational Recommendation Twenty Seven). The Customer Support Officer would liaise with the SHAP agency and participate in the assessment.

The Aboriginal Housing Directorate states that one of its particular tasks is to “employ Aboriginal staff to handle Aboriginal Housing matters” (undated Information Circular page 4). This role should be put to the test in the area of terminations and evictions. While somewhat constrained as part of the organisational structure of Homeswest, that status can allow the Directorate to be given some authority over the decisions of Regional Offices. A precedent exists in the use of Section 64 of the Residential Tenancies Act. In that situation no Section 64 notice can be issued by the Regions without the approval of the Director Rental Operations. It may be that the Directorate can combine the roles of co-ordination and vetting by having Regional Offices provide it with a report and recommendation on Aboriginal tenancies facing termination. The report would contain sufficient information for the Directorate to determine whether it could mobilise support to “save” the tenancy or if necessary approve the eviction. The Directorate’s role on eviction would be to co-ordinate services to ensure the evicted family receives adequate support.

It is difficult to ameliorate the tension this model produces for the Directorate in its position as a Homeswest structure unless consideration is given to the Aboriginal Housing Board having final authority over the eviction decision. This report has already recommended the Board be given authority over terminations of tenancies pursuant to Section 64 of the Residential Tenancies Act (Operational Recommendation Twenty Three).

#### **OPERATIONAL RECOMMENDATION TWENTY EIGHT**

**28.1 The Customer Support Officers of the Aboriginal Housing Directorate receive for Aboriginal tenancies, the information sent to a SHAP agency which prompts a SHAP assessment. (See Operational Recommendation Twenty Seven).**

**28.2 A process be developed where the Customer Support Officer participate with the SHAP agency in the support assessment.**

#### **OPERATIONAL RECOMMENDATION TWENTY NINE**

**29.1 Homeswest Regional Managers obtain the approval of the Director Aboriginal Housing prior to commencing court action to terminate an Aboriginal tenancy.**

**29.2 Homeswest Regional Managers must, in recommending termination of a Aboriginal tenancy, provide the Aboriginal Housing Directorate with a report detailing the history of the tenancy and the support provided or sought.**

**29.3 The format of the report is to be decided by the Director Aboriginal Housing and the Manager Rental Operations (Homeswest Head office).**

#### **OPERATIONAL RECOMMENDATION THIRTY**

**30.1 On receipt of the report and recommendation from a Regional Office, the Aboriginal Housing Directorate in its deliberations, will decide whether it can obtain sufficient support to maintain the tenancy. If this is not considered possible then it will recommend the eviction subject to final approval being obtained by the Aboriginal Housing Board with respect to evictions pursuant to Section 64 of the Residential Tenancies Act (refer to Operational Recommendation Twenty Three).**

**30.2 The role of the Directorate on eviction is to co-ordinate services to ensure the evicted family receives adequate support.**

#### **OPERATIONAL RECOMMENDATION THIRTY ONE**

**31 In recognition of the increased role of the Aboriginal Housing Directorate, consideration be given to resource factors such as;**

- 1) the number of Customer Support Officers.**
- 2) additional training requirements, and**
- 3) the location of Customer Support officers (for example, it may be helpful for these officers to spend part of each week at Regional Offices).**

#### **STRUCTURAL RECOMMENDATION FOUR**

**Notwithstanding the limited authority provided under Operational Recommendation Twenty Three, consideration be given to the Aboriginal Housing Board having the final authority over all decisions to evict Aboriginal tenants.**

##### **3.4.4.3 State Family & Children's Services:**

Much discussion about the role of this Department in supporting tenancies in difficulty took place with community workers during the Project consultations. Community workers were in the main, critical of the lack of support or the crisis response to support provision that seems to inform the Department's role when families are facing eviction. Community workers advised (and this was supported by Homeswest customer service staff), there are no apparent protocols between Homeswest and Family & Children's Services to define their relationship, and in particular to alert the latter department of its statutory responsibilities in relation to children at risk when evictions take place.

Some limited support is available from Family & Children's Services through its Family Crisis Program though eligibility criteria are strict and in general, rental arrears is not seen as an "unforeseen circumstance" and will not be paid to "save" a tenancy.

Family & Children's Services is often represented as the "next" agency (after Homeswest), given its statutory obligations to children who will be affected by the eviction.

There was no consistent evidence obtained by the Project Workers to indicate a co-ordinated approach was being undertaken even in this limited context. One example was given of a sole parent with five children who was homeless and seeking rehousing with Homeswest. That request was refused because of a debt owing from a previous Homeswest tenancy. Half the debt was being sought before further assistance would be considered but that was beyond the capacity of the woman to pay. The woman's advocate (a community worker), negotiated with Family & Children's Services to finance temporary accommodation for the family while discussions continued with Homeswest on debt and tenancy support matters. Homeswest would not reconsider until the part debt was paid. Family & Children's Services finally agreed to pay the Homeswest debt because of the high cost of providing the temporary accommodation.

The "financial" result was a cost to government in excess of the debt the woman owed to Homeswest.

Some attempt at a co-ordinated approach (at Senior Departmental Officer level), has been in limited operation since August 1991 with the euphemistically titled "Dysfunctional Tenancies Program". This was a joint initiative between Homeswest and the former Department of Community Development (now Family & Children's Services), and was intended to compliment the work of SHAP. It has never achieved "program" status because no specific resources have been made available by Family & Children's Services for its operation. The Project Workers found the "Program" to have almost no recognition at the community level and therefore rarely used. The "Program" name and the stigma attached to Family & Children's Services for many Homeswest tenants further inhibits any effectiveness it may strive towards.

#### **STRUCTURAL RECOMMENDATION FIVE**

**5.1 As a matter of urgency, Homeswest and Family & Children's Services develop inter-departmental protocols to define the type and level of support able to be provided by Family & Children's Services for tenancies facing difficulties and possible termination.**

**5.2 Those protocols be developed with community input.**

#### **STRUCTURAL RECOMMENDATION SIX**

**The annual budget of Family & Children's Services include an amount allocated to the operation of Homeswest's SHAP program in recognition of the shared responsibility for some of the fundamental needs of families in Western Australia.**

3.4.4.4 Whole of Government Approach:

During the consultations, mention was made by community workers of the need to develop a “whole of government approach” to evictions, given the effects across agencies of homelessness.

An example was given by SHAP workers of a meeting organised of representatives from government departments, hospitals and non-government agencies involved in a particular tenancy. Ten different groups attended the meeting, not including the Police or Family & Children’s Services (who were involved with the family but were not invited). Clearly, a significant amount of resources were being provided to this household but with no apparent coordination until a meeting was called by SHAP.

It is not unreasonable to suggest that a number of such agencies are (or become) involved in the majority of tenancies which Homeswest describes from time to time as “difficult”. The financial impact of evictions on the work of government agencies such as Family & Children’s Services, Health, Education, Justice and Police is no doubt, substantial.

Muirhead argues:

*“Given the emphasis in the draft CSHA clause 4 (3) (e) (i) on coordination with support services and security of housing tenure, the issue of tenant support is seen as crucial. While the CSHA states that ‘it is not, however, the purpose of this agreement is to fund or provide such services’, it is obviously crucial that signatories must ensure that adequate support is available to comply with this clause”* (page 9).

#### **STRUCTURAL RECOMMENDATION SEVEN**

**A State Government task force be established (with community representation), to explore the effect that public housing evictions has on the services provided by government and community agencies to families made homeless, with the aim of developing a comprehensive support regime for tenancies facing eviction.**

If the notion of a co-ordinated approach is taken at a more immediate level, the Homeswest Regional Office can reasonably become a focus for local initiatives to develop. No doubt what is now an informal process of local agency contact can be readily transformed into a working group arrangement.

#### **OPERATIONAL RECOMMENDATION THIRTY TWO**

**Homeswest Regional Offices establish inter-agency working groups to ensure better co-ordination of services to tenancies at risk.**

### **3.5 Considered Decision Making:**

When it is clear that early support strategies have not proved successful a point is reached where a decision on termination must be made by Homeswest.

Notwithstanding the state of the tenancy the decision to terminate need still be

considered as to whether it is the preferable decision having regard to the circumstances of the tenancy.

The formal relevance of this approach is that Homeswest must ultimately seek a Court order for termination and possession under the Residential Tenancies Act 1987. The Real Estate Legislation Amendment Bill 1995 foreshadowed a change to Section 71 of the Act which is pertinent to the discussion. Under the new Section 71(b), a Magistrate must, before granting an order for possession, be satisfied that the owner has established the breach and **“...that the breach is in all the circumstances of the case such as to justify termination of the agreement”**.

The Legal Recovery Manual has been thoroughly analysed in this Report. The Project consultations found that the Manual was on the whole not being extensively used as a working document by Homeswest officers given its awkward structure and problematic discretionary allowances.

In trying to define the sorts of things officers are required to consider when making a decision on termination however, the Legal Recovery Manual represents the formal Homeswest response. As earlier stated the Manual directs officers to respond to “individual circumstances” and “extenuating circumstances” but without providing direction on the factors that may comprise those circumstances. *What do the case studies tell us?*

There does not appear to be a **formal process** where, **as a matter of course**, underlying issues are explored and a judgement made on their impact on the tenant (and family), when a decision is made to evict. This has implications not only on the eviction decision but also on the timing of the eviction.

This is most clearly demonstrated in the area of health. In its consultation with the Perth Aboriginal Medical Service (PAMS), the Project Workers were told by the Doctors that letters sent to Homeswest detailing serious medical conditions were not being responded to nor was there an open dialogue with Regional Offices.

Giving consideration to the impact of an eviction would invite the type of dialogue sought by PAMS and other agencies (government and community), to enable strategies to be put in place to either reverse the decision or to allow time to meet the needs of the tenant (and family) for alternative accommodation. It would also enable Homeswest to “share” the responsibility for the eviction with all relevant parties (refer to Structural Recommendation Seven).

The Legal Recovery Manual is silent on the particular factors that Homeswest officers should consider prior to the act of eviction. It is appropriate therefore to seek some assistance from the legislative requirements faced by Homeswest as a landlord. The change to Section 71(b) of the Residential Tenancies Act 1987 mentioned above was in part informed by the NSW Supreme Court decision in *Swain and Anor v Residential*

Tenancies Tribunal of NSW and Anor (March 1995). It should be remembered that it is the practice of most tenants when faced with a Court hearing at which the landlord is seeking an order of possession, to not attend and that therefore the “circumstances of the case” are not, in that forum at least, aired. As a matter of fairness then, it is not unreasonable to expect Homeswest to consider these factors in its own right.

In Swain, the landlord had issued a 60 day notice and sought an order for termination. The Court decided that there is power to refuse to terminate an agreement after such a notice if, in considering the “circumstances of the case”, the tenant would suffer hardship and it was not deemed appropriate to make a termination order.

For the purposes of the Project the circumstances that **can** be considered **include**;

- a) the length of time the tenant has lived at the premises;
- b) the age and state of health of the tenant;
- c) reason why the tenant may need to live in a certain area;
- d) the availability of other suitable accommodation in the area; and
- e) the need to be close to family, friends and employment.

### **OPERATIONAL RECOMMENDATION THIRTY THREE**

**33.1** Prior to the decision to evict (and after the Court Order for possession has been obtained), the Aboriginal Housing Directorate or relevant Regional Manager (or the Director Rental Operations in the case of a 60 day notice eviction), formally consider all the circumstances of the case and that a written statement be prepared detailing the weight given to the various circumstances and the final decision (that is, the decision still to be approved by the Board of Commissioners in the case of Section 64 evictions and the Aboriginal Housing Board for all evictions involving Aboriginal tenants).

**33.2** For the purposes of the final decision the circumstances be defined to include;

- a) the length of time the tenant has lived at the premises.
- b) the age and state of health of the tenant.
- c) reason why the tenant may need to live in a certain area.
- d) the availability of other suitable accommodation in the area.
- e) the need to be close to family, friends and employment.

**33.3** Should the final decision confirm the original decision to evict, then consideration be given to allowing a reasonable time for the tenant, representatives and support agencies of the tenant to arrange for alternative accommodation.

### **OPERATIONAL RECOMMENDATION THIRTY FOUR**

**Prior to a final decision to evict being made, that the tenant and their representative (if any) be notified so as to allow a submission to be lodged speaking to the “all the circumstances of the case”, as defined.**

### **3.6 Accommodation Managers and Organisational Needs:**

Throughout this Report much has been said or implied about the role of the Accommodation Manager. A great deal is expected of this housing officer and being in the “front line” they carry the weight of the corporate culture and needs into their interactions with tenants and the community sector. This can have a significant impact on the outcome of support strategies and, ultimately, the maintenance of the more problematic tenancies.

The Project Workers explored this issue in their consultations with Homeswest staff. By way of introduction it was pointed out that although to be used as a “guide”, the Legal Recovery Manual opens with the following statement:

**“With the increased emphasis on debtor management, and in line with the need to concentrate on core business issues, it is timely to revisit current practices in regard to debt recovery.”.**

Reaction of Homeswest workers at the Regional Offices visited, varied but was overwhelmingly bound by a negativity either towards their organisation or the tenant.

Comments included that Homeswest was becoming too “business orientated”, putting more resources into evicting people rather than “saving” tenancies, becoming “obsessed” with arrears performance and having a “corporate philosophy” that “missed” the client in the process. (Accommodation Managers and a Manager of Rental Services)

Negativity towards tenants was expressed in two ways, as a punishment for not adhering to the Tenancy Agreement or as a sense of hopelessness in having to deal with very difficult situations. Time constraints relative to workload was at one point cited as a factor influencing the decision to evict in complex and long-standing “problem” tenancies.

It was not the task of the Project to analyse Homeswest’s “corporate philosophy”, but it was considered relevant to determine the effect on the perceptions and actions of Homeswest staff in their approach to tenancies where breaches had occurred. The ability to make recommendations the aim of which is to reduce the number of evictions, cannot be divorced from the boundaries the organisation itself sets to govern its behaviour.

A critical issue in that regard is the way tenancy arrears levels are linked to the performance management of individual officers. One Accommodation Manager put it as; “Good performance is measured by corporate indicators”.

Information obtained from the Victorian Housing Authority indicates that management performance is in part measured by the percentage of tenancies that are in debt to the Authority. This is in contrast to the Homeswest practice of measuring the dollar level of arrears as a total and average across all tenancies. The former suggests primacy being given to the acknowledgment of a certain number of tenancies in arrears rather than the dollar level of debt.

It was put to the Project Workers that an eviction can “improve” the current arrears figures of an Accommodation Manager by transferring those arrears to a vacated debt account. The responsibility for the debt also shifts, initially to another Homeswest officer and later to an external debt collection agency.

At the level of the Accommodation Manager there exists this structural bias in the management of tenancy debt. Two other factors compound this tension; the workload of Accommodation Managers and their dual role as landlord and support person.

The comments of Homeswest officers noted above are supported by Muirhead in his report on Homeswest's Strategic Plan community consultations. In particular;

- a) *"Many positive words were spoken about Homeswest and staff. The difficulty of their task is widely appreciated, and their care and sensitivity is often applauded."* (page 11);
- b) *"..Accommodation Managers appear to have a virtually untenable case load when compared to the private rental accommodation manager, and it was felt by many that this fact should be acknowledged and addressed by government."* (page 11); and
- c) *"There needs to be a clear separation between the roles of landlord and support."* (page 10).

#### **OPERATIONAL RECOMMENDATION THIRTY FIVE**

**35.1 The following performance indicator for Accommodation Managers be added to those that currently exist with respect to tenancy management and that it be prefaced by a statement that it is to be measured concomitantly with the Manager's current rental arrears portfolio;**

- 1) The number of evictions that have taken place and the reasons for those evictions.**
- 2) The level and type of debt associated with those evictions.**

**35.2 Appropriate benchmarking will need to be developed so as to ensure equity between Accommodation Managers.**

#### **OPERATIONAL RECOMMENDATION THIRTY SIX**

**There be a clear separation and detailed description of the two roles undertaken by an Accommodation Manager these being;**

- 1) property manager (landlord),**
- 2) tenancy manager (support person).**
- 3) and that those roles be reflected in the job description and performance indicators.**

### **STRUCTURAL RECOMMENDATION EIGHT**

**Homeswest undertake a formal review of the role of the Accommodation Manager with particular emphasis on the examination of;**

- 1) the increased duties of the position since its inception in 1988.**
- 2) the extent to which the position is subject to performance measurement compared with commensurate positions within Homeswest.**
- 3) the dual role of property manager and tenancy support and how the resulting tension affects performance.**
- 4) a proposal that Accommodation Managers work in neighbourhood teams such as in the model developed by the Victorian State Housing Authority**

## **4 CONSIDERATION AND DEVELOPMENT OF AN ONGOING PROCESS FOR ANALYSIS AND EVALUATION FROM THE PROJECT.**

When considering the “mechanism” most suitable for an ongoing analysis and evaluation of the recommendations of this Report, the Working Party was drawn to the Housing Advisory Committee (HAC). This Committee is recognised in its Terms of Reference as independent and is mandated to advise the Minister for Housing on that basis.

HAC’s membership comprises peak community organisations and Homeswest representatives.

Two concerns however, are evident;

- 1) HAC does not at this time, have a representative of the Aboriginal community as a member; and
- 2) As an advisory body, HAC is not considered a public entity and therefore cannot make “public statements”.

These restrictions are mitigated by the fact that the Report will be a public document and, no doubt, will invite comment from interested groups. In addition, HAC has the capacity, under its Terms of Reference, to establish working parties from time to time. The working parties have a finite term and can co-opt expertise and information from outside the Committee.

If it is accepted that timing is important to the Report’s effectiveness (that is, any initiatives generated need to achieve a momentum to sustain interest), then an already existing body with a community sector focus (and Homeswest representatives), would seem a reasonable place to “house” the Report. In this regard, HAC is an established body and is assumed to have some standing with both government and the community sector.

### **OPERATIONAL RECOMMENDATION THIRTY SEVEN**

**37.1 The Housing Advisory Committee (HAC), be the mechanism through which an ongoing process for the analysis and evaluation of the recommendations of this Report be developed.**

**37.2 The Committee ensure;**

- 1) there is adequate Aboriginal representation in the process; and**
- 2) extensive community input is obtained in the analysis and evaluation.**

# TERMS OF REFERENCE

## EVICCTIONS PROJECT

### **Aim:**

To identify the immediate causes of problems leading to eviction, or threatened eviction, and propose strategies to address those problems and reduce the risk of eviction.

### **Outcomes:**

A reduction in the number of:

- a) tenancies terminating through eviction; and
- b) eviction notices being issued, without a resultant increase in the level of rental arrears or neighbour disputes.

A review of the policies and practices of Homeswest, including the application of policy at the regional level, which will result in an agreed course of action between Homeswest and its tenants - decreasing the likelihood of eviction.

### **Principles:**

This project will be premised on the following principles - that:

- Homeswest reserves the right to evict when conditions of tenancy agreement are not met
- generally, any recommendations arising out of the project will be met within existing budgets
- there is scope to vary the existing SHAP program
- the SHA Board of Commissioners will decide on many of the issues likely to be raised in the project
- while proposals on positive changes will be welcome, they cannot result in any increase in rental arrears or neighbour disputes

### **Objectives:**

1. Examination and review of Homeswest procedure documents, policies and guidelines (eg Legal Recovery Manual).
2. Examination and review of Homeswest's current eviction policies and procedures, including decision making and reporting processes.
3. Examination and consideration of existing processes for:



**Timeframe:**

The project will commence on 5 February 1996 and be completed in 3 months. There will be no extension to this time-frame.

**Project Officers/Budget:**

DHRD will contribute funds to meet the direct costs of the project. This will cover:

- the part-time salary of a Project Officer nominated from the community sector for 3 days per week (based on the first increment level 5 position with a casual loading).
- A 15% administration fee to Shelter WA
- sitting fees for community representatives on the Steering Committee (excluding Shelter WA)
- costs associated with consultations (including limited country travel).
- Homeswest will second an officer on a part-time basis (2 days per week) to work with the representative from the community sector.

**Process:**

The 2 Project Officers will be based at Shelter while working on the project and will report on a monthly basis to the Steering Committee and the Shelter Executive.

The Steering Committee will have responsibility for the management of the project, day-to-day support to the Project Officers, and ratification of the final action plan.

The Shelter WA Management Committee will have responsibility for the employment of the community Project Officer and will make decisions regarding organisational and administrative issues.

The Project Officers will review and evaluate Homeswest's policies and procedures relating to evictions through:

- an examination of Homeswest's policy/procedure documents, and publicity/information material;
- interviews with Homeswest staff (SHQ and regional offices, including some country regions); and
- interviews with current and past tenants, and other related Government and non-government agencies (a number of case studies will be followed through and documented, while meeting confidentiality requirements).

Consultations will be targeted and limited to seeking comment on specific proposals. They will involve the project staff in at least 2 country visits. The project will also draw from the community consultations which will be undertaken by the Aboriginal Housing Board in February 1996.

**Findings:**

The Steering Committee will present the final Action Plan to the Working Party, which will in turn make recommendations to the Homeswest Board, and the State and Commonwealth Ministers. It will also inform the non- government sector and other related agencies of the findings and outcomes of the project.

Note: The Working Party which has been established to consider issues relating to evictions in W A may adopt other approaches over a longer time- frame in addition to this project (eg members have already met with representatives from SHAP agencies to consider ways of improving this program). However, this project is likely to represent the Working Party's major response.