



Providing a Voice for Housing Consumers

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Homeswest Good Neighbour Policy: *GNP Working Party Final Report*

Prepared by:
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Homeswest Operational
Standing Committee
31 August 2005

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1: Introduction

The April meeting of the Homeswest Operational Standing Committee (HOSC) agreed to establish a Working Party to address the concerns of the Committee with regard to the proposed Homeswest Good Neighbour Policy (GNP). The Minister for Housing and Works has announced that the Good Neighbour Policy will go ahead. However, following this announcement, the Minister referred the Policy to the HOSC for its involvement in developing the subsequent policy detail. The GNP Working Party was established to address the concerns set out below and the recommendations contained in this report will address these concerns without compromising the original intent of the policy. This report fulfils the requirement contained in the Working Parties Terms of Reference (TOR) to deliver its recommendations to the Department of Housing and Works (DHW) Executive and the Minister for Housing Works by Friday 3 June 05. Finally, given the short time-line for reporting, the Working Party was given the authority to report on behalf of the HOSC.

HOSC Concerns to be addressed

Introduction of Fixed Term Tenancies: While the HOSC is aware that Homeswest has used fixed term tenancies on an ad hoc basis for some time now, this policy proposes the formal introduction of fixed term leases in public housing for those “*tenants with a history of anti social behaviour*” and thereby creating two classes of tenant, those with security of tenure and those with limited tenure.

Good Neighbour Agreement: While the proposed policy is called the Good Neighbour Policy, the HOSC is concerned that the Policy takes the approach that all tenants will be subject to special conditions in addition to those required under their Residential Tenancy Agreement and “*will require all tenants to sign a good neighbour contract with the Department, formalising their commitment to abide by the terms of their Tenancy Agreement*”.

Mediation: The HOSC acknowledges the important role mediation services play in extending the life of “tenancies at risk”. However, the Good Neighbour Policy is likely to increase demand for these services and there are only three listed and all are located in the South West of the State. If this Policy is implemented, funding to these services will be increased in order to ensure sufficient capacity throughout the State.

Legal Issues: For instance, the requirement to “seek the views of a neighbour not involved” could be read as implying that information about a tenancy is going to go to other people in the street. This may well breach privacy legislation.

Practical Application: The draft Good Neighbour Policy begins to provide some direction to Accommodation Managers on how to deal with complaints coming under the Policy but it provides no detail on how this will translate into Homeswest Operational Policy. For instance, Accommodation Managers may have difficulty implementing this policy consistently when subjective terminology such as “drunken”, “uncontrollable”, “foul”, etc is used.

Membership of Good Neighbour Policy Working Party

Tammy Solonec, Department of Consumer and Employment Protection;

Julie Knight, Department of Consumer and Employment Protection;

Lyndsey Fitzgerald, Jacaranda Community Centre;

Helen Miskell, Department of Community Development;

Donna Bannister, Tenants Advice Service; and,

Paul Pendergast (Convenor), Shelter WA.

Terms of Reference

- 1: The Working Party will make a recommendation about the appropriateness of Homeswest using fixed term tenancy agreements.
- 2: The Working Party will review the Good Neighbour Agreement and make recommendations that ensure the Agreement recognises and respects the majority of Homeswest tenants who are already Good Neighbours but at the same time details behaviour that may result in punitive action being taken by the Department.
- 3: The Working Party will recommend actions to be taken by the Department to increase the access of at risk tenancies to mediation services.
- 4: The Working Party will identify where the proposed policy may offend the Privacy Act of the RTA and recommend what course of action the Department will take to ensure the Agreements are legal.
- 5: The Working Party will make recommendations on the Good Neighbour Policy will be incorporated into the Homeswest Policy and Procedures Manual.
- 6: The Working Party will report to the Department of Housing and Works Executive and Minister by 3 June 2005.

2: The GNP Working Parties Response to Homeswest's Draft Good Neighbour Policy

Use of Fixed Term Tenancies by Homeswest

The working party does not support the introduction of fixed term tenancies, especially as the Draft Policy provides no details on who will be required to sign fixed term tenancies or for what length of time. The use of fixed term tenancies will create additional stresses for households identified as having a history of anti-social behaviour, at a time when they need secure housing. It would be more appropriate if tenants with poor tenancy histories were offered support.

Recommendation 1

The Working Party does not support the introduction of fixed term tenancies for households with a history of anti-social behaviour and recommends that households falling into this category are required to receive tenancy support.

Acceptable Behaviour Agreement

Acceptable behaviour agreements have been introduced in New South Wales but disability advocacy groups such as People With Disabilities (PWD) warn that the agreements have the potential to adversely affect tenants with disabilities. In its approaches to the NSW Government, "*PWD argued strongly against these measures from the outset out of a concern that they will impact very harshly on tenants with disability who may not be in receipt of necessary social support services, and/or who may engage in involuntary behaviours others may regard as anti-social. Due to increased targeting of public housing towards persons with high social need, more than 40 percent of public housing tenants now have a significant disability*"¹.

Research undertaken by the Australian Housing and Urban Research Institute (AHURI) is more positive toward the development of good neighbour policies of which the acceptable behaviour agreement is one component. They cite the experience of housing authorities in the UK and USA and within Australia, Victoria and Tasmania. They indicate that these policies are important but so to utilising the regulations within the Residential Tenancies Act.²

The acceptable behaviour agreement needs to be understood by tenants and may need Homeswest to read each point out to the tenant or in some cases make use of specialist support services.

The Working Party is also concerned that by using the term "Agreement" that tenants may believe that by signing the Acceptable Behaviour Agreement (ABA) that it forms part of the Standard Tenancy Agreement, which it does not. The Working Party therefore believes that rather than signing an agreement, the prospective tenant should sign an *Acceptable Behaviour Acknowledgement*.

¹ PWD, NSW, Newsletter Article, Residential Tenancies Act – Anti-Social Behaviour amendments.

² Keith Jacobs, Kathy Artherson, Developing effective housing management policies to address problems of anti-social behaviour, AHURI, November 2003.

The Working Party suggests an additional first paragraph be inserted into the Homeswest Acceptable Behaviour Acknowledgment:

Acknowledge that I understand the rights and obligations outlined in the Tenancy Agreement and Homeswest's Good Neighbour Policy and I agree to be considerate of my neighbours in the property offered to be leased to me (Note: if you do not understand any part of the agreement ask a Homeswest officer to explain it to you).

Recommendation 2

The Working Party recommends that Homeswest change the name the Acceptable Behaviour Agreement to the Acceptable Behaviour Acknowledgement.

Recommendation 3

The Working Party recommends the adoption of the Acceptable Behaviour Acknowledgement presented in Section 3 of this report.

Need for Agreements with Mediation Services, WA Police and Local Government Authorities

The AHURI research mentioned above, "*indicates that the most effective approaches are those that seek to prevent incidences of anti-social behaviour through the deployment of partnerships across agencies. The evidence suggests that successful schemes usually entail a set of integrated practices such as social intervention measures, design modifications and effective mediation*"³.

The draft policy lists some mediation services that may be in a position to assist with conflict resolution. However, it is not clear if these services have been approached to ensure they have the capacity to take on any additional workload generated by the introduction of the Good Neighbour Policy. The Working Party encourages the DHW to negotiate Memorandums of Understanding (MOU) with each of the mediation services listed and further with the Police and Local Government Authorities.

The Working Party recognises the value of the services provided by the mediation services listed in the GNP. However, they do not have the capacity to provide assistance in all Regions leaving many parts of the State without access to these services. There is a clear need for the availability of mediations services to be expanded.

Finally, the Working Party believes that advocacy services such as the Tenants Advice Service (TAS) also need to be listed.

Recommendation 4

The Working Party recommends that the DHW make contact with each of the mediation services listed in the Good Neighbour Policy plus the Tenants Advice Service and with the WA Police and Local Government Authorities to developed Memorandum of Understanding.

Recommendation 5

The Working Party recommends that the Minister for Housing and Works encourages the Attorney General to increase the availability of Alternative Dispute Resolution Services.

³ Keith Jacobs, Kathy Artherson, Developing effective housing management policies to address problems of anti-social behaviour, AHURI, November 2003.

Is the Acceptable Behaviour Agreement Legally Enforceable

As part of the GNP Terms of Reference the Department of Consumer and Employment Protection were asked to seek a legal opinion on the draft version of the Homeswest Tenancy Agreement, which includes the Acceptable Behaviour Agreement.

There were three main parts in question:

- 1: The front page provides a description of anti-social behaviour under the heading: You must not, clause 1;
- 2: The tenants responsibilities are described again on page 19; and
- 3: All tenants will be required to sign an Acceptable Behaviour Agreement on page 24.

DHW officers see the Acceptable Behaviour Agreement as opportunity to confirm what is expected of its tenants and believe that it will not be enforceable. What is DOCEPS legal opinion on the effect of points 1 to 3 above?

The Department of Consumer and Employment Protection's Response

Prepared by: Tim Banfield, Manager Building and Tenancy Industries (DOCEP)

At the request of the Chairperson HOSC, the Department of Consumer and Employment Protection (DOCEP) examined the Acceptable Behaviour Agreements (ABA) Homeswest intends to implement to support and enact their Good Neighbour Policy (GNP).

DOCEP understands that Homeswest has introduced their GNP and ABA that are aimed at assisting Homeswest to manage tenants which engage in or allow anti-social behaviour on rented premises.

In coalition with DOCEP's Legal Unit, I have reviewed the proposed GNP and ABA in conjunction with Homeswest's Tenancy Agreement (HTA) and advise HOSC as to the following:

- Does the mechanism Homeswest intends to use for evictions for violation of the GNP or ABA offend the *Residential Tenancies Act 1987* (WA) (RTA)?
- Is the definition of the "antisocial behaviour" contained within the ABA sufficient to enable Homeswest to claim a breach and, if necessary, ultimately evict tenants for offending this policy?
- Is it likely that a breach of the ABA will be sufficient to warrant a Magistrate to order a tenancy agreement terminated under s62 and or s64 of the RTA?
- Is there a more appropriate vehicle for Homeswest to use in enforcing the ABA under the RTA?

The RTA only contemplates one form of contract, that is, a residential tenancy agreement (Agreement). Section 3 of the RTA defines an Agreement as:

*"any **agreement**, whether expressed or implied under which any person **for valuable consideration** grants to any other person **a right to occupy**, whether expressly or otherwise a residential premises or part of a residential premises for the purposes of residence".*

The HTA is one such Agreement. Neither the RTA nor the *Residential Tenancies Regulations 1989* (WA) (Regulations) provide for the enforcement of any other kind of arrangement.

Section 82 of the RTA governs the extent to which parties may contract out of, or incorporate additional terms into, an Agreement. It is useful here to set out the whole provision.

"82. Contracting out

(1) Except as provided in subsection (3) or by or under any other provision of this Act –

(a) any agreement or arrangement that is inconsistent with a provision of this Act or purports to exclude, modify or restrict the operation of this Act is to that extent void and of no effect; and

(b) any purported waiver of a right conferred by or under this Act is void and of no effect.

*(c) Except as permitted by subsection (3) or by or under any other provision of this Act, **no person shall enter into any agreement or arrangement with intent either directly or indirectly to defeat, evade or prevent the operation of this Act.***

Penalty: \$2,000

(d) A residential tenancy agreement may contain a provision by which section 38, 39, 40, 41, 42, 43, 45, 46, 47, 48, 49, 50, 55 or 56 is excluded, modified or restricted if the residential tenancy agreement is in writing and is signed by the owner and the tenant.

Answers To Questions Posed:

1: Is it likely that a breach of the ABA will be sufficient to warrant a Magistrate to order a tenancy agreement terminated under s62 and or s64 of the RTA?

It is DOCEP's opinion that it is unlikely that a breach of the ABA will be sufficient to warrant a Magistrate to order that the HTA be terminated under section 62 or 64 of the RTA. Sections 62 and 64 of the RTA only provide for termination of arrangements that are Agreements.

Pursuant to section 3 of the RTA, an Agreement is required to grant to another person, for valuable consideration, a right to occupy a residential premises. The ABA is not such an Agreement, because it does not grant a right to occupy a residential premises for valuable consideration. As the ABA has not been expressly incorporated into the HTA, it does not form a part of the HTA, but rather exists on its own. On its own, in our opinion the ABA is unenforceable as a contract as there is inadequate consideration. The ABA, in its present form, is merely an acknowledgement of a tenant's obligations contained within the GNP and HTA.

2: Is the definition of the "anti-social behaviour" contained within the ABA sufficient to enable Homeswest to claim a breach and, if necessary, ultimately evict tenants for offending this policy?

As outlined above, in our opinion the ABA is unenforceable and so, in its present form, the definition of anti-social behaviour contained within the ABA will not enable Homeswest to claim a breach and, if necessary, ultimately evict tenants for offending this policy. Clause 8.3 of the HTA, in much the same terms as section 46 of the RTA, provides for Homeswest to regulate its tenants' conduct on the premises as follows:

"The tenant must not use the premises or allow the premises to be used by any other person for any illegal purpose or in any way which causes a nuisance to any other person."

It is important here to note that there is a high bar to establishing nuisance. For Homeswest to establish nuisance at common law, it is necessary to demonstrate that:

- a) the tenant has interfered with a property right of another tenant; and
- b) the interference was both substantial and unreasonable.

I am advised that the common law position is that even if an activity is itself is noxious, if it does not interfere with another's use and enjoyment of land, it will not establish a cause of action in nuisance.

"Anti-social behaviour" is defined in the ABA as follows:

"Ongoing pattern of aggressive, threatening or disruptive behaviour, which adversely affects one or more neighbours...[such behaviour includes] but [is] not restricted to:

- *loud music;*
- *foul language;*
- *drunken behaviour;*
- *uncontrollable parties;*
- *fighting;*

- *acts of physical violence; and*
- *unwanted entry onto neighbouring properties.*

The advice available to me indicates that the common law requirements for nuisance and the definition of anti-social behaviour are similar in that both require a nexus between the conduct itself and the effect upon others. It is our opinion that arguably, the standard of “adversely affects” in the definition of anti-social behaviour in the ABA is lower than “interferes with another’s use and enjoyment of land” as understood by the common law concept of nuisance.

In order to expressly set down the kinds of behaviour that may offend the HTA, Homeswest may wish to consider incorporating a definition of anti-social behaviour within the HTA, however, this recommendation is subject to my comments following. We believe this option is available as Section 82(1)(d) of the RTA, as set out above, does permit some modification of the conduct provision contained within section 39 of the RTA.

3: Does the mechanism that Homeswest intends to use for evictions for violation of the GNP or ABA offend the RTA?

As outlined above, in their present form, neither the GNP nor the ABA will enable Homeswest to evict unruly tenants. If the “anti-social behaviour” definition were to be incorporated into the HTA itself, caution would need to be taken to ensure that the clause itself, and the way that tenants’ behaviour is monitored, does not offend section 82 of the RTA.

In accordance with section 82 of the RTA, set out above, any agreement which excludes, modifies or restricts a provision of the RTA will be void and of no effect. Further, section 82(1)(c) of the RTA, makes it an offence for a person to “enter into any agreement or arrangement with the intent either directly or indirectly to defeat, evade or prevent the operation of this Act.”

We are concerned, given the breadth of relatively ordinary behaviour that “anti-social behaviour” may capture, that its prohibition may interfere with a tenant’s mandatory entitlement to quiet enjoyment of the premises as provided in section 44 of the RTA.

Section 44 provides as follows:

44. Quiet Enjoyment

- (1) *It is a term of every agreement –*
 - a) *that the tenant shall have quiet enjoyment of the premises without interruption by the owner or any person claiming by, through or under the owner or having superior title to that of the owner;*
 - b) *that the owner shall not cause or permit any interference with the reasonable peace, comfort, privacy of the tenant in the use by the tenant of the premises;*
 - c) *that the owner shall take all reasonable steps to enforce the obligation of any other tenant or owner in occupation of adjacent premises not to cause or permit any interference with the reasonable peace, comfort, privacy of the tenant in the use by the tenant of the premises...”*

Used cautiously, we believe that the incorporation of an anti-social behaviour prohibition into the HTA would actually assist Homeswest to fulfil its obligations to other tenants under section 44(1)(c) of the RTA, as set out above.

However, if the anti-social behaviour prohibition were to be enforced in such a way that tenants exhibiting “anti-social behaviour” on an infrequent and moderate basis

may be in breach of the HTA, then there is a risk that the anti-social behaviour prohibition would interfere with a tenant's quiet enjoyment of the premises.

It is our opinion that the definition of anti-social behaviour would be less likely to offend section 82(1)(c) of the RTA if it were more closely aligned with the common law understanding of nuisance. For this reason, we suggest that the words "adversely affects one or more neighbours" are replaced with the words "substantially interferes with one or more neighbours' use and enjoyment of the premises."

4: Is there a more appropriate vehicle for Homeswest to use in enforcing the ABA under the RTA?

In our opinion, yes. There are two methods of enforcing the ABA under the HTA that Homeswest may wish to consider.

Our preferred method of enforcing the contents of the ABA is to incorporate the prohibition against anti-social behaviour into clause 8 of the HTA. This, in our view, provides the simplest mechanism for enforcing the provision, without the need to ensure that the ABA is entered into simultaneously with the HTA. However, as outlined in 3.4 above, so as to avoid any conflict with a tenant's entitlement to quiet enjoyment of the premises, the definition of anti-social behaviour may need to be amended so as to preserve this entitlement to quiet enjoyment.

An alternative method of enforcing the ABA is to insert a clause into the HTA that expressly incorporates the ABA into the HTA. This could be achieved by inserting the following into the HTA:

"The Anti-social Behaviour Agreement is an addendum to Homeswest's Tenancy Agreement and forms a part of Homeswest's Tenancy Agreement. As such, any breach of the Anti-social Behaviour Agreement will be treated as a breach of Homeswest's Tenancy Agreement"

A complicating factor in adopting this method is the need to ensure that the ABA and HTA are executed simultaneously. If the two documents are executed separately then there is a risk that the ABA will not be enforceable due to a lack of consideration, as outlined above.

General Issues

I have discussed these issues with the Commissioner for Fair Trading who is the guardian of the RTA and he agrees that the use of the ABA in its current format is unenforceable in the Magistrates Court under the guise of an RTA action.

Should Homeswest chose at some point in the future to attempt to enforce the provisions contained within the ABA through a RTA action and jeopardise the rights of Homeswest tenants (consumers), then the Commissioner would be forced to give considerable weight to the notion of "stepping into the shoes" to defend the rights of any consumer (so affected) who requests such.

Having said that, the Commissioner has informed me it is his view that it is his intention to assist Homeswest to achieve their objectives within the requirement of the RTA.

Recommendation 6

That Homeswest:

- Consider refraining from executing any ABA's in their current format, effective immediately, and
- Obtain its' own legal opinion on the issues raised above.

HOSC Meeting to Resolve Inclusion of ABA in Standard Tenancy Agreement

At the July meeting of the HOSC a number of concerns were raised about the intent of Homeswest to utilise the ABA in eviction proceedings and how the ABA will interact with the Standard Tenancy Agreement. As a result the following meeting was instigated:

Paul Pendergast, Anne McCrudden, Tim Banfield and a Senior Lawyer at DOCEP are to meet prior to the next HOSC meeting to finalise the issue of including the ABA into the standard Tenancy Agreement document.⁴

The meeting was attended by Robin Wood (DHW) and Anne McCrudden (DHW), Tim Banfield (DOCEP) and Paul Pendergast (HOSC Chairperson). At the meeting the DHW position was presented to the meeting. In the DHW's opinion, the GNP and ABA are purely intended as educational tools and will be used to ensure Homeswest tenants are informed about how they are expected to act within their tenancy. The meeting was also assured that eviction proceedings with regard to anti-social behaviour will only proceed within the conditions set down by the Residential Tenancies Act. In addition, the Homeswest Tenancy Agreement has not changed and the recommendation from the State Solicitors was for DHW not to change the Homeswest Tenancy Agreement.

The Good Neighbour Operational Policy

The Working Party believes that the Good Neighbour Policy will benefit Homeswest tenants, particularly as it requires the accommodation manager and the prospective tenant to spend time discussing what is expected in order to ensure a successful tenancy. However, the Working Party has spent much of its time editing the Draft Good Neighbour Policy document to make it clearer and more concise. This was primarily achieved by splitting it into three parts:

- The Good Neighbour Operational Policy;
- The Acceptable Behaviour Acknowledgement; and
- The Good Neighbour Brochure.

Some of the Working Parties Concerns included:

- the document contained a mixture of policy preamble, Homeswest operational policy and instructions for Homeswest tenants;
- the document contains a number of terms that are ill-defined and seem to rely on value judgements on the part of the reader. Some examples include: "suitable mix of tenants"; "procedural fairness"; "day to day life", "ordinary tolerance levels", and, "legislative requirements relating to privacy". These terms require definitions and these would be best included in the Rental Policy Manual. The list of antisocial behaviour also needs to be more specific – eg quote council bylaws for noise etc;
- some of the instructions require further clarification and it must be made clear that no complaint of anti-social behaviour will be recorded on the tenant's file if the complaint is proven to be unjustified;
- The Working Party were concerned that neighbours of Homeswest tenants could easily make complaints against that tenant but it provides no such

⁴ Homeswest Operational Standing Committee, Minutes Wednesday 29 July 2005, Department of Housing and Works Ground Floor Conference Room 99 Plain Street, East Perth

opportunity for Homeswest tenants, unless the complaint is made against another Homeswest tenant;

- under “Investigation and Discussion with Tenant”, it is acknowledged that the seeking of a third party view when a complaint is contested is intended to be fair, however the working party are concerned this could provide the opportunity for collusion by neighbours against a tenant and escalation of perceived problems and issues; and
- the Working Party believes that the description of anti-social behaviour would be best done in the form of a plain English Brochure that is presented to tenants when signing their tenancy agreement. In addition, a significant proportion of this brochure will be devoted to describing what “good neighbours” do and how to have a successful tenancy (the Tenants Advice Service have prepared an example of what could be included in the brochure to assist with the successful tenancy approach and this has been attached at Appendix 1).

In addition, the Draft Policy states that, *“Homeswest will act quickly whenever a complaint relating to a breach of the tenancy agreement is made. It will be investigated within 24 hours”*. The Working Party recognises that Accommodation Managers already have heavy workloads and the requirement that they investigate complaints within 24 hours will place them under further pressure and ensure that complaints go to the front of their jobs list. The introduction of this policy will also need to be accompanied by increased resources for tenancy management. The AHURI research cited above points out that in jurisdictions with Good Neighbour Policies as much as an hour an a day can be spent on dealing with Anti Social Behaviour Complaints and warns that dealing with this type of complaint as the highest priority can lead to other duties being pushed to one side.

Recommendation 7

The Working Party recommends that the DHW adopt the Good Neighbour Operational Policy detailed in section 5 of this report.

Recommendation 8

The Working Party recommends that the DHW adopt the contents of the Good Neighbour pamphlet contained in section 6 of this report.

Recommendation 9

The Working Party recommends that the DHW include information on how to have a successful tenancy similar to that detailed in Appendix 1 within the Good Neighbour pamphlet.

3: Acceptable Behaviour Acknowledgement

Tenant's responsibilities

When living in a Homeswest rental property, tenants are responsible for their own conduct as well as for the behaviour of other occupants and visitors to their property. Homeswest expects its tenants to meet the following obligations:

1. Not to allow antisocial behaviour in or around the premises, including but not restricted to loud music, foul language, drunken behaviour, uncontrollable parties, fighting, acts of physical violence and unwanted entry onto neighbouring properties,
2. Not to use the premises or allow the premises to be used by any other person for any illegal purpose or in any way, which causes a nuisance to any other person.
3. Not to keep any unlicensed or unroadworthy vehicle on the premises or park any vehicle other than where permitted.
4. Not to leave the premises for more than one month without written consent.
5. Not to intentionally damage the premises.
6. Not to injure or threaten anyone from Homeswest or any adjoining neighbour.
7. Not to obstruct or allow any other person to obstruct any part of the common areas.
8. Not intentionally or recklessly cause or allow any object or substance to fall, be thrown, be fired or otherwise be ejected from any window in the premises or common areas including throwing objects into neighbours properties.
9. The tenant will comply with the requirements of Homeswest as to the maximum number of people who shall reside in the premises.

Acceptable Behaviour Acknowledgment

I (name) _____ of

Address _____

Phone: _____ Mobile No: _____

Acknowledge that I understand the rights and obligations outlined in the Tenancy Agreement and Homeswest's Good Neighbour Policy and I agree to be considerate of my neighbours in the property offered to be leased to me (Note: if you do not understand any part of the agreement ask a Homeswest officer to explain it to you)

at _____

by Homeswest (State Housing Commission) and that I will not conduct, participate or allow others who visit the said rental property to conduct or participate in behaviour which will interfere with or derogate from the quiet enjoyment of the neighbours.

Homeswest defines anti-social behaviour as an ongoing pattern of aggressive, threatening or disruptive behaviour, which adversely affects one or more neighbours.

I will not allow anti-social behaviour in or around the said property, including but not restricted to:

- loud music;
- aggressive, threatening or obscene language or behaviour;
- drunken behaviour;
- uncontrollable parties;
- fighting;
- acts of physical violence; and
- unwanted entry onto neighbouring properties.

I acknowledge that should any of these types of behaviours emanate from those living at or visiting the said property, Homeswest may take action under the Residential Tenancy Act.

Date: _____

Signed by _____

Signature of tenant _____

Date: _____

Witnessed by _____

Signature of witness _____

4: Good Neighbour Policy

1 Preamble

- 1.1 The purpose of this policy is to assist tenants to live in peace and harmony with their neighbours.
- 1.2 Homeswest will manage the tenant mix in a locality to reduce the potential for conflict.
- 1.3 Homeswest will require all tenants to sign an Acceptable Behaviour Acknowledgement.
- 1.4 The Good Neighbour Policy aims to foster:
 - harmonious living environments for public housing tenants;
 - secure, long term public housing tenancies;
 - successful integration of public housing into the general community;
 - sound management of large estates in partnership with relevant external agencies; and
 - sound tenancy management practices.
- 1.5 Homeswest encourages tenants to sort out their own problems with other tenants between themselves or, through mediation. Tenants will be referred to various community services for assistance when required.
- 1.6 Homeswest will work in partnership with agencies such as the WA Police Service, the Office of Mental Health and Department for Community Development to assist in creating and sustaining a peaceful environment for our tenants.
- 1.7 If a tenant has breached the Tenancy Agreement Homeswest has the right to take action against that person's tenancy. The action taken will depend on the seriousness of the breach. If warranted, Homeswest may seek to terminate the Tenancy Agreement immediately.
- 1.8 Homeswest will only take eviction action when all other reasonable options have been exhausted, unless the breach has been extremely serious. Every attempt will be made to salvage the tenancy.

2: What is anti-social behaviour?

- 2.1 Homeswest defines anti-social behaviour as an ongoing pattern of aggressive, threatening or disruptive behaviour, which adversely affects one or more neighbours.
- 2.2 It may involve serious damage to the tenanted property, adjoining premises or any part of a common area. Examples include but are not restricted to regular episodes of antisocial behaviour in or around the premises, including but not restricted to:
 - loud music;
 - aggressive, threatening or obscene language or behaviour;
 - drunken behaviour;
 - uncontrollable parties;
 - fighting;

- acts of physical violence; and
 - unwanted entry onto neighbouring properties.
- 2.3 Often the most difficult issue about anti-social behaviour is how to determine the nature of a complaint. Even after investigation it requires a judgement on whether an incident will be defined as anti-social and therefore whether it is to be recorded in a possible sequence of incidents.
- 2.4 When Homeswest conducts an investigation into a complaint it will follow the rules of Procedural Fairness.

3: How Homeswest handles complaints

- 3.1: Complaints against tenants often start with a minor issue but may escalate into more serious conflict if not addressed in the early stages. Homeswest will act quickly whenever a complaint relating to a breach of the acceptable behaviour agreement is made and will endeavour to investigate within 24 hours.

Steps Taken When Complaints are received

- 3.2 **Complaint is received.** If the complaint is in writing, a copy of this allegation is filed. If the complaint is received in writing, the person receiving the phone call will write down all the allegations and contact details of the person complaining and place a copy of this on the tenant's file.

Advise Accommodation Manager within one working day.

- 3.3 **Preliminary Decision:** The Accommodation Manager will next decide whether the complaint is of a type that requires discussion with the tenant. In that regard, Homeswest will not get involved with minor disputes and disruptions that are considered to be a part of day to day life and within ordinary tolerance levels. CLARIFICATION NECESSARY – EXMAPLES NEEDED.

- If the accommodation manager decides that the matter is not of concern to Homeswest, the complainant is advised in writing and mediation services are offered. An updated list of mediation services will be available to Accommodation Managers.
- If the Accommodation Manager decided that the matter is of concern, go to investigation stage.

- 3.4 **Accommodation Manager Investigations:**

- **Interview the complainant** to determine the details of the complaint and to determine whether they have tried to resolve the allegation on their own or undertaken any other action. If abatement has occurred, the accommodation will report what actions have or have not occurred.
- **Interview the tenant** being complained about to substantiate the complaint. This includes giving the tenant details of the time and date of the incident, who was involved and what was alleged to have happened.⁵ The tenant will be given the opportunity to present their side of the incident and allowed to respond in writing if they wish to do so.

- 3.5 **Secondary Decision:** Following investigations, the accommodation manager will then decide whether the complaint is justified, having regard to the

⁵ Question whether the accommodation manager is able to say the name of the person complaining? What privacy laws apply.

version of events of both parties and any police report, if the police were involved. Where the tenant denies the alleged incident or offers a different perspective, a further decision will be made whether to accept the tenant's explanation or to seek the views of a neighbour not involved⁶ in the original complaint or the police if they were involved. If additional views are sought these will be restricted to the extent they relate to the alleged incident.

3.6 If the complaint is substantiated the following steps will be followed:

- a) The incident is recorded on the tenant's file as an anti-social incident.
- b) An explanation of the decision is given to the tenant in writing.⁷ Where the tenant has low literacy levels and the accommodation manager is aware of this, then steps need to be taken to ensure that the tenant understands what is written in the letter.
- c) The complaint has resulted in an official warning. This letter will be considered as a formal warning. The letter will be on a standard format which states:
 - i. The allegations;
 - ii. The investigations conducted;
 - iii. The decision made;
 - iv. The obligations under the Tenancy Agreement; and
 - v. What will happen if further complaints are received.⁸
- d) An explanation of the decision is given to the complainant in writing.⁹ This letter would need to explain that the justified behaviour from occurring again. The complainant will also be advised of the steps to follow should the behaviour occur again.

3.7 If the complaint is unsubstantiated because the investigation has convinced the Accommodation Manager the incident did not take place as stated or if it did take place and it was either not the responsibility of the tenant or was only a minor dispute or disruption, then the following steps will be taken:

- (a) In this case the complaint cannot be regarded as an anti-social incident. It will be recorded on the file that the complaint was unsubstantiated.
- (b) A written explanation must be sent to both the tenant and the complainant. This letter will be a standard format which states:
- (c) The allegations;
- (d) The investigations conducted;
- (e) The decision made;

⁶ The working party accepts that sometimes a 3rd opinion is sometimes necessary but is concerned of collusion by neighbours. It is therefore recommended that this course of action is used only as a last resort, where no decision can be made.

⁷ Possibly this letter should be via registered post.

⁸ The Working Party would like to know at which point SHAP becomes involved in this process.

⁹ Possibly this letter should be via registered post.

4: When a tenant breaches the Tenancy Agreement

- 4.1: Tenants will breach the Tenancy Agreement if they or anybody they allow onto the property:
- persistently or intentionally causes a nuisance that interferes with the peace, comfort and privacy of neighbours;
 - intentionally or recklessly causes serious damage to the residential premises;
 - intentionally or recklessly causes injury to Homeswest's staff or agent, or any person occupying or permitted on adjoining or adjacent premises; and,
 - fails to maintain property standards
- 4.2: If a tenant's behaviour breaches the Tenancy Agreement Homeswest will give notice of termination of a tenancy agreement on the ground that the tenant has breached a term of the agreement and the breach has not been fixed. The tenant will be given 14 days to rectify the problem detailed in the Breach. If the breach is not rectified within the specified timeframe, a "Notice of Termination" will be issued.
- 4.3: Homeswest will then apply to the court for a termination of the tenancy and possession of the property.
- 4.4: Depending on the nature of the breach Homeswest will also seek immediate termination and possession if a tenant has intentionally or recklessly caused or permitted, or is likely intentionally or recklessly to cause or permit, serious damage to the premises or injury to a Homeswest officer or any person in occupation of or permitted on adjacent premises. In this instance Homeswest will not issue a breach or termination notice.

5: Appealing Decisions or Actions

- 5.1: A tenant can appeal a decision by Homeswest not to approve re-housing on grounds of previous tenancy history, nuisance or annoyance. If a first level appeal on this issue is unsuccessful a second level appeal can be made to the Homeswest Appeals Mechanism.
- 5.2: If a tenant believes that Homeswest did not take proper action about a nuisance or annoyance complaint, they can raise the matter with their local Homeswest office, the Feedback system on the Internet, their local State Member of Parliament or the Minister for Housing and Works.
- 5.3: The Homeswest Appeals Mechanism (HAM) consists of a three-tier process:
- First Tier** - Review by a Homeswest officer not involved in the original decision. An adverse decision will automatically be reviewed at the Regional Office prior to Homeswest sending any correspondence to the tenant or applicant.
- Second Tier** - Review by the Regional Appeals Committee. Tenants and applicants not satisfied with the outcome of the First Tier review may proceed to the Second Tier called the Regional Appeals Committee. The Committee comprises a senior Homeswest officer not involved in the original decision and a community member.

Decisions excluded from review by the First and Second Tiers are those, which are or have been the subject of Court action or inquiry to the State Ombudsman or Minister for Housing and Works. A review of a decision to evict will not be made after a Notice of Termination is issued.

Third Tier - Review by the Housing Review Panel. This is the final level in the HAM system and comprises a panel of three community persons appointed by the Minister for Housing and Works. Tenants and applicants not satisfied with the outcome of the Second Tier review may proceed to the Third Tier.

- 5.4: Decisions excluded from review by the Third Tier are those which are or have been the subject of court action or inquiry to the State Ombudsman or Minister for Housing and Works and also; tenant liability assessments, rental arrears, loan arrears, water consumption accounts and Bond Assistance debts. A review will not be made of a decision to evict after a Notice of Termination is issued.

5: Good Neighbour Pamphlet

1: What is anti-social behaviour?

Homeswest defines anti-social behaviour as an ongoing pattern of aggressive, threatening or disruptive behaviour, which adversely affects one or more neighbours.

It may involve serious damage to the tenanted property, adjoining premises or any part of a common area. Examples include but are not restricted to regular episodes of antisocial behaviour in or around the premises, including but not restricted to:

- loud music;
- aggressive, threatening or obscene language or behaviour;
- drunken behaviour;
- uncontrollable parties;
- fighting;
- acts of physical violence; and
- unwanted entry onto neighbouring properties.

2: Entitlement

Tenants have a right to the peaceful enjoyment of their home and an obligation to abide by the conditions of their tenancy agreement. They have a right to complain about individuals who deny them this right. Additionally, Neighbours have the right to complain about Homeswest tenants who do NOT live harmoniously with them.

Homeswest will investigate complaints against tenants where there is an alleged breach of the tenancy agreement. If the complaints are substantiated, tenants will be given the opportunity to change nuisance and annoying behaviour.

We support the Principles of Multiculturalism, and we will not tolerate harassment in the form of racial, homosexual or transgender vilification.

3: Mediation

Homeswest accepts that neighbourhood disruption is a contentious area of dispute and when resulting in anti-social behaviour, can lead to eviction. It is important therefore, for the neighbourhood, as a community, to attempt to resolve disputes so as to minimise the need for Homeswest to intervene at a level, which puts a tenancy at risk.

In the first instance it is the role of the Accommodation Manager to encourage and facilitate the neighbour to raise matters of concern directly with the Homeswest tenant. Often, however, a party outside of the dispute process will be needed to provide the possibility of mediated resolution to the dispute.

Mediation services are provided by:

- Gosnells Family/Neighbourhood Mediation Service
Phone: 9398 1455
- Bunbury Community Legal Centre (South West Region)
Phone: (09) 97 913 206.
- Aboriginal Alternative Dispute Resolution Service*
Phone: 9221 4599
*This service offers a mediation and negotiation service that is run by Aboriginal staff. The service can help when there is:
 - Feuding.
 - Trouble with Police or Homeswest or Aboriginal Agencies.
 - Serious assaults against the person or their family.
 - Threats made that don't allow the person and their family to settle down.
 - Damage caused to the person's house and other property that is creating other problems.

Appendix 1

Prepared by: Michelle Burgermeister, Tenants Advice Service.

Quick tips: How to succeed as a tenant.

PROTECT YOURSELF

- Read and understand everything you sign – especially the lease or tenancy agreement, as this is a legal document that could be difficult to get out of.
- In the tenancy agreement, look out for things like additional costs to you, numbers of people allowed in the property, you're your are allowed to fix or change on the property, responsibility for maintaining garden, whether it is for a set period (fixed term) or on-going (periodic).
- When you are leaving the premises keep an out for the Bond Dispersal Form, which are you required to sign to get the bond returned to you. Don't sign a blank one and if you don't agree with the owner getting some of it, let the court sort it out.
- Make sure all promises about fixing the house are written into the tenancy agreement before you move in.
- Always pay the rent, that way you will avoid having your agreement breached and giving them cause to kick you out
- Don't withhold rent to get owner to do what they are supposed to do – there are other ways to do this.
- Remember, a tenant can also take an owner to court for not meeting their obligations in the tenancy agreement or the Residential Tenancies Act. Unfortunately, tenants don't realise this and owners don't usually let them know they have this right too!

ORGANISE YOURSELF

- Keep all your tenancy records and keep them in a safe place eg your receipts, letters and tenancy agreement.
- If you receive any notices or letters that you do not understand get information or advice from someone who does – like TAS – before you act. Many people misunderstand what is required of them or panic, and don't realise that they have rights.
- Know who you can ask for expert advice and information on tenancy. Whilst lots of people think they know, many people get it wrong. Try TAS helpline:

COMMUNICATING WITH OWNERS AND OR AGENTS

- Real Estate agents are a different breed to owners who do not have agent and who you deal directly with. There are advantages and disadvantages of both. However, if a real estate agent or business is being misleading or unfair you can complain about them to the licensing board – REBA –. (Not REIWA who are a kind of union for real estate agents!). However you can complain about both to DOCEP.
- When owners won't repair things that they will, put the request in writing explaining what needs to be repaired and when you want it fixed by (say 2 weeks). You then have good grounds to have the courts make them fix it, will they don't do it by when requested.
- Best way to get the most out of owners and real estate agents is to always be polite and firm. Yelling at them will achieve little. Get even instead. There are other ways of getting owners to do the right thing.
- Always put all requests or conversations – especially promises - in writing. If the owner doesn't do it, write a letter saying what the conversation and agreements were. Keep a copy for yourself. These will be useful as evidence should you end up in Court to get the matter fixed.
- Be nice to your neighbours – you never know when they may be able to help you. If they are being unreasonable, bullying or rude, try ignoring them. To react will only feed their bad behaviour. If neighbours are still a problem, get advice on what you can do, *before* you tell them off or deal with it yourself as there may be some other options. For instance may be you could request the owner to do something (if they also own your place) perhaps get in a mediator, or sometimes it may be necessary to get a misconduct order controlling what they are or are not allowed to do

BECOME INFORMED

- Learn about your tenancy rights and responsibilities. These mostly come from the Residential Tenancy Act. When you know what these are, it makes it more difficult for owners and agents to bully you.
- If you receive an order to attend Court – always go. Often owners take matters to Court to have the magistrate decide. If you don't go, they will not hear your side of the story and the owner gets their own way! When tenants tell their side of the story they often win! And court is not that scary. With a bit of information or with someone else to help, it can be OK.
- Note: **Rights** are what you are entitled to. Most rights are spelled out in law, but not all. **Responsibilities** are what you are obliged to do that supports another persons right. If you don't fulfil your responsibilities, often someone else's rights are taken away. When you take your rights and responsibility seriously, it means you are more in-control of your life and ultimately you have lots more freedom!

LIST OF CONTACTS:

TAS - Tenants Advice Line: 9221 0088

DOCEP – Dept of Consumer Employment and Protection: 1300 304054

REBA – Real Estate & Business Agents licensing board: