



STANDING COMMITTEE  
ON  
10 AUG 2009  
FAMILY, COMMUNITY,  
HOUSING & YOUTH

Equal Opportunity Commission

**Submission No: 6**

**Date Received: 10/8/09**

Our Ref: EOP 09/0108  
Enquiries: Diana MacTiernan

A.O.C.

The Committee Secretary  
Inquiry into Homelessness Legislation  
PO Box 6021  
Parliament House  
CANBERRA ACT 2600

Dear Sir/Madam

Submission to Inquiry into House of Representative Homelessness Legislation by Western Australian Commissioner for Equal Opportunity

In early 2008 I authorised an Inquiry under Section 80 of the *Equal Opportunity Act 1984 (WA) (EOA)* into the experiences of Aboriginal and Culturally and Linguistically Diverse (CaLD) people in the private housing rental market. The Inquiry was prompted by concerns that these groups are unfairly treated, due to their racial characteristics, when they attempt to secure and maintain accommodation, and consequently their increased likelihood of homelessness. The report of this Inquiry is entitled "Accommodating Everyone".

The concern about less favourable treatment has been highlighted over the last five years because of the economic boom experienced in Western Australia which has prompted a rapid influx of workers and their families to the state. This influx put significant pressure on the available housing for rent, as well as for purchase. These concerns for Aboriginal people were also flagged in this Commission's 2003 Inquiry into Public Housing for Aboriginal people (Finding A Place) as many people had informed us of their adverse experiences in both sectors of the rental housing market, which frequently resulted in homelessness.

Very few formal complaints of race discrimination in the private housing rental market have been received by the EOC or other similar jurisdictions in Australia. The legal definitions of both direct and indirect discrimination on the ground of race and the difficulties of proving a case of either form of discrimination in the area of accommodation are described, as well as the relevant case law. The Inquiry was made aware that Aboriginal and CaLD people are also reluctant to use other statutory forms of remedy for housing rental issues, such as the Magistrates Courts for residential tenancy matters, and the reasons for this are explored. Section 80 of the *EOA*, provides me with the power to undertake an inquiry when I consider there is a systemic discrimination issue which requires investigation.

## Summary of Inquiries

The more recent Inquiry reported that an overview of the housing rental market in Western Australia shows a decline in funding for public housing, which has traditionally catered for low income and special needs groups, and this has increased the market share of the private housing rental sector over the last ten years. Reference was made to the current review of the state's *Residential Tenancy Act 1987* which regulates the rights and responsibilities of tenants and landlords in Western Australia. The detailed study by the Australian Housing and Urban Institute into the workings of the real estate industry in three eastern Australian states, and its impact on low income earners, was examined in an attempt to understand the market from the perspective of owners and agents and the Western Australian experience appears to be similar.

The submissions to the 2008 Inquiry included first hand descriptions of the private rental experiences of Aboriginal and CaLD people which are often supported by workers from community groups and housing advocates who accompany applicants to the viewing of rental accommodation. The examples included:

- Aboriginal people being invited by a real estate agent during a telephone contact to view a property which is available for rental. On arrival the agent advises that the property is no longer available, however it is clear later the same day that the property is still available.
- African people arrive at a 'home open' and are waved away by the real estate agent at the same time as a Caucasian family is admitted to view the property.
- An Aboriginal woman visits a real estate agency and is offered no assistance with advertised vacancies for the type of accommodation she seeks. Her non-Aboriginal partner visits the same office the next day and is given every encouragement by the same member of staff to view a variety of available vacancies which meet the same specifications as those requested by his partner the day before.
- At a 'home open' attended by a community housing worker, it was noted that the real estate agent in attendance held on to the application forms and did not make them available to people of Asian appearance or a woman who wore a burqa.
- A property manager advised a home owner that if he didn't want 'dogs or Aboriginals' in the rental property then they could make that a part of the conditions.

A review of the available literature on race discrimination in the private housing rental market in Australia reveals evidence of access barriers to the market for ethnic minority groups from the perspectives of both the rental applicants and property managers in Australia. The literature review also points to evidence of race discrimination from paired testing studies in the United States of America. The paired testing studies show that persons from different racial groups who make identical rental inquiries of property managers receive markedly different treatment.

In addition to the claims of racial discrimination described in the submissions, other concerns were raised, particularly in regard to women with children who are escaping domestic violence. Section 56 of the *Residential Tenancies Act 1987* (WA) prohibits discrimination against tenants with children,

however the housing advocates are of the view that the remedies for this, of contacting the responsible Government agency or lodging a complaint in the EOC, can take too long to provide the immediate assistance with accommodation which is needed.

Concern was expressed in the submissions that many private landlords who manage their properties are less likely to be aware of their responsibilities under the RT Act or the requirements of other state and federal legislation on such matters as discrimination. Abuse and threats towards tenants are described as not uncommon, and are often directed at tenants for having the temerity to seek advice and assistance. Examples of unlawful actions by owners include giving incorrect notice when terminating a periodic lease; applying unlawful rent increases i.e. less than six months since the previous increase or not giving proper notice of an increase; and the unlawful disposal of a tenant's possessions.

Other forms of harassment by owners and real estate agents include agents threatening to 'blacklist' tenants should they breach the *Residential Tenancies Act 1987*; 'blacklisting' through an entry on a residential tenancy database if a tenant attempts to enforce their rights by breaching the agent and taking the matter to court; owners gaining access to a property when a tenant is not present; and threatening eviction if tenants do not comply with unreasonable requests.

As the current use of tenancy databases has the potential to actively exclude people from the private rental market, the 2008 Inquiry included a specific chapter on Tenancy Databases which was done by Katherine Bryant, a student of Murdoch University.

Where a residential tenancy database is operated properly it can be a useful tool for owners and agents to use in their assessment of applicants for a tenancy. However the findings of the Federal Privacy Commissioner in response to a complaint about one such database confirms there are numerous ways in which unfair and discriminatory practices have been used by database operators. These include not advising tenants that they have been listed and charging excessive amounts for them to check their records; having no process to ensure the accuracy of the data and whether it is up to date; and a failure to have appropriate dispute resolution procedures in place. Agents can access databases which may make reference to a person's race or where inaccurate or unfair information is published by an agent on the basis of their racist perceptions.

Queensland and New South Wales have implemented legislation which requires only appropriate and timely entries to be made on the databases. The changes to the relevant Queensland legislation, which took effect in 2003, include that a tenant (but not others resident in a dwelling) can be listed on a tenancy database where an amount owing to the owner is owed under a conciliation or Tribunal order, or they have been served with a breach notice, or where the dwelling has been abandoned. A tenant can also be listed for objectionable behaviour or repeated breaches where the Tribunal has terminated the tenancy for those reasons. The person intending to lodge the listing is obliged to advise the tenant of the proposed listing before it can be accepted by the database.

### **Connection to Homelessness**

The 2003 Finding a Place Report made a number of findings where it deemed that homelessness was a direct result of policy and or practice or it was not being dealt with effectively.

In "Finding a Place Inquiry", it was found that the practice of the state housing authority at that time was not to deem a family in need of accommodation if they resided with another family. It also found in many cases that Aboriginal tenants advised they had simply accepted the accommodation that was on offer, irrespective of its state, so as not to remain homeless.

This Commission has developed a working relationship with the Department of Housing to ensure the implementation of the 165 recommendations made in the Inquiry. Despite the positive developments in the changes to policies and practices, there is an increasing list of applicants for public housing which is currently around 20,000. 3,000 of these are categorised as priority listed and it is estimated that a significant proportion of these are in fact without any permanent residence, and therefore effectively homeless.

The 2008 Inquiry "Accommodating Everyone" did not extrapolate that the situations which were presented actually resulted in homelessness, there was very strong inference however in both inquiries that there is a prevalence of at least secondary and tertiary homelessness which is exacerbated by the practices and the lack of availability of stock in both the private and public housing markets.

It would not seem unreasonable to surmise that given both Inquiries have focussed on those who have sought to find a stable home through the rental market, this is their only viable option given their income. Home ownership, even through supported shared equity schemes is not a practical alternative. A submission received in 2008 by an Indigenous support worker in a regional area stated that in fact even the private rental market was not a viable option for his clients as the rates were far too high.

#### **Relevant Recommendations**

The 2008 Inquiry made a range of recommendations to address the issues raised in the Inquiry. I would see the following recommendations as being relevant to the Terms of Reference of your Inquiry, although some of them relate to State government agencies and legislation.

#### **Recommendation 1**

That training in equal opportunity law be a compulsory component of licensing requirements for those operating in the private rental housing market; with equal opportunity law also being incorporated as a compulsory module in training for property managers.

#### **Recommendation 2**

That the Equal Opportunity Commission work with the Department of Commerce (formerly DOCEP) to develop equal opportunity law guidelines for owners who operate in the residential tenancy market.

#### **Recommendation 3**

That residential tenancy databases in WA be regulated to achieve consistency with the Queensland legislation which requires only appropriate and timely entries to be made on the databases.

#### **Recommendation 4**

That the Western Australian Government promote the need for nationally consistent legislation governing tenancy databases and ensure that the legislation addresses the anti discrimination concerns identified in this Report.

**Recommendation 5**

That the Western Australian and Australian Governments provide increased funding for community groups to support CaLD and Aboriginal people to access and maintain a tenancy.

**Recommendation 6**

That the Western Australian and Australian Governments provide funding to community groups for interpreters to assist those without good English skills to fully understand tenancy contracts and property condition reports.

**Recommendation 8**

That the Australian Government be encouraged to provide the option of accommodation similar to migrant hostels for a minimum period of twelve months from the date of arrival so that recent humanitarian arrivals are able to acquire a better understanding of their new country.

**Recommendation 13**

That the Western Australian Government amend the *Residential Tenancies Act 1987* to address the power imbalance between tenants and owners, in particular:

- Prohibiting the contracting out of minimum standards in tenancy agreements;
- Prohibiting the charging of option fees by agents;
- Property condition reports to be on prescribed forms;
- Addressing the incidence of excessive rent increases;
- Implementing time limits for the carrying out of repairs; and
- An owner's right of entry to be reviewed, particularly with reference to a tenant's right to quiet enjoyment of a property.


**Recommendation 15**

That the Western Australian and Australian Governments investigate the need to provide more public housing suitable for larger families.

Note a similar recommendation was made in the 2003 Report.

I have included a full copy of the "Accommodating Everyone" Report for your reference and please feel free to contact me, Kathy Digwood or Diana MacTiernan on [redacted] or [redacted] should you seek further clarification about the reports and or recommendations.

Yours sincerely

  
Yvonne Henderson  
**COMMISSIONER FOR EQUAL OPPORTUNIT**

- 7 AUG 2009

