Accommodating Everyone

An inquiry into whether persons from culturally and linguistically diverse backgrounds and Aboriginal people are being discriminated against on the basis of their race either directly or indirectly in the private housing rental market

Equal Opportunity Commission

ISBN 978-0-9803497-2-6

Equal Opportunity Commission

GOVERNMENT OF WESTERN AUSTRALIA

Equal Opportunity Commission

June 2009

The Hon C Porter
Attorney General
29th floor, Allendale Square
77 St Georges Terrace
PERTH WA 6000

Dear Attorney,

Under Section 80 of the Equal Opportunity Act 1984, the Equal Opportunity Commissioner is empowered to

'For the purpose of eliminating discrimination...carry out investigations, research and enquiries relating to discrimination...rendered unlawful under this Act.'

In June 2008 I commenced an investigation into whether persons from culturally and linguistically diverse backgrounds and Aboriginal people are being discriminated against on the basis of their race, either directly or indirectly, in the private housing rental market, thereafter referred to as the Inquiry.

I now have pleasure in presenting the results of that Inquiry titled 'Accommodating Everyone'.

Yours sincerely

Yvonne Henderson
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Abbreviations

Abbreviation	Word / phrase in full
ABS	Australian Bureau of Statistics
AGWA	Auditor General for Western Australia
AHURI	Australian Housing and Urban Research Institute
CaLD	Culturally and linguistically diverse
CRA	Commonwealth Rent Assistance
CSHA	Commonwealth State Housing Agreement
DCD	Western Australia. Department of Community Development
DHW	Western Australia. Department of Housing and Works
DIAC	Australia. Department of Immigration and Citizenship
DOCEP	Western Australia. Department of Consumer and Employment Protection
EOA	Equal Opportunity Act (WA), 1984
EOC	Western Australia. Equal Opportunity Commission
FaHCSIA	Australia. Department of Families, Housing, Community Services and Indigenous Affairs
HCCCaLD	Housing Crisis Committee for Culturally and Linguistically Diverse Communities
LAS	Landlords Advisory Service
MCCA	Australia. Ministerial Council on Consumer Affairs
MIDLAS	Midland Information, Debt and Legal Advisory Services
MSCWA	Multicultural Services Centre of Western Australia
NRAS	National Rental Affordability Scheme
NTD	National Tenancy Database
OMI	Western Australia. Office of Multicultural Interests
PAMDA (Qld), 2000	Property Agents and Motor Dealers Act (Qld), 2000
QSGBC	Queensland Special Government Backbench Committee
REBA	Real Estate and Business Agents Supervisory Board
REIA	Real Estate Institute of Australia
REIWA	Real Estate Institute of Western Australia
RTA	Queensland. Residential Tenancy Authority
RT Act	Residential Tenancy Act (WA), 1987
RTD	Residential Tenancy Database
SACES	South Australian Centre for Economic Studies
SCAG	Australia. Standing Committee of Attorneys General
TAS	Tenants Advisory Service (WA)
TICA	Tenancy Information Centre Australasia
TRA	Trade Reference Australia

Acknowledgments

The Equal Opportunity Commission (EOC) would like to thank the following groups who gave their assistance to this Inquiry by way of submissions or facilitating the collection of case studies and individuals' experiences in the private housing rental market.

- Association for Services to Torture and Trauma Survivors Inc
- Broome Circle
- Bunbury Community Legal Centre
- Domestic Violence Legal Workers Network
- Ethnic Communities Council of Western Australia
- Ethnic Disability Advocacy Centre
- Geraldton Community Legal Centre
- Gosnells Community Legal Centre
- Housing Crisis Committee for Culturally and Linguistically Diverse Communities (HCCCaLD)
- Koolkuna
- Multicultural Services Centre of Western Australia Inc
- Northern Suburbs Community Legal Centre
- Office of Aboriginal Health, Department of Health
- Strong Families Coordinator (Great Southern)
- Sussex Street Community Law Service Inc
- Tenants Advice Service –Including input from: Rural Community Legal Centre, Northam; Pilbara Community Legal Centre, Karratha; Kimberley Community legal Centre; Goldfields Community Legal Centre; Northern Suburbs Community Legal Centre, Mirrabooka; Midland Information, Debt and Legal Advocacy Services (MIDLAS); Gosnells Community Legal Centre; ASWA.
- Welfare Rights and Advocacy Service

Research assistance was provided by Malcolm Allbrook in the preparation of the Literature Review and Katherine Bryant, a student of Murdoch University, who prepared the research paper: Diverse People, Diverse Needs: RTDs and Discrimination in WA which forms the basis of Chapter 5 of this Report. The Office of Multicultural Interests provided financial assistance for venue hire and translators and interpreters to facilitate the gathering of individuals' stories by community organisations.

EOC gratefully acknowledges the time given to this Inquiry by staff involved in the Reference Committee, chaired by Diana MacTiernan, and the writing of the Report:

- Kathy Digwood
- Pauline Grimley
- Sarah Kemp
- Allan Macdonald
- Zarin Milambo
- Marc Newhouse

Executive summary

This Inquiry into the experiences of Aboriginal and Culturally and Linguistically Diverse (CaLD) people in the private housing rental market was prompted by concerns that these groups are unfairly treated, due to their racial characteristics, when they attempt to secure and maintain accommodation. 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.

In response to these concerns, the Equal Opportunity Commission (EOC) established Terms of Reference for the Inquiry to investigate the allegations of race discrimination and to look at possible causes of, and remedies for, any evidence of unfairness in the private housing rental market. The EOC has gathered submissions from both the affected individuals and the community groups and housing advocates who provide assistance to low income people seeking to find and maintain private housing rental accommodation. Submissions and comments were also invited from real estate representatives and the Real Estate Institute of Western Australia, but no written response was received.

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 is made to the current review of the Residential Tenancy Act 1987 which regulates the rights and responsibilities of tenants and landlords in Western Australia. A 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, is discussed and the Western Australian experience appears to be similar.

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.

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.

Residential tenancy databases are used by real estate agents to check the prior rental history of prospective tenants. Research into this largely unregulated tool reveals that the databases may contain inaccurate or unfair information which can be particularly detrimental to ethnic minority groups who are less likely to have the necessary skills to access and correct the information that may be recorded about them. An investigation by the Federal Privacy Commissioner, in response to a complaint about one such database, recommended substantial changes to the way the databases operate. While some Australian states have introduced the necessary legislative change, this has not been done in Western Australia.

The Inquiry concludes that there is substantial evidence of racial discrimination in the private housing rental market and this is discussed within the Inquiry's Terms of Reference. The possible causes of race based discrimination are identified, together with proposed remedies to ameliorate the numerous examples of unfair treatment which have been found to exist.

List of recommendations

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 7

That REIWA be encouraged to invite representatives of community groups which assist prospective tenants, to meet with their members and facilitate the exchange of information and views, to the benefit of both groups.

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 9

That the Department of Commerce (formerly DOCEP) investigate ways to improve the handling of tenants' complaints.

Recommendation 10

That the Western Australian Government investigates an alternative dispute resolution mechanism for tenancy disputes which is focussed on finding ways to maintain a tenancy; and consider redirecting part of the funding from the interest on tenants' bond to assist in maintaining such an organisation.

Recommendation 11

That the *Equal Opportunity Act 1984* be amended as recommended in the 2007 Review of the *Equal Opportunity Act 1984* to develop a simpler complaint system which could accommodate complaints being made orally and transcribed by EOC staff, where complainants need assistance, as permitted in the NSW *Anti-Discrimination Act 1977*.

Recommendation 12

As recommended in the 2007 Review of the *Equal Opportunity Act 1984*, the proportionality test contained within the definition of indirect discrimination should be removed and the respondent should be the party required to prove that the condition or requirement which is the subject of the complaint, is reasonable.

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 14

That the Department of Housing ensure that the policy of not requiring Aboriginal people to attempt access to the private housing rental market prior to receiving priority assistance is applied in all metropolitan and regional offices.

Recommendation 15

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

Chapter 1: Introduction

The Commissioner for Equal Opportunity is appointed to administer the Equal Opportunity Act 1984 (WA) (EOA). The first object of the EOA is set out in Section 3 as:

> *...to eliminate, so far as is possible, discrimination against persons on the ground of sex, marital status or pregnancy, family responsibility or family status, sexual orientation, race, religious or political conviction, impairment, age or, in certain cases, gender history in the areas of work, accommodation, education, the provision of goods, facilities and services and the activities of clubs.*

In the general operation of the Commission this object is met through the use of the investigation and conciliation powers for complaints and also through the community education program. The Commissioner however has a broader power under section 80 of the Act to inquire into perceived areas of discrimination to ascertain whether there is indeed unlawful discrimination occurring, what its causes may be and what remedies may be available to redress these.

Section 80 of the EOA provides the Commissioner with the power to:

- carry out investigations, research or inquiries relating to discrimination;
- acquire and disseminate knowledge on all matters relating to the elimination of discrimination;
- arrange and co-ordinate consultations, inquiries, discussions, seminars and conferences;
- consult with government, business, industrial and community groups in order to ascertain means of improving services and conditions affecting a person or persons who are subject to discrimination on the grounds referred to in the EOA; and
- publish any written reports compiled in the exercise of the Commissioner's powers.

In late 2007 the Commissioner received a submission from a group known as the Housing Crisis Committee for Culturally and Linguistically Diverse Communities (HCCCaLD) comprising organisations which deal on a daily basis with finding accommodation for recent migrants and humanitarian entrants. This submission identified a range of problems being encountered by clients of the representative organisations in trying to access the private rental market or cope with difficult experiences as tenants. The case studies enclosed with the submission described the experiences of recent arrivals from Africa who were refused the opportunity to view properties which were advertised as available for rent, apparently because of their appearance. Those who were able to secure accommodation continued to be confronted with hardship as described at page three of the HCCCaLD submission:

> *"As our clients become more and more desperate for housing they are forced to accept substandard properties where plumbing, electrical and structural problems predominate. Often the existing problems create deterioration to the property and it is evident from the case studies that many of our clients pay for the owners' lack of maintenance from their bond money at the end of the tenancy."*

The submission was endorsed by the following agencies:

- Edmund Rice Centre Mirrabooka
- Ishar Multicultural Women's Health Service
- Multicultural Service Centre of Western Australia Inc
- Centrecare
- Ogaden Community
- Ethnic Disability Advocacy Centre
- Metropolitan Migrant Resource Centre of Western Australia
- Northern Suburbs Community Legal Centre
- Representatives of the Girrawheen Baptist Church and the Scarborough Anglican Church.

The Commissioner was also mindful of three specific recommendations from the Report of a previous Section 80 Inquiry entitled *Finding a Place* (EOC 2004) which related to race discrimination issues for Aboriginal people in the private rental market. The three recommendations are as follows:

- Recommendation 52. The Inquiry noted that many submissions referred to the existence of racist attitudes in the private rental market and the effect this has on the capacity of Aboriginal prospective tenants to gain housing. The Inquiry recommends that DHW conduct training sessions to raise awareness of this.
- Recommendation 53. In view of the frequency with which Aboriginal people report race based discrimination in accessing the private housing rental market, the DHW to cease the practice of requiring that Aboriginal prospective tenants make multiple attempts to access the private rental market before the DHW will list these tenants for priority housing.
- Recommendation 54. That all DHW officers, including regional officers, be made aware of and required to follow the new policy of not including a requirement to provide evidence of trying to obtain private rental housing before being considered for priority assistance.

These two sources contained the common issue of reported race discrimination for both CaLD and Aboriginal people trying to access the private housing rental market or their experiences within it. The Commissioner therefore determined to exercise her powers under Section 80 of the EOA, and to conduct an Inquiry into whether persons from culturally and linguistically diverse backgrounds (CaLD) and Aboriginal people are discriminated against on the basis of their race either directly or indirectly in the private housing rental market. The intention of the Inquiry was also to examine the possible causes and appropriate remedies for addressing any perceived race-based discrimination identified in the private housing rental industry. The Commissioner was concerned that the Inquiry needed to include liaison and consultation with the private housing rental industry where appropriate.

Terms of reference

An internal committee of officers of the Equal Opportunity Commission was established to oversee the direction and conduct of the Inquiry. One of the first tasks was to establish the Terms of Reference. An initial draft of the Terms of Reference was sent for comment to a wide range of organisations including community legal centres, advocacy centres, peak refugee, Aboriginal and not for profit organisations, various government departments, and housing industry bodies including the Real Estate Institute of Western Australia.

Following consideration of the twelve written responses received, the Terms of Reference for the Inquiry were established as:

Whether persons from Culturally and Linguistically Diverse Backgrounds (CaLD) and Aboriginal people are discriminated against on the basis of their race either directly or indirectly in the private housing rental market;

The experiences of people from CaLD backgrounds and Aboriginal people who believe they have suffered less favourable treatment in the private housing rental market based on their race;

The possible causes and appropriate remedies for addressing race based discrimination in the private housing rental industry.

Terminology

The term CaLD is defined on the website of the Western Australian Office of Multicultural Interests (OMI) in the following way:

> *Culturally and linguistically diverse refers to the wide range of cultural groups and individuals that make up the Australian population. It includes groups and individuals who differ according to religion, race, language and ethnicity except those whose ancestry is Anglo-Saxon, Anglo Celtic, Aboriginal or Torres Strait Islander. For ease, CaLD is commonly used as an abbreviation for culturally and linguistically diverse. (OMI 2009)*

This broad term was adopted for the Inquiry in consideration of the HCCCaLD group which had approached the Commission with their concerns about issues for their client group, however it should be noted that the case studies and submissions received by this Inquiry regarding CaLD people referred almost exclusively to recent refugees and humanitarian entrants from different parts of Africa. Throughout this report there are alternate references such as 'people from non-English speaking backgrounds', 'ethnic minority groups' and 'migrants' as the report is sourced from a range of research and external references which may use an alternate phrase. The report however has endeavoured to ensure that although the terminology may be different, the reference is to the same category of people intended to be covered by the Terms of Reference.

The Commission as a matter of practice uses the terms 'Aboriginal people' and 'Aborigine' to refer to those who identify with the traditional owners of the land. For the purposes of this investigation, the term 'Aboriginal' includes those of Torres Strait Islander descent. When referring to external references such as the Australian Bureau of Statistics, the term 'Indigenous' is used.

Conduct of the Inquiry

To ensure that the potential diversity of experiences encountered by Aboriginal and CaLD people would be appropriately considered, the EOC extended the scope of the inquiry to examine intersectional forms of racial discrimination. Specifically this was to include experiences of racial discrimination that may occur at the intersection of one, or a number of other additional grounds identified within the EOA, such as 'race' and 'sex', or 'race' and 'sex' and 'impairment', 'race' and 'marital status'.

The Commission was keen to invite submissions not only from interested individuals, but also from the range of key organisations across the not for profit sector which dealt with housing issues, government departments and the real estate industry, all of which were contacted in the development of the Terms of Reference for the Inquiry. Separate submission forms were developed for the three different types of submissions the Inquiry anticipated it would receive, namely from individuals, organisations and real estate representatives. An information package was also developed and made available on the EOC website, together with copies of the submission forms.

The information package (see Appendix A) includes a description of the reasons for establishing the Inquiry, the terms of reference and notes that the Inquiry could not assist with resolving individual cases, although individual complaints continue to be investigated by the Commissioner in the normal manner. In the section about making a submission, the EOC indicates that it recognises that individuals may need assistance in lodging submissions and therefore called on key ethnic minority and Aboriginal organisations to hold community forums with their clients who had were seeking, or had secured, accommodation in the private housing rental market. To assist organisations with gathering information, the EOC provided information briefings in metropolitan and regional areas and confirmed that limited funds were available to assist the community organizations. These funds were provided by a grant from the Office of Multicultural Interests and could be used for the purposes of venue hire and the services of interpreters and translators.

Separate information briefing sessions for the community organisations and real estate industry representatives were held in Albany, Bunbury, Geraldton, Gosnells, Kalgoorlie, Mandurah, Mirrabooka, Perth and Port Hedland.

The EOC Committee overseeing the Inquiry also determined that dialogue with the key housing industry bodies, the Real Estate Institute of Western Australia (REIWA) and the Real Estate and Business Agents Supervisory Board (REBA), was a necessary component of the Inquiry. It was anticipated that these bodies would be a conduit to individual agents who deal in the rental property market thus providing these bodies with an opportunity to provide their perspective of issues in the private rental market. A member of the Committee met directly with representatives of both bodies to provide an overview of the Inquiry and the process being undertaken.

The Committee became aware that whilst more than twenty real estate industry representatives had attended the information briefing sessions, at the time of close of submissions there were no submissions from the industry. Follow up with REIWA was made by EOC to encourage their input. As a means to seek the information in an alternate manner, the EOC Committee extended an invitation through REIWA to conduct a focus group session, including an assurance of confidentiality in the process. REIWA replied that their members declined this approach, but offered to provide a response to the issues raised in correspondence from the Commissioner. No correspondence has been received from REIWA.

To provide information about the private housing rental market, the Inquiry has relied on publicly available information and statistics as well as research from across Australia which would seem to be relevant to the WA context. This information, as well as a general overview of the decline in public sector housing which has traditionally provided housing for low income earners and those with special needs, is contained in Chapter 2. The following chapter describes the legal definition of racial discrimination, which may be either direct or indirect, and gives examples of the available case law. Chapter 4, a literature review of research on the subject of racial discrimination in the private housing rental market in Australia and overseas, was prepared by a consultant, Malcolm Allbrook. Chapter 5 is based on research undertaken by a student of Murdoch University, Katherine Bryant, on the subject of residential tenancy databases which are used extensively in the real estate industry. These databases are unregulated in Western Australia, and as described in that chapter, can contain information about tenants which is inappropriate or wrong.

Chapter 6 summarises the information received in the submissions to the Inquiry from organisations and individuals on their experiences with the private housing rental market. Chapter 7 addresses the Inquiry's Terms of Reference in the light of information gathered by the EOC and makes recommendations to address the issue of race discrimination and the difficulties experienced by Aboriginal and CaLD people within the private housing rental market.

Chapter 2: The housing rental market

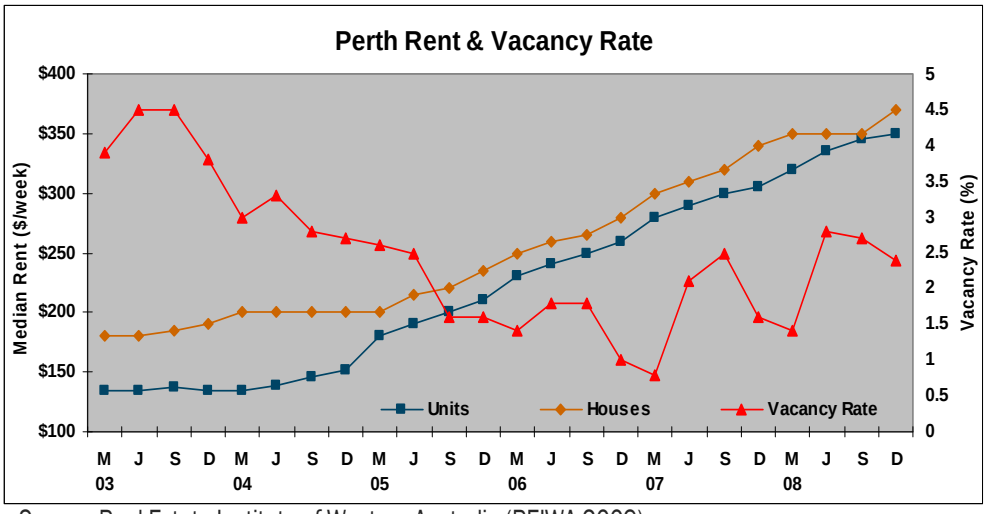
The private housing rental market is a significant source of accommodation in Western Australia, second only to home ownership which dominates the market with some 70% of the housing stock. In contrast, the public rental sector in this state now provides just 4.2% of housing stock, a decrease from 5% in 1996 (Auditor General for Western Australia (AGWA) 2008). This trend is obvious throughout Australia over the ten year period 1994-95 to 2003-2004, showing that the proportion of Australian households renting from public authorities has decreased slightly with the proportion in the private housing rental market increasing from 18% to 21% (Australian Bureau of Statistics 2007). This chapter gives an overview of the range of government funding for housing and the trend away from public housing rental; a description of the private housing rental market as it involves low-income earners and particularly CaLD and Aboriginal people; and the relevant legislation which regulates the real estate industry and the relationship between tenants and owners.

Much of the description of the operation of the private rental housing market is taken from a study carried out by the Australian Housing and Urban Research Institute involving property managers in Queensland, New South Wales and South Australia (Short et al 2008). As noted in this chapter, this Inquiry made a number of approaches to real estate agents in Western Australia through and including the Real Estate Institute of Western Australia (REIWA) however no submissions were made to the Inquiry by industry representatives.

The increased demand for housing

A period of high demand for accommodation has been experienced in Western Australia since 2002, fuelled largely by a boom in the resources and mining sectors, which has caused a significant influx of workers and their families to the state. According to the Department of Immigration and Citizenship the state's population increased by 57 128 in 2007 – 2008, a growth rate of 2.7%, the highest population growth rate for all Australian states and territories (DIAC 2007). Of the 28,785 permanent additions to the population in that year, the Skill Stream accounted for 58.8%, the Family Stream 19.6%, New Zealand citizens 15.5% and the Humanitarian Program 5.4%. The substantial increase in the number of people looking for accommodation has affected low-income earners, including many Aboriginal and CaLD families, by accentuating the difficulties they face as minority ethnic groups. Owners and property managers are able to choose from a long list of applicants for any available rental property in the private market. This has inevitably resulted in those deemed to be more 'desirable' tenants being successful in securing the available accommodation ahead of the 'less desirable'. The 'less desirable' include those less able to compete financially or lacking the necessary references or rental history; particularly those in receipt of pensions or other government subsidies, young people, single parents and those with large families.

The following graph showing Perth rental and vacancy rates in the private housing market for the period June 2003 to December 2008 illustrates the dramatic decrease in vacancy rates accompanied by very steep rises in the median rents charged for the properties. The vacancy rate dropped from 4.5% in June 2003 to less than 1% by March 2007 while the median rents per week increased from approximately $175.00 per week for a house to $300.00 over the same period. Although the vacancy rate has since eased to just below 2.5% by December 2008, the median cost of both house and unit rental has continued to increase.



Source: Real Estate Institute of Western Australia (REIWA 2009).

The very low vacancy rates in the private housing rental market and the strong increases in the level of rents which are charged have particularly impacted on low-income earners, many of whom rely on fixed income from government allowances. Because the level of rent assistance available from the Commonwealth Government to some categories of low income earners is capped, the rapid increases in the cost of private sector rentals in Western Australia over the last few years, as shown in the table above, has meant that the level of rent assistance has fallen far short of making private rentals affordable for many low income earners (Short et al. 2008). The impact of the tight private housing rental market is particularly difficult for low-income earners at a time when the waiting periods for public housing are very long. For those not eligible for priority listing (which may take 18 months or more, depending on the type of accommodation required), the State Housing Authority confirmed on its website that as at November 2008, those on the wait list from April 2001 for a four or more bedroom house in the north central metropolitan area were currently being offered housing (DHW 2008). That is, they had been on the list for over seven and a half years. The shortest waiting period in the Perth metropolitan area was in Kwinana where a three year period applied for the same size of house.

Government assistance for housing

The Commonwealth Government provides funding assistance for housing in both the public and private sectors through a variety of programs. The main forms of assistance described here are through the Commonwealth State Housing Agreement and the rent assistance provided for those in the private housing rental market through Commonwealth Rent Assistance.

The public housing sector has traditionally been the provider of accommodation for those on low incomes and it is funded through the Commonwealth State Housing Agreement (CSHA) between the Commonwealth Government and all Australian states and territories. The CSHA is renegotiated every five years and provides funding for all social housing in Australia. The phrase 'social housing' includes the 88% of dwellings which are used for public housing programs with another 3% of dwellings providing public housing specifically for Indigenous people. A further 7% of the dwellings are utilised by community housing which is operated by a range of non-government organisations.

The remaining 2% is occupied by the Supported Accommodation Assistance Program which provides crisis accommodation for those at risk of homelessness, including victims of domestic violence (South Australian Centre for Economic Studies (SACES) 2008).

The public housing sector is attractive to those on low incomes because the determinant of rental rates is the level of household income of the tenants, with a ceiling of 25% of the household income to be spent on rent, rather than the market value of the property. However the three bedroom home, which is the most common residential structure in Australia and also the most common in the public housing sector, can be inadequate for many low income earners, and particularly for CaLD and Aboriginal people with extended families. Only 11% of the public housing stock in Western Australia has four or more bedrooms (SACES 2008, p.73).

As well as providing social housing, the Commonwealth State Housing Agreement contains assistance for home purchasing and for the private housing rental market. While all states and territories provide relief to low- income earners in various forms such as bond loans and rental grants, in Western Australia it is only repayable bond loans, on which no interest is charged, which are made available (SACES 2008). The State Housing Authority in Western Australia approves approximately 14,000 bond loans each year with the size of the loan calculated on the size of the household and with some consideration of the geographic area for which it is sought where a remote area may entail extra costs (Jacobs et al. 2005).

In a tight private rental market, however, the need to access a bond loan can be perceived in the real estate industry to indicate a low-income earner who may be a higher risk of defaulting on rent payments. A review of private rental support programs by the Australian Housing and Urban Research Institute in 2005 noted that

> *In Western Australia, real estate agents acknowledged participation in the bond loan scheme as a factor used to identify the most and least desirable applicants [...for a private housing rental property]. Discrimination can be based in a number of characteristics (for example, practitioners noted discrimination against indigenous families and those with a large number of children). Financial status is one of these factors and bond loans may be seen to indicate a lack of necessary funds to maintain the tenancy. In Western Australia, most application forms carry a direct question about whether an applicant is seeking bond assistance. (Jacobs et al. 2005, p.38)*

In addition to the Commonwealth State Housing Agreement, financial assistance is provided through Commonwealth Rent Assistance (CRA) to individuals and families in the private housing rental market and in community housing. CRA is a supplementary payment which is non-taxable and is available to pensioners, those in receipt of other forms of government allowances, and those in receipt of more than the base rate of the Family Tax Benefit Part A, where the recipient is paying above a certain threshold in rent. The Centrelink website (2009) confirms that the level of assistance is capped and the quantum is calculated with reference to such factors as the amount of rent paid by the applicant, whether the applicant is single or has a partner, the number of dependent children and whether the applicant is living in a share arrangement with other people.

The expenditure through Commonwealth Rent Assistance to those in the private market totalled $2,086 million in 2004-05 and represents the largest form of housing assistance outside of the Commonwealth State Housing Agreement. This contrasts with the 2004-05 expenditure in rent rebates of $1,353 million provided by the Commonwealth and states under CSHA programs (SACES 2008). Recent Federal Governments have increased funding for the Commonwealth Private Rental Assistance at the expense of the CSHA assistance to the State Housing Authorities. In a report entitled *Independent Audit of Government Contributions to Housing Assistance*, it is confirmed that that the real value of total Australian funding of CSHA schemes in 2004 – 05 was 11% lower than it had been in 1996 – 97. If this change is represented in the context of the increase in population growth, then the CSHA schemes have experienced a 19% decrease in per capita terms (SACES 2008). An increased proportion of those looking for accommodation is therefore needing to turn to the private sector.

Indigenous housing

As noted above, housing for Indigenous people is a component of the social housing provided through the Commonwealth State Housing Agreement.

Indigenous people in all states and territories have a far lower rate of home ownership than the 70% rate applying for the population generally. In Western Australia, 23.6% of Indigenous people were home owners or in the process of purchasing a home. Apart from the 9.1% of Indigenous people for whom housing tenure was 'other' or not stated, the remaining two thirds were in rental accommodation: 29.7% in public rental housing; 18.5% in Indigenous or mainstream community housing; and 19.2% in the private housing rental market (ABS 2008).

There are two forms of community housing for Indigenous people with a total of 34,442 such dwellings across Australia as at 30 June 2004. (Eringa 2008, p.12) This form of housing is provided through either the State Owned and Managed Indigenous Housing program or the Indigenous Community Housing program. The former of these programs is funded through the Commonwealth State Housing Agreement and managed by the respective state governments; the latter is a larger scheme which varies in its administrative arrangements depending on the funding source.

The majority of Indigenous people in Western Australia live in the major cities with the National Aboriginal and Torres Strait islander Social Survey figures showing that 70.6% live in major cities, 22% in regional areas with just 7.4% of the Indigenous population live in remote and very remote areas. A recent survey of remote housing found that this state has the largest number of remote and very remote Indigenous Housing Organisations with 34 providers servicing 121 communities with 2,261 houses. (Eringa 2008, p. 33)

Culturally and linguistically diverse (Cald) humanitarian entrants to Western Australia

The overwhelming majority of case studies submitted to this Inquiry involving CaLD people related to recent African entrants under humanitarian programs. Over the last six years, approximately 6,700 humanitarian entrants have settled in Western Australia with more than 70% of the group being from Africa. The main country of birth is the Sudan which has supplied over 30% of all humanitarian entrants. In 2007-2008, 1557 humanitarian permanent entrants arrived in this state, approximately two thirds as refugees and the balance under the other humanitarian programs. Of these new arrivals, 19.9% were born in Burma, 10.7% in Sudan and 9.1% in Iraq (DIAC, 2007). In a discussion paper on the needs of humanitarian entrants released by the Australian Government it was noted that

> *The African caseload generally has greater settlement needs than people from previous source regions, reflecting their experiences and circumstances prior to arriving in Australia. Some of these pre-migration experiences include higher levels of poverty, larger families, lower levels of education and English proficiency, lower levels of literacy in their own languages, higher incidence of health issues, longer periods spent in refugee camps, little experience of urban environments, and higher rates of torture and trauma.(DIAC 2006, p.7)*

Since 2002 – 03, almost 80% of the humanitarian entrants lacked proficiency in English, with just 5% assessed as having a 'very good' level of proficiency. The main language spoken was Arabic which applied to 21% of the entrants (DIAC 2007). Most humanitarian entrants arrive as part of a family group, with 39% belonging to a household of five to seven people and 14% to a household of eight or more people. A recent review of the state government services available to these entrants in Western Australia suggests that the level of support is not high or well delivered. The key findings of a report by the Auditor General for Western Australia to the state parliament in June 2008 entitled *Lost in Transition: State Services for Humanitarian Entrants* included:

- Humanitarian entrants still face difficulties in getting services because:
  - Agencies have not adequately addressed language and literacy obstacles and considered what is the most effective service delivery approach
  - The inflexible application of policies and criteria can prevent humanitarian entrants getting the most appropriate service
  - There is a lack of coordination between agencies in providing services to humanitarian entrants, making access to services more difficult.

(AGWA 2008, p. 5)

The Commonwealth Government provides assistance to the 50% of humanitarian entrants who are not sponsored by individuals or organisations for their initial six months through a contracted provider under the Integrated Humanitarian Settlement Strategy, and further services can be accessed for a more extended period. These entrants are all settled in the Perth metropolitan area where 93% of the humanitarian entrants who have arrived since 2002-03 are still located; the Stirling local government area housing approximately 42% with Canning and Wanneroo with a further 10% each (DIAC 2007).

As permanent residents, all humanitarian entrants are eligible for state government services such as housing, however the long waiting lists for public housing mean that the private housing rental market is the main option for accommodation in the short term. As the DHW data systems do not identify humanitarian entrants, the department has no statistics available on the number of these CaLD people who have been housed in the public sector (AGWA 2008).

Regulation of the real estate industry

While there is some regulation of the real estate industry in Western Australia, it should be noted that property owners can choose to lease their properties without the services of an agent, although both agents and owners are subject to the state legislation which governs the relationship between landlords and tenants which is described below. The real estate industry in Western Australia is regulated by the *Real Estate and Business Agents Act 1978* and the *Real Estate and Business Agents (General) Regulations* 1979. This framework, as with similar legislation throughout Australia, establishes the Real Estate and Business Agents Supervisory Board, regulates agents' trust accounts and provides for the licensing requirements and minimum standards for industry participants such as real estate agents and sales representatives.

As stated above, there is no requirement for a property owner to use a registered real estate agent for residential tenancy matters and no requirement for real estate agents to be members of the professional Institute in their respective state or territory. Some 68% of dwellings in the Australian private housing rental market are managed by real estate agents on behalf of property owners; and many that are managed by property owners will have been listed with real estate agencies for the process of selecting tenants, but not the ongoing management of a property (Short et al. 2008, p. 6).

In Western Australia, real estate agents are not required to be members of the Real Estate Institute of Western Australia (REIWA), however the REIWA website claims that they have close to 1000 member agencies which covers over 80% of the operating agents in this state. Consistent with its counterparts throughout Australia, and as required by the Real Estate and Business Agents Act 1978, REIWA publishes on its website a Code of Conduct which is largely concerned with the relationship between real estate agents and property owners, or 'principals'. The Code includes at point 5 that agents 'must not engage in harsh or unconscionable conduct' and at point 6 contains the requirement that real estate agents and their staff must comply with the provisions of 'the Act, this Code of Conduct, and other relevant statutes, rules and regulations where applicable to them'(REIWA 2008).

Each Australian state and territory has its own legislation to regulate the relationship between tenants and property owners. In Western Australia, the *Residential Tenancies Act 1987* (RT Act) is the primary legislation which regulates the rights and responsibilities of tenants and owners through residential tenancy agreements in both the private and public housing markets. Similar legislation exists in all other states and territories throughout Australia. Additional to the RT Act are the *Residential Tenancies Regulations 1989* (the Regulations) which also play an important role in defining the tenancy relationship. Those parts of the RT Act which have most impact on the people who are the subject of this Inquiry are briefly described here.

The RT Act details the rights and obligations of owners and tenants with regard to payments of rents and security bonds, the latter being equivalent to four weeks' rent. Schedule 1 of the RT Act confirms that bond monies are to be paid to the bond administrator or an authorized agent. It is prescribed that the weekly rent may be increased by the owner where 60 days' notice of the increase is given in writing and at least 6 months after the last increase, or commencement of the tenancy.

It also specifies the owner's rights where a tenancy has been abandoned and the circumstances in which a tenant's possessions, which have been left at the premises, may be disposed of by the owner or recovered by the former tenant.

Section 44 of the RT Act states that tenants shall have 'quiet enjoyment of the premises without interruption by the owner' and section 46 specifies that in most cases the owner must give not less than seven days' notice when intending to visit a property. Most importantly for families with children, section 56 prohibits the refusal to grant a tenancy on the ground that a child included in the tenancy, except where the premises also house the owner or the owner's agent in close proximity. The RT Act also prescribes that disputes involving the tenancy relationship be dealt with in the Magistrates Court where the amount of money involved is less than $10,000.

The Residential Tenancies Regulations 1989 require that a copy of Schedule 2 of the Regulations be given to a tenant by the owner of a rental property. This documentation describes for the tenant the rights and responsibilities of both owners and tenants as prescribed in the RT Act and the Regulations, and refers to the role of the Department of Consumer and Employment Protection (DOCEP) in giving advice and looking into complaints. It confirms that DOCEP's role is one of mediation and conciliation only and that disputes must be pursued through the Magistrates Court. Schedule 2 lays out the respective roles and responsibilities of tenants and owners with respect to repairs and cleanliness; the circumstances under which an owner may enter the premises; how rents may be paid and the process by which an owner may increase the rent; the requirements with respect to the payment of a security bond and its lodgment with the Bond Administrator or an authorized financial institution; and various rights and responsibilities involved in the ending of a tenancy.

Review of the Residential Tenancies Act 1987

A statutory review of the RT Act as required by section 90 was instituted in 2001 by the Department of Consumer and Employment Protection (DOCEP). Following an initial consultation phase which was carried out by the independent consultants appointed to the task, Stamfords Advisors Consultants, a report was published in August 2002 entitled Statutory Review of the Residential Tenancies Act 1987 (WA) – Final Report. Following a subsequent series of public consultations, a Policy Position Paper was published by DOCEP in January 2008 containing a series of proposals for amendments to the RT Act. To date, the proposals in this position paper have not resulted in legislative change.

It is noted in the executive summary of the DOCEP Paper that:

> *Extensive research and public consultation has been invested in this Review in recognition of the imperative to ensure any amendments to existing residential tenancy laws in WA operate for the overall benefit of the community. It has been recognized in literature about residential tenancies, and confirmed by stakeholder feedback, that there is often an inherent power imbalance between owners and tenants, and each jurisdiction attempts to address this imbalance by granting a fundamental set of statutory rights and obligations.*
>
> *In recent times, low interest rates combined with strong capital growth and increasingly flexible lending practices have encouraged a considerable number of investors to purchase residential properties. It is likely that this trend has brought a large number of owners into the residential tenancy market without sufficient knowledge of the laws and procedures under the RT Act.*

> *A lack of knowledge has led to increasing levels of disputation between parties to tenancy agreements in some areas of the market, and highlights the need for clear, understandable laws. The Government recognizes that any changes to the RT Act will need to balance the protection of tenants' rights with a regulatory environment which is also fair to owners; and will need to be accompanied by an appropriate community education campaign which is sensitive to the incredibly diverse backgrounds of tenants, owners, agents, as well as public and community housing providers. (DOCEP 2008)*

The DOCEP Paper proposed that the RT Act be amended to correct many of the concerns identified by those making submissions to this Inquiry. A particular concern which is articulated in most submissions is that many tenants are not clear about their rights and obligations under a tenancy agreement. The DOCEP Paper proposed that the current Schedule 2 of the Regulations and the requirement that tenants be provided with a copy at the commencement of the tenancy be included in the RT Act itself. In addition it proposed that a declaration be added which must be signed and dated by the tenant and the owner to confirm the giving and receipt of Schedule 2; also that where an owner fails to do so, the omission will become an offence.

It was also proposed that additional terms to the standard tenancy agreement be clearly marked as such, with statements signed by the owner confirming that the additional terms are not inconsistent with the RT Act and by the tenant confirming that they understand the nature of the additional terms.

A further area of concern highlighted by those making submissions to this Inquiry is the lack of understanding of tenants about property condition reports. The DOCEP Paper made a number of proposals to clarify for tenants the content of a sample condition report and for tenants to be given reasonable opportunity to be present when an owner makes an inspection at the termination of the tenancy. It was also proposed that DOCEP conduct further community education to assist tenants in understanding what items can be lawfully claimed by owners as 'fair wear and tear' and to assist tenants to dispute unreasonable claims.

Real estate agents in Western Australia (but not in any other states) are currently able to charge prospective tenants an option fee in order to view a property which is available for rent; an impost which is acknowledged by both the Stamford's Review and the DOCEP Paper to have a disproportionately adverse effect on low-income earners. The latter proposed that the RT Act be amended to remove the ability to charge option fees in line with the practice in other states.

The DOCEP Paper also proposed that DOCEP conduct a community education program to advise tenants of their right to access a dispute resolution system to require owners to fulfil their legal obligations and that the RT Act be amended to require owners who habitually fail to carry out maintenance obligations to lodge a security bond which can be accessed by tenants for compensation. Further, that the RT Act be amended to allow a tenant to claim that their right to quiet enjoyment has been breached and for a penalty to be imposed by a magistrate where a breach has been found to occur. Proposals were also made for situations where the owner alleges that a property has been abandoned and an owner's rights and obligations with regard to a tenant's possessions at a tenancy.

On the issue of residential tenant databases, the it was noted that Queensland and New South Wales have amended their own residential tenancies legislation and proposed

> *That the Government monitor the work of the national working party on tenancy database regulation and, if necessary, amend the RT Act as required, if a uniform national approach to database regulation is not settled. (DOCEP 2008, p.84)*

It was further acknowledged that there needs to be an increased level of understanding, through the government working with both tenancy organizations and real estate industry, of the rights and responsibilities of owners and the right of tenants to make application to the Magistrates Court where an owner fails to carry out their obligations.

The DOCEP paper also proposed that there be no change to the current provisions which allow the parties to a periodic tenancy agreement to terminate the agreement without stating a reason; however there are amendments recommended to enable a tenant to apply to the Magistrates Court for an extension of time order on the grounds of undue hardship. An amendment was also proposed to make clear that a tenant can challenge a termination on the grounds that the owner was motivated by the tenant's attempts to enforce their rights.

On the subject of tenancy dispute resolution systems, the DOCEP Paper noted that formal systems such as the Magistrates Courts are mainly accessed by owners and their property managers and that most tenants are daunted by the prospect of using the system. It was also noted that funding from the interest earned on tenants' bond money is used in part to fund the handling of residential tenancy matters by the Magistrates Court. It was proposed

> *That the Review investigate the need for a separate residential tenancy tribunal while also considering the possibility of empowering a number of Justices of the Peace throughout the State to constitute a Magistrates Court to hear and determine residential tenancy matters.(DOCEP 2008, p. 170)*

A report entitled *Why won't tenants exercise their rights? The realities of the current rental market in Perth* published in October 2006 by the Tenants Advisory Service (TAS) refers to the reluctance of tenants to seek the enforcement of their tenancy rights. TAS is a Western Australian community legal centre which is funded to provide assistance to existing tenants about their rights and responsibilities and prospective tenants who experience difficulty accessing the public or private housing markets. The report found

> *'... (i)t is thus clear why a tenant, currently within a relatively secure tenancy, will be unwilling to 'rock the boat' for fear of losing their accommodation and re-enter this marketplace. It is far better for many to accept illegal rent increases, dripping taps or broken locks and know they have somewhere to live.' (TAS, 2006, p. 10)*

In the highly competitive market for private residential tenancies in Western Australia, the study found tenants are afraid to pursue their legal rights for fear of being evicted, in the knowledge that finding a new rental will be very difficult indeed. The study found that the tenants may be aware of the avenues through which they can challenge the actions or inaction of property owners, namely in the Magistrates Court as specified in the *Residential Tenancies Act 1987* or by seeking the assistance of the Department of Consumer and Employment Relations. Despite these options being available, the risks of potential retribution from an owner or property manager in the current 'owners' market were judged by tenants to outweigh the benefits of seeking to enforce their right to protection from illegal rent increases, the owner entering the property without appropriate notice being given or failure to provide necessary maintenance of the property.

There is currently legislative provision for alternate dispute resolution in tenancy matters in most other states of Australia and in New Zealand. A review of the systems in Victoria, New South Wales and the Australian Capital Territory has found that where the emphasis in the process is on maintaining the tenancy, there is benefit for tenants (Gibson 2007). Where the parties are not assisted to focus on the desirability of maintaining a tenancy, the power imbalance between property owners (who are often represented either by the legal profession or a real estate expert) and tenants (who are less likely to have secured representation) results in a low rate of positive outcomes for the latter. The author noted that in all jurisdictions, actions are overwhelmingly brought by owners; in Victoria, where the alternative dispute resolution is not positively promoted, apart from encouraging parties to settle prior to entering the Tribunal room, 95% of applications were brought by property owners with many tenants failing to appear at the proceedings (Gibson 2007, p.107).

Assessing tenancy applications

The Australian Housing and Urban Research Institute published a study in May 2008 entitled *Risk-assessment practices in the private rental sector: implications for low-income renters*. The study was instigated because of a growing body of evidence which suggested that low-income households were finding increasing difficulty in accessing low-cost private rental accommodation. Whilst the study was based at the Queensland Research Centre and surveyed private rental market in the three states of Queensland, New South Wales and South Australia, it provides valuable insights into how the market operates, based on in-depth interviews with 29 property managers working in real estate agencies. Without evidence to the contrary, it is reasonable to assume that similar findings would have resulted in Western Australia.

The research was designed to assess what factors are included in 'risk-assessments' by real estate agents in allocating 'affordable' tenancies and how these risks were quantified and managed at the point where a property manager made a decision about the acceptance or rejection of a tenancy application. The study sought answers to the following research questions.

What factors are taken into account by real estate agents in their assessment of risks entailed in the allocation of rental tenancies to different categories of tenants?

What procedures (qualitative and/or quantitative) do real estate agents use to evaluate risks in the moment of allocation of tenancies?

Do real estate agents attach greater risk to low-income renters?

If so, what aspects of low-income status are perceived, by real estate agents, to constitute risks in rental tenancies?

What factors are perceived, by real estate agents, to mitigate any specific risks arising from or associated with tenants' low-income status?

What role might the processes of risk-assessment in the private rental sector play in shaping the movements of low-income households within the rental sector? (Short et al. 2008, p.4)

The AHURI study found that the two major risks in property management were identified as financial risk and the risk of litigation. In the process of assessing potential tenants, this translated into a concern for the ability to pay the market rate for a rental property and the ability to care for the property. The real estate industry consistently views 30% of a household's income as being the upper level at which rent can be paid before the household's tenancy is viewed as being at risk.

A standard application form requires a prospective tenant to provide current and previous employment details; current and previous tenancy information; personal referees; details of next of kin; and other persons who will reside at the property. As well as personal details, applications require written consent for the real estate agent to access information about their tenancy and employment history. Should the information and consent not be given as requested on an application form, an application will not be accepted (Short et al. 2008).

The AHURI study describes that the assessment of a prospective tenant's ability to pay is consistently applied as being 30% of their income and that those whose income is too low for the rent levels are regarded as an unreasonable risk. It is noted as being problematic that one third of those in receipt of income support (i.e. low income earners) in the private rental market were paying more than 30% of their income in rent (Short et al. 2008).

Whilst the assessment of whether an applicant has the financial ability to meet rental payments may be a clear mathematical calculation, an assessment of the ability to care for the property is more open to subjective judgement. The assessment of a prospective tenant's likelihood of caring for a rental property is largely based on their rental history on tenancy databases, as well as 'intuitive judgements about 'potential' risks and benefits' according to the AHURI study. The analysis of interviews with property managers identified a process comprising four stages are used, each with varying degrees of objectivity. The four stages are 'sorting out', 'ranking', 'discriminating' and 'handing over'.

In 'sorting out', property managers make the assessments guided by the 30% indicator of ability to pay described above and the evidence of behaviour at previous tenancies from sources such as the residential tenancy databases as an indicator of ability to care. From this process, applications which do not meet the standards sought in this initial review are not considered further.

The next stage of 'ranking' puts the acceptable applications in order from most desirable to least desirable according to the perceived view of who has a greater ability to pay and care. The research finds this process to be 'far less transparent' than the initial sorting in the competitive low vacancy market applying at the time of the study (Short et al. 2008, p. 35).

In the third stage of 'discriminating' it is noted that property managers are particularly aware of the need to comply with state and federal legislation relating to illegal forms of discrimination and describe their reluctance to manage properties where the owner specifies that they do not want a property tenanted by people who have children or who are of a particular ethnicity. The research states that ''Discrimination', however, is implicit in the processes of selection and allocation (Short et al. 2008, p. 36).

The fourth stage of 'handing over' is described in the report as having two components by which the agent is not responsible for decisions about a tenancy. The first component is the referral by the agent to the owner for making the decision on which tenant should be selected as the successful applicant. The second component is the view of both agents and owners in the private housing rental market that they have no social responsibility to offer accommodation to applicants perceived by them to be unsuitable, as agents are contracted by the owner to select the most suitable applicants who will provide the least risk to the owner's investment property.

The study showed that property managers have concerns about a higher level of risk concerning capacity to pay and capacity to care for a property being associated with the following experiences which are often associated with low income earners:

- unemployment
- the presence of children in the household
- an experience of domestic violence (with a perceived potential for damage to property)
- marital breakdown
- Aboriginality and ethnicity, and
- physical incapacity (Short et al. 2008, p. 42).

It is suggested that where prospective tenants can indicate a willingness to appreciate the concerns of the property managers and give an indication of how they would manage a potential problem, such as a financial crisis which may affect their ability to make rent payments, then they are more likely to be given an opportunity. A tenant's rental history is seen as being an indicator of the likely level of potential risk, however the tools used by the real estate industry for accessing information about such history are the residential tenancy databases.

> *Tenant databases, though almost universally used in the core private rental sector, are believed to provide limited and possibly unreliable information about a tenant's history. (Short et al. 2008, p. 51)*

The study goes on to identify a number of potential opportunities for 'discrimination and (un)unfairness' in the selection process for private rental applicants. It is noted that while the real estate industry is mindful that their selection and assessment processes must be consistent with legislative requirements,

> *...risk assessment entails a range of informal practices based on 'gut feelings', mixtures of intuition and experience that may involve unfairly judging and excluding an applicant on the basis of perceived rather than real risks, and may be at odds with the intent of anti-discrimination legislation.*
>
> *Unfair assessments of the 'suitability' of tenants by property managers or landlords themselves may have a strong bearing on the final decision making in the assessment and allocation process where there is no obligation on the part of the property owners to provide a reason why an applicant was unsuccessful. The 'owner's decision' loophole is used actively by property managers to avoid 'non-compliance' with legislation and the consequent risk of litigation. (Short et al. 2008, p. 52)*

The study also identifies the requirement for applicants for a rental tenancy to give to real estate agents their consent to access a range of sources about their personal affairs as an indication of an unfair imbalance in the respective rights of owners and tenants. The study concludes with the identification of three policy directions in which low income renters can be assisted in the private housing rental market:

- The provision of appropriate supports for tenants to enable them to enter and maintain private rental housing;
- Addressing issues of discrimination and privacy arising in the selection process; and
- Increasing the availability of suitable rental properties.

These proposals are considered, together with the rest of the information gathered in the course of the Inquiry, in the summary and recommendations contained in the final chapter of this Report.

Chapter 3: Race discrimination law in Australia

In September 1975, Australia ratified the *International Convention on the Elimination of all Forms of Racial Discrimination* ("the Convention"). Article 1(1) of the Convention defines racial discrimination as:

> *"any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or in any other field of public life."*

Article 5(e)(iii) of the Convention obliges State Parties to ensure that all persons, regardless of race, have equal access to, and enjoyment of, a range of civil rights, including the right to housing.

As part of Australia's international obligation to enact domestic legislation giving effect to the Convention, the Commonwealth Parliament passed the *Racial Discrimination Act* ("RDA") in 1975, in readiness for Australia's ratification of the Convention. Both the Convention and the RDA took effect in October 1975. Section 9(1) of the RDA reproduces Article 1 of the Convention in almost identical terms. Aside from the Commonwealth, the RDA binds all Australian states and territories, including their instrumentalities, and extends to most areas of public life, such as employment, education, and accommodation.

Under Australia's constitutional system, the states are not direct parties to treaties or conventions ratified by the Commonwealth. In the main, they are free to enact laws giving effect to the subject matter of a convention, but are not under an obligation to do so. The Commonwealth, however, can override state laws by enacting legislation that 'covers the field', excluding the operation of state laws on a particular subject (s.109 Commonwealth Constitution).

In respect to discrimination law in Australia, each state and territory has passed legislation making it unlawful for a person to discriminate against another person on one or more grounds, including race, in a number of areas of public life. These laws are generally consistent with Commonwealth laws dealing with the same subject matter, and have corresponding application in each jurisdiction.[1] The *Equal Opportunity Act 1984* (EOA) was passed by the Western Australian Parliament in 1984, and took effect in July 1985. Like the RDA, the EOA makes discrimination on the ground of race unlawful in a number of areas of public life, including employment, education, the provision of services, and accommodation (see RDA Part II, EOA Part III). In most instances, a person aggrieved by an act of race discrimination has a choice between the RDA and the EOA when making a complaint.

The term 'race' is defined under the EOA as including colour, descent, ethnic or national origin or nationality (EOA s 4).

[1]Except that Commonwealth instrumentalities, programs, and employees are covered exclusively by Commonwealth laws. The Commonwealth *Race Discrimination Act 1975*, the *Sex Discrimination Act 1984*, and the *Disability Discrimination Act 1992* all contain provisions that allow state laws on the subject matter to continue operation.

Direct discrimination

All Commonwealth, state, and territory discrimination laws recognise unlawful discrimination in two ways, direct and indirect. Direct discrimination occurs when a person, because of a particular attribute such as race or sex, is treated less favourably than another person without that attribute, in the same circumstances. The other person need not actually exist; a hypothetical comparison is sufficient to establish unlawful discrimination. It is not necessary either to show that the discrimination was intended, only that the impugned act resulted in less favourable treatment. Further, a discriminatory act will still be unlawful even if it is only one of several non-discriminatory acts that the person is subjected to (EOA s 5). Direct discrimination in a legal context is relatively easy to understand because it fits easily into the notion of cause and effect, its perpetrators clearly identifiable, their actions able to be investigated.

Indirect discrimination

Indirect discrimination, whilst more difficult to grasp conceptually, can reveal otherwise well camouflaged, yet considerably far-reaching acts of discrimination; systemic, policy-based, management-led practices, supported by government and business at the highest levels. Such practices appear fair in form and intention, but are discriminatory in impact and outcome.[2] Whilst overt, intentional acts of direct discrimination are usually greeted with understandable condemnation by the general community, indirect discrimination may continue in the workplace, in education, and in the provision of accommodation, undetected for years. And whereas an act of direct discrimination might affect one person, possibly several, indirect discrimination, in the form of an apparently neutral policy or procedure, can impact adversely on hundreds of people at once.

In precise terms, section 36(2) the EOA defines indirect race discrimination in the following way:

> *"For the purposes of this Act, a person (in this subsection referred to as "the discriminator") discriminates against another person (in this subsection referred to as the "aggrieved person") on the ground of the race of the aggrieved person if the discriminator requires the aggrieved person to comply with a requirement or condition –*
>
> (a) with which a substantially higher proportion of persons not of the same race as the aggrieved person comply or are able to comply;
>
> (b) which is not reasonable having regard to the circumstances of the case; and
>
> (c) with which the aggrieved person does not or is not able to comply."

Due to its complexity, the definition of indirect discrimination, whether it is on the ground of race or another ground, has been the subject of much judicial comment on appeal in the courts.

a) What is a "requirement or condition"?

The concept of a requirement or condition is broad enough to embrace any stipulation that must be satisfied if there is to be a practical (and not merely a theoretical) chance of compliance.[3] For example, a typical requirement often imposed by employers in certain industries is that employees be available to work rotational shift work, often on a 24-hour roster system.

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[2] See The Secretary of the Department of Foreign Affairs and Trade & Anor v Styles (1989) EOC 92-265, at [77,636], Bogle v Metropolitan Health Services Board (2000) EOC 93-069, at [74,217].

[3] See Kemp v Minister for Education (1991) EOC 92-340, at [78,370]; Finance Sector Union v Commonwealth Bank of Australia (1997) EOC 92-889, at [77,232]. See also State of NSW v Amery (2006) EOC 93-477 for a recent discussion by the High Court on indirect discrimination.

The requirement of 'availability' may not actually be specified in the employees' contracts, or in any industrial agreement; it is a practical requirement that is implied in practice, even when the employer expressly gives no such direction. Nevertheless, workers entrusted with the care of another person at home may find the requirement impossible to comply with.

b) What is a "substantially higher proportion"?

To establish indirect discrimination in law, it is necessary to make a comparison of proportions within a 'base group'. The comparison must reveal whether the relevant ground is significant to compliance with the discriminatory requirement. In the case of alleged race discrimination, that involves ascertaining the number of persons of the complainant's race who comply with the requirement, as a proportion of the total number of persons of the same race within the base group. The same method is applied to the persons not of the complainant's race, as a proportion of the base group.[4]

The *Equal Opportunity Act* does not provide any explicit guidance as to when one proportion becomes "substantially" higher than another. The phrase "substantially higher proportion" will take some of its meaning from the context, particularly as it refers to substantial in a relative rather than an absolute sense.[5] The issue of what is a 'substantially higher proportion' is a question of fact. It is for the tribunal of fact to assess, based on the evidence presented, the context in the respective requirements were imposed, and the ordinary meaning of the words in question.[6]

c) What does "does not or not able to comply" mean?

In respect to indirect race discrimination, the aggrieved person is taken not to comply with the requirement or condition if to do so would involve giving up a distinctive custom and cultural rule or, alternatively, by reason of some inherited and unalterable racial characteristic.[7]

Where housing is concerned, a cultural or historical reality, such as large family groups, embedded poverty, chronic ill-health, customs or beliefs to do with funerals or the death of a family member, may all impede or prevent efforts to comply with a particular requirement imposed by the owner or agent of a rental property. In any given case, the definition of indirect discrimination is capable of accommodating these attributes as variables influencing the question of compliance.

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[4] See *Miller v Minister for Education* (2001) EOC 93-115; *Kemp*, supra, at [78,370]
[5] *Finance Sector Union*, supra, at [77,235], *Styles v The Secretary of the Department of Foreign Affairs and Trade & Anor* (1988) EOC 92-239, at [77,237], per Wilcox J.
[6] *Finance Sector Union*, supra, at [77,239].
[7] *State Housing Commission v Martin* (1999) EOC 92-975, at [79,212], per White J.

d) What does "not reasonable" mean?

When considering whether a complainant has demonstrated a requirement or condition is not reasonable it is necessary to consider:

- the nature and extent of the discriminatory effect;
- the activity or transaction being performed by the respondent;
- whether the activity or transaction can be performed without imposing the discriminatory requirement;
- effectiveness, efficiency and convenience.[8]

However, a requirement is not automatically discriminatory simply because alternatives that are more favourable to the complainant are not implemented. It is the requirement or condition itself that must be unreasonable. There is no obligation under the law to treat a person *more* favourably than another person by giving that person special consideration because of his or her race.[9]

Overall, indirect discrimination remains a potent legal concept in the effort to identify and eliminate unlawful discrimination in Western Australia and elsewhere. However, it is not hard to see from the above summary of the law that many hurdles stand in the way of a person who believes that he or she has been unlawfully discriminated against, either directly or indirectly. It is difficult enough for an experienced advocate or official, let alone the victim of the discrimination itself, to negotiate the legal tests set down in the statutes.

Accommodation

Under the EOA, it is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of that person's race, by refusing his or her application for accommodation, or in the terms or conditions on which the accommodation is offered, by evicting the person, or subjecting him or her to any other detriment in relation to the accommodation. 'Accommodation' is defined to mean residential as well as business accommodation. It is also unlawful for a principal or agent to racially harass a person who occupies accommodation over which the principal or agent has control, or an applicant for such accommodation. Racial harassment includes threats, abuse, insults, or taunts, on the ground of a person's race. The applicant or tenant must have been disadvantaged in connection with the accommodation as a consequence of taking objection to the harassment, or have reasonable grounds for believing that he or she will be so disadvantaged.

Vicarious liability

Under section 161 of the EOA, where an employee or agent of a person does an act in the course of performing their duties that is unlawful by reason of the EOA, the employer or principal is also liable for the unlawful act. However, the employer or principal will not be liable if it is established that they took all reasonable steps to prevent the employee or agent from doing the unlawful act.

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[8] *Bogle*, supra, at [74,226]; *Commonwealth Bank*, supra, at [78,071]-[78,072]

[9] See *State of Victoria v Schou* [2004] VSCA 71, discussing this issue regarding family responsibility discrimination in employment

Section 161 is directly relevant to owners of rental properties and their agents. In any given case, once the relationship of principal and agent is established, the owner can be joined as a co-respondent in a complaint alleging that an agent unlawfully discriminated against a tenant or an applicant for a rental property. Whether or not the agent did the unlawful act as alleged will be a matter of evidence but, should such a finding be made, the principal bears the onus of demonstrating that it took all reasonable steps to prevent the agent from acting unlawfully. Each case is different, so the characteristics and practices of the particular organisation or industry would be taken into account when determining what was reasonable in the circumstances (Ronalds 2008, p.150).

In the employment context, reasonable steps may include regular training of employees about discrimination law, establishing internal policies and procedures dealing with discrimination and harassment, and ensuring that complaints of discrimination are taken seriously and investigated promptly. On the other hand, the relationship between an owner of a rental property and an agent is different to an employment relationship. In many cases, the owner is unlikely to have taken any steps to prevent the agent from discriminating against a tenant or applicant. In the property market, it is the conduct of the agents rather than the owners that is regulated and controlled, so an owner may simply assume and expect that the agent is complying with all the relevant laws, including discrimination law. The question of whether or not it is reasonable for an owner to rely on such an assumption would be relevant to the application of section 161 to a discrimination complaint involving a rental property. An agreement between owner and agent may be expressed in such terms that the owner is taken not to authorise any unlawful act committed by the agent in the course of carrying out the agent's duties.

But if an owner actually instructs an agent to discriminate against a tenant or applicant on the ground of race, the agent should refuse to carry out the instruction, so as to avoid exposure to a complaint of unlawful discrimination and possible liability under the EOA. It is not a defence to a complaint for the agent to argue that it was simply carrying out the owner's instructions (Ronalds 2008, p.122).

Case Summaries

King v John McMahon Stock & Realty Pty Ltd [2005] NSWADT 260.

An Aboriginal woman approached a real estate agency in Casino, NSW, enquiring about a rental property for herself and her family. She spoke to an employee of the agency, who advised her there were a number of suitable properties available in her price range, and provided her with an application form to complete. She returned the completed form, with a reference, and was told that she would hear back from the agency in a couple of days. The agency did not contact her, despite the woman making numerous telephone enquiries.

Approximately a month later, the woman's brother-in-law and sister-in-law, both non-Aboriginal, made similar enquiries with the agency, on the same day. Each was advised that suitable properties were available and details were provided. Later that day, the woman attended the agency office and asked if there were any properties available. She was informed that there was nothing available.

The NSW Anti-Discrimination Tribunal found that agency treated the woman less favourably than it treated non-Aboriginal people who had made similar enquiries about rental properties on the same day, and the reason for the less favourable treatment was the woman's race. The Tribunal observed that the right to housing is a fundamental human right recognised by international treaties, and protected by the *Anti-Discrimination Act*. The agency was ordered to pay the woman $3000.

Lynton v Maugeri & Anor (1995) EOC 92-754

A married couple placed an advertisement in a local newspaper in Ingham, Queensland, offering a three-bedroom house for rent. The house was owned by the husband. An Aboriginal woman, who had been living in emergency accommodation with her husband and six children, saw the advertisement and telephoned the couple. The woman agreed to rent the house over the phone.

That afternoon, the woman went with her daughter to meet the wife at the house, so that she could inspect it. The woman introduced herself to the wife as the person who had telephoned earlier. The wife told the woman that someone else had taken the house. The woman then pointed out that they made an agreement over the telephone. The wife responded that the house was too good for the woman and cost too much. She recommended another house owned by the couple. The woman knew this house to be old and run down.

Later the same day, the woman's brother telephoned the couple anonymously to enquire if the property was still available to rent. He spoke to the couple's daughter, who asked him what colour he was, as her parents did not want black people living in the house.

The Queensland Anti-Discrimination Tribunal held that the wife was acting as an agent for her husband in the letting of the property. It was probable also that the husband was directly involved in the decision to withdraw from the agreement to let the property to the woman. In any event, the husband was vicariously liable for his wife's unlawful conduct. There was no evidence that the husband took any steps, reasonable or otherwise, to prevent his wife from contravening the Anti-Discrimination Act. The Tribunal ordered the couple to pay the woman $18,000 compensation.

Sheather v Daley [2003] NSWADT 51

An Aboriginal woman and a non-Aboriginal woman rented a house in Inverell, NSW. The non-Aboriginal woman was the sole lessee. After a few months, the non-Aboriginal woman decided to move out. Before doing so, she spoke to the owner about the Aboriginal woman taking over the lease. The owner declined, stating that he doubted her capacity to pay the rent. At no time had the rent been in arrears.

The Aboriginal woman then approached the owner directly. The owner made derogatory remarks about Aboriginal people visiting the house and making noise, causing the neighbours to complain, and about damage to houses caused by Aboriginal people on the other side of town. He told the woman that he did not want his property damaged. A week later, the owner showed a number of prospective non-Aboriginal tenants through the house, without giving notice. The woman was home at the time. A few days later, the women moved out of the property. The owner refused to provide her with a written reference, on the basis that she had not been the actual tenant, and failed to return her half of the bond, which she had paid at the commencement of the lease.

The NSW Administrative Decisions Tribunal found that there was repeated consistent evidence of consciousness of race in the owner's conduct. In giving evidence to the Tribunal, the owner himself repeated some of the views attributed to him regarding Aboriginal tenants, although he denied that he had discriminated against the woman, or against any Aboriginal person. The Tribunal upheld the woman's complaint of unlawful discrimination and ordered the owner to pay her $10,000 compensation. In doing so, the Tribunal observed that the right to adequate housing is recognised in the *International Covenant on Economic, Social and Cultural Rights*. The woman's enjoyment of that right had been diminished through the owner's discriminatory conduct.

Chapter 4: Literature review

> *Discrimination must be seen as embedded in a web of interlocking, mutually supportive causal connections wherein proximate 'consequences' of discrimination lead to still other negative effects, which ultimately feed back to intensify discrimination itself (Galster 1992, pp.662-663)*

A broad review of research and studies in Australia and overseas on the topic of possible race based discrimination in the private housing rental market was conducted as part of the Inquiry. In particular, the literature review sought to highlight studies examining possible links between race and:

- access to the private rental market including experiences on application to rent and associated property inspections; requirements for bonds; requirements for referees and any other requirements at the time of entering a lease;
- experiences as a tenant in the private rental market;
- types of leases offered.

An electronic search utilised Google and several data banks around the key words 'race', 'discrimination', 'private rental' and 'housing' with the principal data banks being

- J-Stor listings of academic journal articles;
- Project Muse listings of academic journal articles;
- The University of Western Australia library catalogues;
- The Murdoch University library catalogues;
- Listings of Australian Commonwealth Government and associated research institute publications;
- The Australian Housing and Urban Research Institute.

In addition, the Western Australian non-government housing sector was contacted to identify and obtain any unlisted publications and reports. In relation to other countries with broadly comparable anti-discrimination laws, the review focussed on Canada, the United States and the United Kingdom.

The research methodology was successful in providing an indication of comparable studies in Australia and overseas. In summary, it identified no studies of a similar scope to this Inquiry in any Australian state or territory, although a number of publications, non-peer reviewed articles and conference papers have identified perceived discrimination on the basis of race as a likely factor in impeding access to private rental housing by members of Indigenous and immigrant ethnic minority groups. Certainly, there are no reports of studies comparable to important federally-funded research undertaken in the United States in 1977, 1989 and 2000 in which 'paired test' methodologies were used to identify race based discrimination in private rental accommodation in 23 metropolitan areas (Government of the United States of America 2000). There are, however, Australian studies comparable to the type undertaken in Toronto, Ontario in which sample surveys of real estate agents and landlords were utilised to assess discrimination in access to rental housing, particularly the indirect discrimination resulting from elements such as minimum income criteria (for example, Hulchanski 1994).

This review examines the issues from two broad perspectives. It firstly assesses 'demand side' research and investigation which explores issues of discrimination in access to rental housing from the perspective of potential or actual tenants. While no systematic Australian research on the issue was identified, this is not to suggest that the issue has been devoid of attention. Indeed, perceptions of race discrimination in private rental housing have long been identified in relation to Indigenous and culturally and linguistically diverse (CALD) groups. The relative absence of systematic research is in contrast to important demand-side longitudinal research undertaken in the USA, the methodology and results of which are briefly discussed in this research. The review then turns to 'supply-side' research in which the subjects were property managers, real estate agents and landlords. Discussion focuses on two recent projects, one in Australia, the other in Toronto, Ontario. The aim of this discussion is to suggest possible investigative approaches that might shift Australian investigation from the domain of the anecdotal and impressionistic into the realm of greater precision.

'Demand-side' research and investigation

In Australia, numerous government reports and inquiries, including the 1991 Royal Commission into Aboriginal Deaths in Custody, have noted widespread perceptions of race discrimination in private rental markets against Aboriginal and CALD populations.10 Between 1997 and 1999, for example, the Race Discrimination Commissioner consulted widely with new and emerging immigrant communities in New South Wales, the Northern Territory, Victoria and Western Australia. Access to private rental accommodation was reported as one among a number of important areas of difficulty for new and emerging community members. Difficulties in access were compounded by high rental charges and rental bonds which often resulted in poor standard accommodation and housing too small to accommodate families. Public rental subsidies were found to be of limited benefit in enhancing access to 'good quality, safe and appropriate accommodation', while there also appeared to be a limited stock of accommodation suitable to house families (Human Rights and Equal Opportunity Commission 1999, p.20). In addition, difficulties with rental agents were also reported as a problem, as few recent arrivals were able to provide rental histories to support their applications. Discriminatory treatment of new arrivals was frequently related to low income (including receipt of social security benefits) and family size. Many also believed that colour and religious prejudice resulted in discriminatory practice. The Race Discrimination Commissioner concluded that 'discrimination occurs on grounds of skin colour, family responsibilities and religion' and that this appears to be unlawful under the Race Discrimination Act and State Equal Opportunity laws. She recommended that there was a need to 'improve compliance with Commonwealth and State anti-discrimination legislation throughout the real estate industry', as well as 'to ensure that community members are aware of rights available under tenancy and anti-discrimination law' (Human Rights and Equal Opportunity Commission 1999, p.21).

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[10] See for example, Australian Bureau of Statistics 2001, *Counting the Homeless,* Australian Census Analytic Program, Canberra; Australian Institute of Health and Welfare 2005, *Indigenous Housing Needs 2005: A Multi-Measure Needs Model,* Canberra; Commonwealth Advisory Committee on Homelessness and the Australian Government Department of Families, Community Services and Indigenous Affairs 2006, *Indigenous Homelessness within Australia, May 2006,* Canberra; Human Rights and Equal Opportunity Commission 1996, *State of the Nation: A Report on people of non-English speaking backgrounds,* Race Discrimination Commissioner, Canberra; Office of the Victorian Government Architect 2007, 'A Paper on Indigenous Housing in Victoria', delivered to *Which Way? Directions in Indigenous Housing Conference,* Alice Springs, on line at www.governmentarchitect.dpc.vic.gov.au; Parliament of the Commonwealth of Australia 1995, *Report on Aspects of Youth Homelessness,* House of Representatives Standing Committee on Community Affairs, Canberra; Commonwealth of Australia 1991, *Royal Commission into Aboriginal Deaths in Custody*, Vol. 4, 35.2.6, p. 466.

More recently in Perth, the Housing Crisis Committee for Culturally and Linguistically Diverse Communities reported that immigrants entering Australia under the humanitarian entrance category reported significant degrees of discrimination in their access to private rental accommodation. As well as discrimination on the basis of race and skin colour, humanitarian entrants also perceived discrimination because of large family size, income and perceptions that they will be risky tenants (Burgermeister, Kitching and Iscel 2007, p.23).

Comparable discriminatory practices have also been identified in relation to Australian Aboriginal populations. In 2007, Long et.al. surveyed Australian research on Indigenous housing, and noted that studies of Aboriginal housing before 2000 fell into three broad categories: (a) the poverty cycle theory in which housing is linked to health, education and employment, (b) a broadened problem definition that included government policy and capacity, limited design types, discrimination in rental housing sectors, and the lack of suitable land tenure, and (c) a health-related focus whereby both physical and mental health can be linked to many problematic housing circumstances (Long, Memmott and Seelig 2007, p.28).

In 1999 Focus Pty. Ltd. undertook focus group research to:

- undertake open-ended research into discrimination against Indigenous people in the private rental market;
- develop a methodology for more systematic and broader scale research on the issue.

The study included case studies of Indigenous households in various Australian centres and more intensive research in Kununurra. The chief finding was that direct and indirect 'discrimination is evident in all housing markets', and 'is often so strong that Aboriginal households are effectively barred from the private rental market' (Stanley 2001, p.1). Furthermore, where private rentals are secured 'this often involves substandard housing (including housing scheduled for demolition), which is poorly maintained by the property owners or agents'. Access to private rental housing by Aboriginal people is often unrelated to income levels or other measures of suitability, while indirect discrimination was implied by factors such as prior rental history and absence of references. Assessment of ability to meet rental commitments tended to be based on permanent employment rather than other sources of income such as government social security entitlements. Similarly the size of Aboriginal families and stereotypical views on family obligations to accommodate visiting friends and relatives exacerbated problems, particularly in the north. 'The poor access that Aboriginal people have to private rental housing', Stanley concludes, 'leads to a vicious cycle, in which homeless people move in with friends and relatives, and this leads to termination of their hosts' leases' (Stanley 2001, p.3).

Tammy Solonec, in a paper on racial discrimination in the Western Australian private rental market, commented that although there is little research evidence to support perceptions, 'census data, various Government reports, and Perth Indigenous housing workers confirm that there is an unequal proportion of racial discrimination occurring against Aboriginal people in the private rental market' (Solonec 2000, p.1). Census data from 1996, for example, showed that although 69% of Aboriginal households were in rented accommodation, only 16.6% were in private rentals. Aboriginal tenants, she writes, are perceived by agents and landlords as a risk: 'They believe that their property will be damaged; that Aboriginal tenants will be unable to maintain good housing conditions; that the property will be used to house endless relatives; that there will be anti-social behaviour and that Aboriginal tenants will have difficulty paying the rent'. The effect of such stereotyping is profound. Aboriginal people believe that private rentals are not accessible to them unless it is substandard, and this in turn perpetuates the stereotypes of Aboriginal people as risky tenants.

Solonec argues that the procedures of the Equal Opportunity Act have been largely ineffectual in addressing the issues, principally because conciliated resolutions of complaints often include confidentiality clauses and thus have little potential to discourage similar illegal discrimination. She recommends that remedies need to include both legal and extra-legal processes:

- comprehensive research into the issues;
- making public apologies a mandatory element of conciliated outcomes;
- regulate tenancy 'blacklists';
- implement internal self-regulatory mechanisms into real estate agent practices;
- increase cultural awareness in relevant industries, including the real estate industry (Solonec 2000, p.1).

In a paper to the 3rd National Housing Conference in 2003, Hanson and Roche provide a Noongar perspective on the issues involved in securing both private and public rental accommodation in a Western Australian country town, and the potential of Supported Housing Accommodation Program workers to ameliorate what may often be inevitable gaps in perception between real estate agents or public accommodation managers, and Aboriginal tenants (Hansen and Roche 2003). Discrimination is a common, almost expected part of the rental process if you are an Aboriginal person, with countless experiences of being offered only the worst accommodation while non-Aboriginal friends are provided with entirely different levels of service by agents. The rental market, private and public, is governed by a complex set of 'rules, codes and values of operation', most of which are imperfectly understood by Aboriginal applicants and tenants and are often in direct conflict with Aboriginal family values, support systems and mutual obligations. Housing thus can become a site of conflicting values 'symbolic of one person's means of employment while another's life and family home' (Hansen and Roche 2003).

Contrasting with the consultative and perception based methodologies of Australian investigations, the United States Department of Housing and Urban Development conducted longitudinal research specifically on race discrimination in private rental markets in 1977, 1989 and 2000 (Government of the United States of America 2000). The three studies utilised 'paired tests' in which two individuals, one white and one minority, posed as otherwise identical home-seekers and visited rental agents to inquire about the same advertised property, a methodology claimed by the research managers to 'provide direct evidence of differences in the treatment minorities and white experience when they search for housing'. Random samples of advertised housing units were drawn from major metropolitan newspapers, and both testers were assigned income, asset and debt levels, comparable family circumstances, job characteristics, education levels and housing preferences to make them equally qualified to rent the advertised property. They then visited the same agents to inquire about the same property, and systematically recorded information about levels of information and assistance they were offered.

The 1977 and 1989 studies had found 'significant levels of racial and ethnic discrimination in urban housing markets', while the 2000 study, based on 4,600 paired tests in 23 metropolitan areas, found that, although discrimination persists, there had been a substantial overall reduction since 1989. Hispanic renters faced the same levels of discrimination as in 1989, and although there was an overall decline in discrimination against African Americans, they still received less preferable treatment than whites in 21.9% of tests, while 'whites were consistently offered more information and had more opportunities to inspect available units'. Reported discrimination was also found in relation to 'Asian and Pacific Islander' tests, with 21.5% of testers in these categories receiving less favourable treatment.

Similarly, tests were undertaken in Minnesota, Montana and New Mexico to measure discrimination against Native Americans, where 28.5% were provided with less favourable treatment than the white testers.

'Supply-side' research and investigation

Research on the practices and attitudes of rental market suppliers has the potential to considerably illuminate understandings of race discrimination in the rental market, as well as suggest possible points of intervention in reducing the incidence of such discrimination. However, the small but informative body of research in Australia and Canada suggests that this is an area of some complexity; that it is not simply a matter of ignorant infringement of anti-discrimination laws, but a complex interplay of a landlord's right to select a suitable tenant with renter characteristics that may or may not be directly relevant. In the Australian context, a small number of studies have examined issues of discrimination from the viewpoint of agents and landlords and sought to distinguish between the kinds of 'lawful' discrimination that are believed to be the responsibility of agents in their endeavours to identify 'good' tenants, and 'unlawful', that is discrimination on the basis of race, religion, gender, age and sexual preference. In 2008, Short et.al., for example, interviewed industry representatives and a sample of agents in six regional and metropolitan local areas in Queensland, New South Wales and South Australia to 'document formal 'industry perspectives' on perceived risks, risk-assessment and risk-management, and to obtain industry-level understanding of variations in rental markets across localities or regions' (Short et al. 2008, p.15). Interviews discussed processes of 'sorting out' and 'ranking' in the tenant selection process, noting that they are inherently problematic in the context both of anti-discrimination and fair trading laws (Short et al. 2008, p.36). The authors note that 'discrimination' is implicit in selection and allocation, and that many if not most property managers are aware of the 'possibility that they may be accused of discriminating unlawfully in rejecting some applicants' (Short et al. 2008, p.36). Many property managers, they found, effectively skirt the issue by 'handing over' the risk of infringing anti-discrimination laws to the property owner:

> *'Handing over' is a fail-safe strategy, evident in two particular forms: first, all property managers use what can be called the 'owner's decision loophole' which works to shift the actual responsibility for selection of tenants from the property manager to the owner, and second, most property managers adopt a 'we are not social workers' stance which works to discursively hand over unsuitable tenants to the public or community housing sector or to informal, family support (Short et al. 2008, p.37).*

Thus, many agents argued that their responsibility lay simply in listing and receiving applications for rental properties. Many also stated that they were reluctant to act for owners who explicitly excluded groups protected by anti-discrimination, but were also able to shift responsibility for actual selection to the owner. The research, however, was concerned principally with risk-assessment and therefore did not address other aspects of agent responsibility such as property inspections, rental reviews, repairs and maintenance.

In 1994, Hulchanski undertook a sample survey of agents and property managers in Toronto to explore industry use of minimum income criteria as a mechanism for excluding 'undesirable' tenants at the point of application (Hulchanski 1994). He found that 70% of agents surveyed utilised minimum income criteria as a principle basis of tenant selection, and argued that this 'rule of thumb' measure entailed a discriminatory practice that could, under certain conditions, be unlawful. Reviewing 'how to rent' guides for landlords, he noted that the authors were aware that certain methods of screening tenants could constitute illegal discrimination but found that as property owners they retained rights to discriminate on grounds not specified in legislation such as ability to pay rent. 'You should always', he quoted from one such guide, 'be able to find a valid legal reason not to rent to those who are obviously objectionable' (Hulchanski 1994, p.8). A 'considerable [Canadian] literature' explains why landlords might discriminate:

- Landlord prejudice (animus);
- Customer or expected prejudice, in which landlords exclude prospective tenants of a different group when other neighbouring tenants are perceived to be prejudiced;
- 'Inferior' tenant judgements based on 'statistical discrimination', in which group identity correlates with unstable rent payments, poor maintenance and disruptive behaviours.

'Statistical discrimination', similar in outcome to 'indirect discrimination', is a term used to describe the judgement of individuals based on averages instead of individual characteristics, and was found by Hulchanski to be commonly utilised by agents to screen prospective tenants. This also makes the process of screening easier by applying a 'rule of thumb' measure to all individual members of a certain identifiable group. As Hulchinski remarks, an apparently relevant and objective measure can then be extended to the realm of the irrelevant and subjective:

> *Black people, women and single mothers ... can earn proportionately less because of their colour, or gender or marital status. This is in part due to discrimination in the labour market. Taking this fact and using it against them in the rental housing market is simply adding to their disadvantage status (Hulchanski 1994, p.15).*

As a consequence, when a landlord or owner wants to act on the basis of prejudice, and where anti-discrimination laws make it difficult to do so, then 'proxy means of achieving the desired prejudicial outcome', such as minimum income criteria, must be found:

> *The applicant is not being rejected ... for being on social assistance, or because she is a single mother, or because he is a young black immigrant. Rather, they are being rejected because these households fail to meet supposedly valid and reliable criteria objectively applied to all applicants (Hulchanski 1994, p.55).*

Conclusion

While there is ample evidence in Australian research literature that race discrimination in the allocation of rental housing constitutes an access barrier for both Indigenous and immigrant ethnic minority groups, particularly new arrivals under the humanitarian entry program, there has been very little systematic research investigation of the issue. Instead, much of the evidence is in the realm of perception which, while undoubtedly reflective of the existence of the problem, does little to illuminate its extent. Similarly, there is evidence that property managers as a group are aware of the risks of contravening anti-discrimination laws and use tried and tested methods of shifting responsibility for tenant selection from their profession to the property owner. The issue of race discrimination in the rental market is further complicated by current high demand and low supply of private rental accommodation, and a market in which 'screening' and 'ranking' of applicants is a necessary and accepted practice for property owners. In such a market, there may often be a fine line between exclusion on the basis of ostensibly reliable (and lawful) factors such as income or employment status, and unlawful ones such as race, gender and religion. Furthermore, the use of lawful methods of discriminating may serve to conceal unlawful discrimination, rendering the proof of such discrimination difficult.

There is clearly scope for further systematic research into issues of discrimination in the private rental market. Methodologies such as 'paired testing' for example, could serve to provide statistically valid evidence to support perceptions of discrimination. There is also scope for supply-side research focussing on perceptions and practices of property managers and agents that, as well as illuminating the extent of discriminatory practices and prejudicial attitudes, also has the potential to inform and educate these populations on their responsibilities and obligations under anti-discrimination provisions.

Chapter 5: Residential tenancy databases

Residential Tenancy Databases (RTDs) are records of tenant histories collated by commercial operators and provided to property managers for a fee to help those in the real estate industry minimise risk of financial loss and property damage. This chapter provides an overview of RTDs, including the major RTDs operating in WA, the extent to which they are influential, issues about current regulation and stakeholders' views. The second part of the chapter focuses on the operation and practices of RTDs, including the types of data, accuracy, privacy, dispute resolution processes, and the effects of listings and their secondary implications.

Background information

Access to the private housing rental market is not only an integral part of social housing public policy, it also allows choice and promotes a more diverse social mix that is not always available through government-funded housing programs (Short et al. 2008). Access to the private housing rental market is an important social issue in Australia because of the numbers affected and housing and welfare policy reliance on this housing sector. Any barriers to access created by RTDs have the potential to have significant influence on the operation of the Australian private rental market.

As public policy increasingly relies on the private sector to provide housing options to larger proportions of the population (Australian Federation of Homelessness Organisations 2004), RTD listings have greater potential to affect access.

A major difficulty of relying heavily on the private market to house tenants who might otherwise access publicly-funded or community housing is the widely argued perspective within the private housing rental sector that its role should not be that of a 'social worker', providing accommodation to all people. Property managers aim to obtain a reasonable and best possible return on the investment for which they are responsible. RTDs are a mechanism by which risk of financial loss resulting from accommodating higher risk tenants may be reduced. However, in the context of government housing policy, such practices may impede some people's access to housing. In 2004, in relation to an investigation of an RTD operator, the Privacy Commissioner recognised this and stated,

> *Having a home is a very fundamental right and therefore it's very important that all tenancy database operators have exemplary information handling practices... If the rental sector believes that databases are an important tool then it's essential that they are reliable. If they are not accurate this could have negative results for both landlords and tenants.*
>
> *(Office of the Privacy Commissioner 2004)*

Residential tenancy databases are electronic records of residential tenant histories provided to property managers, real estate agents and landlords by commercial operators. They primarily exist as a risk-management tool to minimise financial risk to property. Records of bad tenancy, commonly known as 'blacklists', have existed for a long time. Agents and landlords have traditionally shared records informally; however, the development of RTDs as a powerful technology now allows much easier and more widespread communication of this information. RTDs in Australia became increasingly significant after 1991 following credit information being restricted to credit providers (Queensland Residential Tenancy Authority (RTA) 2002). This led leading property managers to seek other methods of accessing tenant histories (RTA 2002).

RTDs have several functions. The main aim is to protect property managers from high risk tenants through providing information about their poor tenancy histories. It is also argued that RTDs are used to influence behaviour in ways that benefit the private rental sector – for example, they encourage the payment of debts (Queensland Special Government Backbench Committee (QSGBC) 2002) and deter problem tenants from applying for properties managed by RTD subscribers (Ministerial Council on Consumer Affairs / Standing Committee of Attorneys General (MCCA / SCAG 2003).

The general consensus is that

> *... tenancy databases, if operated properly, used fairly, maintained accurately and monitored correctly are legitimate tools to protect lessors' interests. (QSGBC 2002)*

Thus, RTD operators and property managers argue that RTDs serve the private rental sector appropriately in terms of 'risk-reduction, decreasing rent arrears and malicious tenants' (RTA 2002). Whilst it can be argued that RTDs protect the long-term provision of rental housing stock through their provision of risk minimisation mechanisms, via which owners are able to protect their assets (Victorian Law Reform Commission 2006); it is also the case that RTDs can be used for unfair and discriminatory practices. There are significant concerns about the adequacy of current management and regulation of the databases for protecting tenants from the inappropriate use of information to which landlords have access.

Major RTDs operating in WA

This chapter examines seven major RTDs identified to be in operation in WA:

- Barclay MiS;
- BadTenants.com.au;
- National Tenancy Database (NTD);
- Tenancy Information Centre Australasia (TICA);
- Tenant Check;
- TheLandlord.com.au; and,
- Trade Reference Australia (TRA)

There are a number of other databases in existence, however these either do not currently operate in WA or there is little information available about their operation.

The features and operation of these seven main databases, which differ in the customers targeted or in the processes used for listing, access and review, will be described in the following subsections together with a table comparing and summarising their main features. Generally, property managers check one or more of these lists before approving a tenant.

Barclay MiS

Barclay MiS, which states that their major focus is the on debt recovery and risk management, provides a 'Fast-track National Tenancy Database' product. Any property manager can subscribe and will be allowed to list tenants and make unlimited searches on the database (Barclay MiS Group 2008). The operator acknowledges that different regulations apply in different states and therefore the information placed by property managers is monitored to ensure it is not in breach of relevant rules or regulations (Barclay MiS Group 2008).

BadTenants.com.au

The BadTenants.com.au website is a more limited RTD with its target market being short-term accommodation providers, such as caravan parks. Notably, in the context of a competitive private rental market and few housing options, short-term accommodation options frequently turn into longer-term arrangements for those on low incomes, and thus the impact of an accommodation-based RTD can be quite extensive. BadTenants.com.au provides a 'Bad Tenants Database' which aims to "raise the awareness for accommodation providers, of particular individuals who have previously breached, and have continued to breach, their accommodation providers' house rules" (BT Global 2008). The website claims that the database performs three functions: providing warning of bad histories, acting to deter inappropriate behaviour, and supporting debt recovery options. Its featured quote from a subscriber is:

> *I have had bad tenants smash holes in walls, threaten staff and steal other tenants belongings. One drunken pair of tenants used a bedroom as a toilet and smeared their faecies [sic] on the wall. It didn't matter how much we cleaned it, we couldn't get the smell out. It ended up costing me $3,000 to replace the bed and carpet and have the walls repainted. Even when they were charged by the Police and found guilty we never saw any money. I wish there had been something like BadTenants.com.au a long time ago, so I could have avoided some of these people. - Mick Buzcak, Western Australia.*

BadTenants.com.au appears to be the only RTD that includes a search option for a tenant's country of origin (BT Global 2008).

National Tenancy Database (NTD)

The National Tenancy Database (NTD) is a large RTD operating throughout Australia and may be the one most commonly used in WA. A Queensland report in 2002 suggested that this database held 90% of the RTD market share in WA (RTA 2002). It is only available by subscription to licensed real estate agents and is endorsed by the Real Estate Institute of Western Australia (REIWA) (NTD 2008). In a recent exception, access is now also available to landlords who are members of the Landlords Advisory Service (LAS) for a per-check fee (LAS 2008). NTD claims that it has over 4000 members, over one million tenant records on file and that over 7000 property managers and agents with access to their records (NTD 2008).

Tenancy Information Centre Australasia (TICA)

Another large operator is the Tenancy Information Centre Australasia (TICA)'s Default Tenancy Control System, processing over 90,000 tenant inquiries per month (TICA 2008). TICA operates two databases – one recording tenancy history and one recording defaults. It has attracted more negative media attention than any other RTD, perhaps because of its adversarial approach to tenants illustrated by its slogan – 'Catching them before they catch you' (TICA 2008). The website states:

> *Tenants who constantly default under their tenancy agreement do so not only because of financial hardship but because they can and worse still some believe they have a right to do so. No person has the right to effect [sic] another person's lifestyle.*
>
> *(TICA 2008).*

TICA was the focus of a complaint determination issued by the National Privacy Commissioner in 2004.

Tenant Check

Tenant Check is an RTD specifically designed for landlords, which uses a simple system for landlords to submit entries within four criteria:

- Known not to keep property reasonably clean and tidy;
- Known to interfere with the reasonable peace, comfort and privacy of neighbours;
- Known to leave without paying the rent; and
- Known to deliberately or carelessly damage property, or allow any other person to damage property.

(Tenant Check International 2008).

TheLandlord.com.au

TheLandlord.com.au's Defaulting Tenant Database and Recommended Tenant Database limits membership to landlords and has explicit listing criteria and guidelines. In addition to these databases the site also offers access to state-specific forms and contacts, information about relevant laws and legislation, interest rate information and regular articles about owning and managing a rental property.

Trading Reference Australia (TRA)

Trading Reference Australia (TRA) is an RTD with the broader function of a debt-based record system accessed by "banks, institutions, real estate agents, commercial agents and video stores" (TRA 2008). It provides information for residential and commercial tenancies, and claims to offer 'legal protection of property managers and principals against litigation from owners and tenants' (TRA 2008).

Other known RTDs

A number of other RTDs operating in Australia have been identified in previous research. Of these, perhaps the largest is RP Data Information Services whose database holds records for both residential and commercial tenants. Two other RTDs are Australian Property Owners Database, a small database based in Queensland provided solely for landlords; and Console, a property management software package. The information on these is limited and no confirmation has been obtained that they operate in WA

Table of tenancy databases influential in WA [11]

	Barclay MiS	BadTenants .com.au	NTD	TICA	Tenant Check	TheLandlord .com.au	TRA
Client type	Property managers	Hotels, motels, backpackers	Licensed real estate agents, LAS members[12]	Property managers	Landlords	Landlords	'Industry' – (banks, real estate & commercial agents, video stores)
Accommodation type	Residential	Accommodation	Residential & commercial	Residential	Residential	Residential	Residential & commercial
Region	Australia (based in Qld)	Australia (based in Qld)	Australia (based in Vic)	Australia, New Zealand and the UK (based in NSW)	Australia, New Zealand, USA and Canada[13] (based in NZ & Qld)	Australia (based in Tas)[14]	Australia (based in NSW)
Size	3000[14]		'Largest', more than 4000 members, more than 1 million records	'Largest', thousands of members, (4000)[14]			
Listed parties	Tenants only[15]		Tenants only[15]	Those named on the tenancy agreement[15]		'Every person who has signed the lease'[16]	
Time of listing	After or pending Small Claims Tribunal (SCT) order[15]		When reason for listing occurs[14]	When reason for listing occurs[14]		Not regulated. Operator believes the end of lease is the usual time[16]	

[11] All information has been obtained from the RTD operator's website unless otherwise specified.
[12] (LAS 2008)
[13] (Short et al. 2003)
[14] (RTA 2002)
[15] (QSGBC 2002)
[16] (TheLandlord.com.au 2004)

	Barclay MiS	BadTenants .com.au	NTD	TICA	Tenant Check	TheLandlord .com.au	TRA
Data	'Within state regulations' • Frequent breaches • Monetary loss • SCT order Pending hearing[14]	Breach of 'house rules' • Drunken, unruly behaviour • Interfering with the reasonable peace, comfort and privacy of other tenants. • Left without paying the bill. Known to deliberately or carelessly damage property	'Rental history' • Recommended • Owes money • Tribunal order • Current tenant 'Refer to agent'[14]	Tenancy History Database • 'listings' Inquiries Database tenancy applications and occupancy	Brief remark & known to: • not keep property reasonably clean & tidy • interfere with the reasonable peace, comfort & privacy of neighbours • leave without paying the rent deliberately or carelessly damage property, or allow any other person to damage property.	Defaulting Tenant Database • seven categories (except Qld & NSW) Recommended Tenant Database	Debt • 'refer to agent' Breach of contract / owing money[14]
Verification / notificiation	Operator 'monitors' information so it is not in breach of regulations. Mostly verified through SCT[14]		'Reasonable steps' (unspecified) to ensure accuracy. Agents asked to provide orders / invoices[14]	'Reasonable steps' (unspecified) to ensure accuracy.	Members to ensure listings are fair and accurate.	Tenant advised of listing by mail. Monthly review.	Tenant advised of listing by mail.
Tenant access	By mail (self-addressed envelope) within 14 days[17]	From subscribers or RTD website	By mail • Immediate - $15 • Within 10 working days - free	• By phone - $5.45 / minute • By mail - within 28 days - free or $14.30		By mail (self-addressed envelope) within 14 days - $15[16]	• By mail with 21 days - free • Online search - $36.30 for 10 minutes access to RTD[17]

17 (MCCA / SCAG 2006,2)

	Barclay MiS	BadTenants .com.au	NTD	TICA	Tenant Check	TheLandlord .com.au	TRA
Duration of listing	Until rectified[14, 17]	Until tenant rectifies misconduct	Indefinite[14, 15, 17]	• 3 years if no debt involved • 5 years after breach cleared • Indefinitely if breach not rectified[14, 15, 17]		• 5 years if no debt involved unless objection made prior • If debt involved – if cleared within 12 months – removed, otherwise 5 years[17]	Until rectified or 7 years – whichever comes first[14, 17]
Dispute mechanism	Evidence sought from both parties. Operator determines whether listing remains[14]	$5 fee, apology and rectification through subscriber or website	Contact NTD for mediation.[17] Member asked to verify information and this is provided to the tenant[14]	TICA investigation. Evidence requested.[17] Record removed or amended or if not resolved – details of dispute included in listing.		Resolution with landlord who made the listing	Resolution with landlord who made the listing Operator arbitrates[14]
Privacy compliance	Mentions adherence to 'regulations'	Policy online	Policy online, tenants agree to this when applying for a tenancy	Policy online, stresses compliance with NPPs	Mention of Privacy Act requirements	'Policies comply with the Privacy Act'	'Compliance with NPPs'

The influence of RTDs

A number of studies (RTA 2002; MCCA / SCAG 2003) have sought to identify exactly how extensive the coverage of RTDs is within the private rental market. This is hard to quantify because there are no publicly available figures for subscription to the different RTDs, and some property managers subscribe to more than one. However, it is generally agreed that RTDs have much wider coverage within the 'formal' sector managed by real estate agents (Short et al. 2008, The Herald Sun, 2006). It is suggested that up to 90% of real estate agents check one or more RTDs before approving tenancies (RTA 2002). Coverage in the 'informal sector' (managed by landlords) is somewhat lower but anecdotal data suggests it is increasing as new landlord RTDs emerge such as Tenant Check and TheLandlord.com.au.

Coverage has also increased in recent years as records have built up. The Sydney Morning Herald reported in 2002 that over 5000 tenants were listed on RTDs around Australia (MCCA / SCAG 2003). In 2003, Shield estimated that 1.5 million tenants were listed. In 2008, NTD alone claimed that it had over one million tenant listings. The extent of the coverage of RTDs in Australia is uncertain but it appears to be substantial and constantly increasing.

The extent to which RTDs are influential is also affected by the power relationship between property managers and tenants. In WA, property managers are not required to give reasons for the rejection of an application to rent and a property may be advertised until an 'acceptable' tenant is located. Tenancy processes and agreements operate largely in favour of property managers and it is argued that this power imbalance is enhanced by RTDs (TAS 2003) – for example, property managers have the power to list 'bad tenants' and effectively deny them access to the private rental market, yet tenants cannot report 'bad agents / landlords' for not fulfilling their obligations in a tenancy agreement. One minor exception is a small 'bad landlord' website: http://www.dontrentit.com.au/ which aims to redress the power imbalance; however, this is not comparable to the influence and reach of RTDs. Property managers can use informal strategies of control such as warning letters and 'reality checks' to encourage certain good tenant behaviours because of their greater bargaining power, but tenants have no comparable avenues. Threats of listings can circumvent the *Residential Tenancies Act 1987 (WA)* procedures for dispute resolution and possibly even contravene WA's Criminal Code which prohibits threats with intent to influence (TAS 2003).

Tenants may not pursue their rights such as issuing 'breach of agreement' notices against agents who do not fulfil the terms of the tenancy agreement. The lack of regulation covering the databases means there is little clear advice on resolutions to RTD disputes and little basis for claims in court. Furthermore, this lack of regulation has contributed to inconsistencies in court decisions:

> *It is at the discretion of the Court as to whether a dispute about an RTD listing will be heard and as a consequence decision making has been inconsistent. In the event that the Court makes an order that a listing be removed, the court can only order the owner to instruct the agent to do so as the agent is not a party to a tenancy agreement. (TAS 2003, p.10).*

Even where there are avenues for rectification available, some tenants fear to pursue their rights. Where property managers have the power to list any tenant for any reason (including 'making a fuss'), tenants often avoid exercising their rights in the hope that they will not be listed (RTA 2002; Victorian Law Reform Commission 2005) and denied further tenancies. Identity capital (a tenant's history, references and income), is a tenant's main asset when applying for a tenancy, so tenants may avoid conflict and acquiesce to property owners' demands in order to protect it (Short et al. 2006). This inequality in power between tenants and property managers ensures the effectiveness and influence of RTDs.

Whilst it is recognised that property managers have a greater power position in the tenancy relationship, economic conditions determine the extent to which this is the case – for example, whether there is a 'tenants' market' or 'owners' market'. Thus, when housing availability is scarce, RTDs have greater effect than when there are high vacancy rates. As stated in the AHURI report entitled *Tenancy Databases: Risk Minimisation and Outcomes*:

> *... when the rental market is tighter, or where there is a lower demand for certain types of accommodation, property managers are prepared to negotiate with prospective tenants, through offering opportunities to remedy the actions that lie behind the listing, or through shorter leases tied to stringent probationary conditions. (Short et al. 2003, p.ii)*

When economic conditions afford more power to tenants in the tenancy relationship RTDs do not act as such a strong barrier to access in the private rental market. However, when economic conditions create housing shortages, people listed on an RTD may be denied access to much of the private rental market. The recent economic conditions in WA have contributed to creating an 'owners' market'. There is a shortage of rental housing stock, home ownership is out of reach of most people, rental fees are subsequently very high and there is great competition for rental properties. In these conditions, RTDs have the potential to be highly influential.

Regulation of RTDs

As RTDs are a relatively new development there are significant gaps in regulation. The regulation that does exist arises from a range of overlapping regulatory instruments – these include industry regulation, the *Federal Privacy Act (Cwth), 1988*, Federal consumer protection legislation (*Trade Practices Act (Cwth), 1974*), State residential tenancy legislation, State licensing of real estate agents, State consumer protection legislation, and State equal opportunity legislation. The manner in which these regulate RTDs is set out below. A discussion of proposed mirror legislation and the current regulatory environment in WA is also included.

Industry regulation

In the absence of an industry body for RTD operators, the only form of industry regulation in Australia for RTDs is through real estate institutes (MCCA / SCAG 2006). The Real Estate Institute of Australia (REIA) has a code of conduct for its members. This code focuses on ethical and appropriate conduct. There are consequences for non-compliance such as financial penalties or expulsion from the institute (REIA 2004). Also,

> *... agents who are members of State / Territory institutes can be expelled, suspended, fined or receive warnings for proven breaches of their Code of Practice.... Western Australian real estate agents may be required to appear before the relevant Supervisory Board and may lose their licence. That body can hand down mandatory penalties or removal of registration or licence. This could then result in losing membership of REIWA. (REIA 2004, p.6)*

REIA's code of conduct has no specific reference to RTDs as it is primarily focused on the relationship between agents and property owners rather than between agents and tenants – although, guidelines for appropriate conduct in relation to RTDs may be implied. TAS (2003) argues that industry regulation of RTDs, particularly through a Supervisory Board is not effective where there are limited avenues for redress in Court. If Courts will not hear cases related to RTD listings, there can be no proof given of unconscionable conduct. This form of industry regulation is limited in its reach because only 75% of real estate agents subscribe to it (MCCA / SCAG, 2006). Also, it does not cover the increasing number of landlords who are now accessing RTDs directly.

Federal legislation

The *Privacy Act (Cwth), 1988* has dominated discussion relating to regulation of RTDs at a federal level; in particular the Privacy Commissioner's inquiry into TICA had great influence and changed the practices of that particular RTD. TICA was found to have breached the *Privacy Act (Cwth)*, 1988 in the following areas:

- Determination 1
  - Charging an excessive amount for people to access their tenancy record by mail
  - Charging an excessive amount for people to access their tenancy record by telephone
- Determination 2
  - Failing to have appropriate agreements in place with members to ensure data quality
  - Failing to have appropriate measures in place to check the quality of data supplied by members
  - Failing to advise tenants that they have been listed on the database
  - Failing to have appropriate and effective dispute resolution procedures in place
- Determination 3
  - Failing to keep personal information accurate and up to date
  - Failing to destroy or de-identify personal information that is no longer needed for any other purpose
  - Failing to take reasonable steps to ensure tenants are aware what personal information will be collected, to which organisation it will be disclosed and that individuals can gain access to the information

(Office of the Privacy Commissioner 2004)

The National Privacy Principles on which these determinations were based regulate private operations such as RTDs with a recognition that commercial and community interests must be balanced with the right to privacy (which is not an absolute right) (MCCA/SCAG 2006). Although influential, the Privacy Commissioner's determinations in the TICA case were not binding (MCCA/SCAG 2003), so there have been moves towards creating a binding privacy code of conduct for all RTDs.

Commonwealth Consumer Protection Legislation (*Trade Practices Act (Cwth), 1974*) could arguably be used for addressing concerns about RTDs although there has been no such action to date. This Act deals with services where it can be demonstrated that there has been unconscionable conduct, misleading and deceptive conduct or undue harassment and coercion (MCCA / SCAG 2003).

State legislation

Residential tenancy legislation exists in each Australian state and territory and is the primary regulator of housing rights and responsibilities. Reviews and reforms to such legislation recognising RTDs have taken place in Queensland and the ACT. A recent review of the *Residential Tenancies Act 1987 (WA)* recommends only that the progress of the national working party on tenancy database regulation be monitored so that if a national approach is not agreed, then the RT Act could be amended.

Queensland undertook the first and most comprehensive review process of RTDs and this resulted in significant reform of its *Residential Tenancies Act (Qld)* 1994 in 2003. Reviews included the Griffith University School of Law Report, the Guthrie Report and the Queensland Special Government Backbench Committee Report. The report by the Griffith University School of Law in association with the Tenancy Database Action Group Queensland in 2001 evaluated the Queensland regulation of RTDs and avenues for redress by consumers adversely affected by them. It recommended law reform in the vein of Fair Trading (Griffith University School of Law 2001). In 2002, the Residential Tenancy Authority (RTA) produced a report written by Fiona Guthrie (the Guthrie report), outlining key problems with RTDs, the current regulatory environment and a recommended strategy for government. This report made nine recommendations, the first being that the Queensland *Residential Tenancy Act, 1994* 'be amended to extend to the database listing and disclosure practices of lessors' (RTA 2002, p.32). This was received favourably by the government of the day and a Special Government Backbench Committee (SGBC) was created to explore how this would be best achieved. The QSGBC produced a report on RTDs and made seven recommendations. These were adopted and the *Residential Tenancies Act (Qld),* 1994 was amended in 2003 to regulate who could be listed, what information could be recorded and how information must be disclosed on RTDs.

The Queensland regulation specifies that

> *... only those on the tenancy agreement can be listed, only at the end of a lease / agreement, when*

- the amount owing exceeds the rental bond and the money is owed under a conciliation agreement or tribunal order, or
- they have been served with a Notice of Remedy Breach (Form 11) for rent arrears and have failed to remedy the breach, or
- after abandonment of the premises, unless the dispute is currently subject to a Tribunal determination, or
- where the Tribunal has determined the agreement has ended for objectionable behaviour or repeated breaches.

(RTA 2006)

The tenant must also be advised of the listing before it occurs. Whilst there has been no review of the effectiveness of the reform, it has been deemed by most tenancy advocates to be successful (MCCA / SCAG 2006a).

The Australian Capital Territory also amended its *Residential Tenancies Act, 1997* in 2005. This was largely based on the Queensland reforms with an additional caveat that the period for initiating a listing is also limited (MCCA/SCAG 2006b).

The licensing of real estate agents affords State governments limited power in regulating access to and use of RTDs. Queensland again led the way in reform in this area. It was the first state in Australia to regulate RTD listings by real estate agents (Tenants' Union of Queensland 2004).

The *Property Agents and Motor Dealers Act, 2000* (PAMDA (Qld), 2000) contains provisions to ensure accuracy and fairness in RTD listings made by property agents – such as a requirement to take reasonable steps to disclose the information to the tenant (MCCA / SCAG 2006b). While Queensland's PAMDA (Qld), 2000 regulates in conjunction with amended tenancy legislation, NSW's reform, the Property Stock and Business Agents Amendment (Tenant Databases) Regulation 2004, amending the *Property Stock and Business Agents Act (NSW),* 2002 is the state's primary method of regulating RTDs (NSW Office of Fair Trading 2007). The new regulation in NSW applies to listings made on or after 15 September 2004 and stipulates that listings may only be made for specific reasons:

- ... for owing the landlord money for rent and / or damage caused intentionally or recklessly to the residential premises (but only if the amount owing exceeds the amount of the rental bond)
- failure to pay an amount of money to the landlord in accordance with an order of the Consumer Trader & Tenancy Tribunal (CTTT)
- where the CTTT has issued a termination and possession order for serious or persistent breach of the residential tenancy agreement
- where the CTTT has issued a termination and possession order for serious damage or injury.

(NSW Office of Fair Trading 2007)

The major criticism of RTD regulation through licensing of real estate agents is that it does not regulate listings made by landlords (Pryer 2007), an increasing target market of RTDs. Although there has been no review of effectiveness of the Queensland or NSW regulation of real estate agents, it has been viewed by tenancy advocates as generally successful (MCCA / SCAG 2006a).

Similar to consumer protection legislation at the Commonwealth level, State consumer protection legislation does regulate RTDs to a limited extent. South Australia and the Northern Territory have amended their consumer protection legislation to regulate RTDs. SA amended its *Fair Trading Act (SA), 1987* to ensure fairness and accuracy of database listings but has not prescribed listing practices, at least not to the extent of Queensland or NSW (MCCA / SCAG, 2006b). NT has amended its *Consumer Affairs and Fair Trading Act (NT), 2005* to mirror SA's reform (MCCA / SCAG, 2006b).

The *Equal Opportunity Act 1984 (WA*), (EOA) (and similar acts for other states) could provide some protection for tenants against discrimination in relation to RTDs. No equal opportunity legislation in Australia specifically regulates RTDs, however, the EOA deems it unlawful to discriminate on the grounds of race in the area of accommodation. Whether such a claim of discrimination in terms of RTDs would be successful at the State Administrative Tribunal would depend on individual circumstances and to date, no such cases have been tested. However, there have been some few successful related cases. Solonec explains that as of 2000,

> *Although the [EOA had] been in force for 16 [years], there [were] only five cases where Commonwealth, State or Territory anti-discrimination laws [had] been successfully invoked by Aboriginal people who [had] been discriminated against on the grounds of their race when seeking accommodation in the private rental market.*

Because of the often covert and indirect forms of discrimination facilitated by RTDs, any case would be difficult to prove.

For some time it has been apparent that as a result of

> *... the national nature of databases, together with the mobility of the Australian population... individual and different States and Territory responses will be far less effective and equitable than a nationally coordinated response.*
>
> *(QSGBC 2002, p.7)*

RTD regulation has been pursued in a somewhat ad-hoc fashion in the past but in recent years but there has been a move towards national uniformity through the Ministerial Council on Consumer Affairs. It is argued that a

> *... national approach to the regulation of residential tenancy databases will provide greater certainty for tenants, landlords, agents and property managers....*
>
> *(MCCA 2008)*

and a simpler and clearer regulatory environment for RTD operators.

State and territory responsibilities for tenancy issues mean that mirror legislation is considered the most appropriate action for national legislation (MCCA / SCAG 2006a). A proposal for mirror legislation is currently being developed by the Standing Committee of Attorneys General and the Ministerial Council on Consumer Affairs in a joint working party on databases and it is expected to be available for consideration in June 2009 (WA Legislative Council 2008). This work builds on the Issues paper (2003), Report (2006) and Regulation Impact Statement (2006) that have already been produced by the group. It is expected that the mirror legislation will also be accompanied by a binding national industry code of conduct under the *Privacy Act (Cwth) 1988* to clarify its application.

Western Australia is one of the few states which has not changed its legislation to regulate RTDs. It is important to note that there were fewer recorded complaints about RTDs to the Department of Consumer and Employment Protection (DOCEP) in WA than there were to Queensland and NSW's equivalent agencies before reform (RTA 2002). Also, in 2003, REIWA received less than five written complaints about RTDs from members of the public (REIA 2004). However, as suggested previously, economic conditions can determine the extent to which tenants or owners hold bargaining power. It is possible, even likely, that WA's current competitive housing market may be deterring tenants from making complaints and pursuing issues arising from RTDs in fear they will be locked out of the market.

Apart from those in Commonwealth legislation, there are currently no specific controls of either the processes or content of RTDs operating in WA. Federal privacy legislation is the key regulation of RTDs operating in WA (WA Legislative Council 2008). This is not to say that the issue has been ignored at a state level entirely. Much of the future response depends on the outcomes of the MCCA / SCAG joint working party on databases.

The issue has also been raised in WA Legislative Council question time. The position of the state government in June 2008 was that if there were further delays to the development of national legislation, the WA government would be likely to withdraw from the working party and regulate RTDs under the *Residential Tenancies Act 1987 (WA)* (WA Legislative Council 2008). All further government action on RTDs in WA has been delayed until findings of the national review, expected in June 2009, are published.

Stakeholder perspectives

Although the majority of research, reports and analyses of RTDs come to similar conclusions about their validity, appropriate operation and regulation, it is important to note that stakeholders hold widely differing views. RTD operators, real estate agents, landlords, social justice & tenancy advocate groups and tenants have different levels of knowledge about RTDs and perceptions of best practice. This short section aims to highlight some of the major viewpoints of these key stakeholders.

RTD operators in Australia are few in number and diverse in views. This may be partly attributed to the fact that they deliberately try to differentiate themselves to remain competitive. However, some common perspectives can be identified. Firstly, of course, RTD operators support the operation of RTDs. By simply providing information about tenant histories, RTD operators consider their service as fact-sharing rather than an unfair restriction upon access to housing. They believe it is up to tenants to abide by their agreements and ensure they establish a good tenancy history (Short et al. 2003). In terms of regulation, it is recognised that nationally uniform legislation will reduce the costs of complying with different state provisions and this is supported. However, some operators believe that regulation is being pushed too far and that they are being punished for the poor operation of an unethical few (QSGBC 2002).

The general views of real estate agents are that RTDs are a legitimate tool of risk minimisation essential for protecting business from risky tenants, pleasing clients, fast-tracking the process of approval and securing insurance (Mead et al. 2003). RTDs are considered essential because agents lack access to credit records. Some agents expressed frustration that rental companies providing televisions worth hundreds of dollars have access to credit records while agents, providing housing worth thousands of dollars do not. Therefore RTDs are considered to be a necessary tool (Short et al. 2003).

Many agents support greater regulation of RTDs, particularly in the form of nationally consistent legislation (REIA 2004). There is general agreement first, that there is no place for inaccurate listings and second, that 'other' agents may abuse the system (QSGBC 2002). However, in general, agents support minimal regulation as most believe tenancy laws are already skewed in favour of tenants.

Landlords share many of the opinions of real estate agents, as effectively both are property managers. One point of difference between the two stakeholders is that landlords generally advocate far greater access to all RTDs for landlords (Property Owners Association WA 2003). Real estate agents are more likely to argue that such 'unlimited' access invites misuse from unlicensed and potentially unscrupulous landlords who can bring RTDs into disrepute.

Most social justice and tenancy advocate groups claim there is no place for RTDs at all in the private rental market. They argue that government should prohibit their operation

> *... on the grounds that they increase the ever-present power imbalances between tenants and lessors (and their agents), are manifestly unjust, and can cause excessively severe and unfair hardships for listed tenants".*
>
> *(Griffith University School of Law 2001, p.9)*

Those groups which do recognise the legitimate nature of RTDs advocate for much stricter regulation to minimise the potentially severe consequences for listed tenants (Shelter WA 2003). They claim that

> *... while it is irrefutable that investors have the right to use reasonable means to protect their investment, this right should not interfere with the reasonable right for tenants to access appropriate housing. (QSGBC 2002, p.22)*

Whereas property managers argue that RTDs are necessary for minimising risk from bad tenants, tenant advocates argue that those who are listed are not necessarily 'bad'. They claim that there is a difference between those who can't pay and those who won't (RTA 2002). For example,

> *... a breach of an agreement leading to a listing on a database may have arisen because of particular circumstances and need not be an indication of current 'risk' to a lessor.*
>
> *(QSGBC 2002, p.22)*

Because RTDs don't differentiate between such tenants and 'bad' tenants, they reduce the pool of potential applicants and unnecessarily disadvantage many potential tenants (RTA 2002).

Anecdotal data suggests that most tenants are not aware of RTDs beyond a vague notion of a 'black list'. RTDs are often viewed as a collusion of property managers to discriminate and punish tenants unfairly. Many tenants feel removed from the information about themselves stored in RTDs (Short et al. 2003). Most knowledge about RTDs is gained from personal experiences and networking, some media reports and speculation. There is little knowledge of current regulation but a firm belief that they should be monitored more closely (Short et al. 2003).

Key issues

Many issues have been raised in the research on RTDs. Some key issues and themes are apparent: the types of data, the accuracy of data, privacy, dispute resolution mechanisms and the effects of listings. These issues have primarily been discussed in terms of fair trading, compatibility with existing tenancy regulation and risk minimisation. There has been a notable lack of research in the area of discrimination as it relates to RTDs. Concerns about discrimination are sometimes mentioned but they have not been a focus of any Australian RTD studies.

Types of data listings

The type of information included in RTDs varies between each database and there is also variation in the listing practices of property managers (Carr 2002). Associated with this lack of consistency there are a number of problematic categories of data included in RTDs. These include vexatious or biased listings, trivial information, sensitive information, 'refer-to-agent' listings and neutral listings. There are also concerns about who is listed.

One of the most commonly cited (RTA 2002; Tenants Union ACT 2006) issues with RTDs is the inclusion of inappropriate information about tenants. As listings are made at the discretion of property managers they are potentially open to influence by personal disputes, retaliation and gossip (RTA 2002). Where a personal disagreement arises between a property manager and a tenant there are limited controls against misuse of RTDs by these property managers. There have been examples of people being listed for being 'difficult', for example, for standing up for their rights in a tribunal hearing, and even those who have won hearings have been listed in retaliation (Tenants Union ACT 2006). The Neil Jenman Group (2003) suggests such personal grudges can extend to discrimination on the basis of ethnicity:

> *Community workers and social service groups report it is also common for people to be black listed because of their ethnic origin.*

Another arguably inappropriate form of listing in RTDs is trivial information. Arbitrary issues, such as unkempt lawns, which would never be accepted by a tenancy tribunal, are commonly listed on RTDs (Carr 2002). Although it appears this practice is decreasing (TICA for example has removed unkempt gardens as a basis for listing on their website), no regulation in WA prohibits the inclusion of trivial information in listings. Property managers can use discretion as to which tenants deserve to be listed for arbitrary reasons and which do not.

Assumptions are sometimes made about race as a form of 'risk management' (Molloy 2008). Aboriginality and CaLD backgrounds are sometimes viewed as 'risky' characteristics in relation to family size, cultural practices and housekeeping (Short et al. 2008; Solonec 2000). Where RTDs specifically list ethnicity, this may endorse the practice of discrimination on that basis. For example, Badtenants.com.au includes a category for a tenant's country of origin. While this category may be intended to provide a more accurate method of identifying the correct person, it can also lead to discrimination.

Some RTDs allow non-specific listings about tenants that simply refer the person enquiring to speak to the previous agent – 'refer-to-agent' listings. Because no information is recorded within the RTD, an agent is able to make comments 'off the record' in regard to anything they deem appropriate.

Increasingly, RTDs are expanding to include neutral listings. Neutral listings are evidence of previous rental history, or in some cases, also evidence of previous rental applications. Unlike most other RTD listings there are no negative reasons for listings – it is simply a record of a tenant's previous involvement with the private rental market (or at least with property managers with access to that particular RTD) and is assumed to be positive where no other listings are under the tenant's record. TICA markets itself as a tenancy history database (Pryer 2007); in the words of Phillip Nounnis, TICA's managing director:

> *TICA's biggest response to the Privacy Act has been expanding the 'blacklist' to a data web covering every new tenant registered with its 5000 member agents. 'We've started putting the good tenants on,' he said.*
>
> *(Needham 2002)*

The decision of who is listed on an RTD, for example the lessee or person who has caused damage, relies on the discretion of property managers. Although most state tenancy legislation limits accountability for tenancy breaches to those who have signed the agreement, RTDs have no such regulation, at least in WA. Approved occupants, partners and visitors have been known to be listed on RTDs even when they are not listed on a tenancy agreement (MCCA / SCAG 2006), if the property manager judged them to be part of the issue.

Accuracy of data

The accuracy of data and use of verification processes are also inconsistent between RTDs. Although it is of commercial benefit to RTDs to ensure accuracy, as it ensures greater risk minimisation, there have been many cases of inaccurate data being included in RTDs and negatively affecting tenants' access to housing (Short et al, 2003). Some issues regarding accuracy include vexatious and biased listings where personal prejudice can affect the accuracy of the information, the timing of listings, and verification processes.

The accuracy of listings is also related to the time at which a listing is made. It is possible to circumvent tenancy regulation through listing at particular times in the process of following up a breach. The RTA Report in 2002 provides a lucid example:

> *Arguably at present there is nothing to prevent a property manager from listing a tenant after they are just a day late in paying their rent. The [Qld Residential Tenancies] Act however provides that the agent can send a Notice to Remedy Breach only after the rent is seven days in arrears. Listing therefore circumvents the intent of the Act – in this case, to provide a tenant with an opportunity to rectify the breach without penalty.*

Similarly in the MCCA / SCAG report (2006b), it was shown that standard letters from RTD operators gave tenants less time to rectify a breach than is generally afforded through legislation. For example, TICA's letter gave four days to rectify a breach before a listing and Barclay MiS gave five days. Because of these practices, listings in RTDs may be inaccurate and out of date (Tenants Union ACT 2006). This is particularly an issue because faced with limited time and resources, property managers are less likely to update information when a breach is rectified within the term of a lease than if it continues to be an issue. A number of tenancy advocate and social justice groups have also argued that if a tenancy has been continued it would imply that the tenants are satisfactory and therefore there would be no basis for a listing (Department of Community Development (WA) 2003).

In most cases there do not appear to be any review or verification processes for data in RTDs. For those RTDs where such processes exist, they appear to be inconsistent and often insufficient. Many cases of mistaken identity and invalid information have been identified (RTA 2002; TAS 2004). It is generally the responsibility of RTD subscribers to ensure the validity of information entered – in fact this is often a condition of the contract. However, property managers face scarce resources and have higher priorities than updating or verifying listings, so this is perhaps not a viable or reasonable expectation.

National privacy legislation is the key form of regulation in WA, yet there are still issues related to privacy that have arisen. Notably there are concerns about the collection of personal information, insufficient and inconsistent notification processes, access to personal information and access by third parties. Permission for the collection of personal information is often obtained through standard tenancy application forms. This is arguably a form of coercion as there are no other options for tenants. If a potential tenant refuses to allow an RTD check their application will not be processed. As Carr (2002) suggests, 'Prospective tenants may not be aware or do not understand the implications of giving their consent'. There is a lack of information available to tenants about RTDs and their privacy rights. Furthermore, each RTD has different privacy policies and processes regarding access to personal information (see Table). High fees and complex processes limit tenants' ability to obtain information. This is discussed further below in relation to access to dispute resolution processes.

There is no requirement in WA for property managers or RTD operators to notify tenants of a listing on an RTD. Each RTD has a different (or non-existent) notification process. In fact, some RTDs actively discourage property managers from advising potential tenants that they are listed (Carr 2002; RTA 2002). Lack of notification denies tenants the opportunity to respond to, or correct their personal information.

In some cases personal information kept in RTDs has been passed on to third parties. Debt collection agencies (sometimes associated with the RTDs) have been known to use RTD information (RTA 2002). TRA allows full access to their database for 10 minutes to anyone for a fee with the intention of allowing tenants a chance to check for listings (TRA 2008). However, this breaks confidentiality as effectively personal information is publicly available.

Dispute resolution processes

Related to the point that most tenants are unaware of exactly what RTDs are and how they operate, is the fact that even if tenants are somehow made aware of a listing on an RTD, there is very little information available on how to dispute it. Each RTD has a different dispute resolution process and access can also be highly complex and expensive. For example, TICA will provide information about a listing by mail for free but only if it is specifically stipulated that it be provided free of charge in writing. If this is not done, the person enquiring is charged a fee of $14.30 (TICA 2008). High fees for help lines providing information about listings and dispute processes such as $5.45 a minute for TICA (TICA 2008), are also barriers to dispute resolution. The onus of proof for all listings lies with tenants rather than database operators or property managers (MCCA/SCAG 2006).

The lack of legislation on RTDs allows agents to avoid tenancy regulation through informal notices of breaches in reference to a potential RTD listing. Such notices can be misleading. For example, some standard letters notifying tenants that they may be listed also threaten listings on a credit reference list, for which there is actually a long process (Carr 2002).

A number of RTD operators act as a mediator in dispute resolution processes. As RTD operators hold contracts with their subscribers – the agents and landlords – and they often attract subscribers by having higher numbers of listings, there is a severe conflict of interest on their part in any mediation attempt (MCCA / SCAG 2006). Even if the RTD operator were able to take an impartial role in mediation, it is not their core function, so lack of training and skills in mediation are likely to be significant issues.

Effects of listings and secondary implications

The duration of listings on RTDs is inconsistent within and across the different databases. A listing may continue to be retained on a database from a period of three years to indefinitely. As tenancy database activist Penny Carr (2002) points out,

> *No control exists over length of listing. Some tenants stay on the tenant database lists for longer than criminal convictions are recorded.*

It is interesting to note that under the Spent Convictions Act (WA), 1988 it is unlawful to discriminate against a person whose conviction has become spent (EOC 2007) but there is no such protection for some listed tenants. For some databases such as TICA, even if listed parties rectify the reason for their listing, apart from a note of when this occurred, they can never remove that information. Philip Nounis, TICA's managing director

> *... confirmed that TICA did not remove the record of debts from the database when the tenant repaid the money. Instead, it added the date on which the money had been repaid.*
>
> *(Shield 2003)*

Such indefinite listings are inconsistent with the stated purposes of RTDs as they remove incentives to pay or rectify misconduct (Carr 2002).

People who are identified as risky tenants and listed on RTDs, either legitimately or erroneously, are often effectively locked out of the private rental market. To secure housing, they must pursue other accommodation options. Where there is less demand for accommodation, property managers are often more prepared to negotiate with prospective tenants with an RTD listing (Short et al. 2003).

Even when the rental market is highly competitive, some types of properties may have less demand because they are of poor quality, or they may be expensive, or they may be small properties, or they may be properties in areas with few or poor quality services and infrastructure. A listing on an RTD can limit a prospective tenant to these options which may either far exceed their needs and expectations or be inadequate and inappropriate for their situation (Seelig 2003). Although it may seem to be paradoxical that these two extremes may be available, each reflects the same issue of access as a result of less demand.

One example of how negotiations for properties in less demand can accommodate discrimination is in relation to expensive properties. Prospective tenants who are listed on RTDs sometimes agree to rent expensive properties even when they may struggle to meet regular payments. For many people, sacrificing a larger portion of their income to obtain a private rental house that meets their needs is preferable to the other limited housing options available to them once they are listed (Wood et al. 2004). However, where this is the case, tenants are more vulnerable to financial pressures and more likely to default on payments (QSGBC 2002; Seelig 2003). This continues the cycle of a bad tenancy history and further bars tenants from reasonable access to the private housing rental market.

The informal rental market

Even though landlords' access to RTDs appears to be increasing, much of the informal rental market does not access any form of tenancy database. This creates a number of issues. Landlords vulnerable to financial loss and / or wishing to increase profits may take advantage of the small bargaining power of listed tenants. Where potential tenants have few other options they may accept inadequate forms of housing in the informal rental market for higher prices, often with strict conditions attached. Even if landlords are not aware of specific listings, by offering prices significantly higher and arrangements more volatile than those available in the formal rental market (Short et al. 2003), landlords can surmise that unlisted potential tenants will not apply for their properties. Once again, particularly in the case of high costs, this can increase the likelihood of defaulting, continue the cycle of a bad tenancy history and bar tenants from the rental market.

Tenants who have legitimately been listed on RTDs may also actively seek to access the informal rental market, increasing the risk to landlords. This is the main argument of landlords who seek to gain greater access to RTDs. This increased risk is also recognised by insurance companies.

> *"Ms Scheer, chief executive of Terri Scheer Insurance Brokers, also said that some chronic non-payers often seek out landlords who independently manage their properties. This was because the tenants assume the owner will not have access to a credit data base, which might otherwise cause the landlord to choose someone else" (The Herald Sun 2006)*

The Landlords Advisory Service concurs,

> *"Private landlords are seen as a 'soft target' by unscrupulous professional bad tenants. They know all the tricks to bluff their way past an unwary landlord. They also know that most Real Estate Agents and Property Managers have access to National Databases and Credit Reference Checking facilities, limiting their chances of being accepted as a tenant if they have a record." (LAS 2008)*

As the risk of renting to bad tenants increases, landlords may have less incentive to provide accommodation. This can reduce the amount of housing available and contribute to housing shortages.

Negative outcomes for both tenants and landlords occur particularly when vulnerable landlords with large mortgages are matched with legitimately listed and low income tenants (Short et al. 2003). A study by Wood et al (2004) revealed that vacancy rates in low rent housing stock are actually higher than in more expensive properties. This is because of the higher rate of poor matches between landlords and tenants where RTDs are not used. Wood et al suggested that private landlords who do not access RTDs are more likely to have longer and more frequent periods of vacancy because the selection and screening process will be slower, they will face greater variance in tenant quality and high risk tenants are more likely to rent their properties.

Apart from standard long-term housing options provided by landlords in the informal rental market, people listed on RTDs may alternatively access short-term (and often unsuitable) accommodation for long periods of time (Mead et al. 2003). Caravan parks, hostels and boarding houses may become long-term accommodation options where there are few other alternatives. For those tenants eligible for publicly-funded housing, a listing on an RTD can mean they leave the private rental market. In WA, the Department of Housing and Works (DHW 2003) identified that many indigenous people have come to rely on social housing because of discrimination facilitated by RTDs in the private rental market.

People who stay with friends and family because they are unable to secure other accommodation are known as the 'hidden homeless'. Tenants who are displaced by RTD listings may not be eligible for publicly-funded, community or emergency housing and in a highly competitive market they are often still unable to obtain tenancies in any part of the private rental market. Staying with friends or family is sometimes the only option. Many Aboriginal and CaLD people have significant obligation to accommodate friends and families in need (Short et al. 2006). As more people live in a residence, overcrowding and increased wear and tear can result. Where the friends or family are themselves renting, this can lead to conflict with property managers and tenancy breaches and perhaps a listing on an RTD.

There are many examples of the opportunities for race based and other forms of discrimination in the largely unregulated operation of residential tenancy databases. The types of data listed, the accuracy of that data, the privacy concerns of those who appear on the listings and their access to dispute resolution processes are all issues identified by the Privacy Commissioner as being problematic for tenants in general (Office of the Privacy Commissioner 2004). Those low income tenants from minority ethnic backgrounds can be most vulnerable to the lack of regulation which applies to the operation of the databases in Western Australia.

Chapter 6: Submissions

Invitation to make submissions

As the focus of the Inquiry was to collect information about the experiences of Aboriginal and CaLD people in the private housing rental market, the EOC prepared separate submission forms for individuals, community organisations and real estate practitioners and published an information package to explain and promote the call for submissions (see Appendices). To assist individuals in making submissions, the EOC asked key ethnic minority and Aboriginal organisations to hold community forums to facilitate the collection of information, and limited funding was made available for costs such as venue hire and payments for interpreters and translators. Separate information briefings were conducted by EOC staff in metropolitan and regional areas for community groups and for real estate representatives.

Metropolitan and regional information briefings

A total of eleven information briefings were conducted in Perth, Gosnells, Mirrabooka, Mandurah, Albany, Bunbury, Kalgoorlie, Geraldton and Port Hedland. At the meetings with community support workers, EOC staff provided information about the terms of reference of the Inquiry, promoted the organisation of community forums to assist individuals to put forward their stories and encouraged the preparation of submissions. Community support workers who participated in the briefings agreed that their Aboriginal and CaLD clients had difficulty with composing written descriptions of their housing experiences and preferred to describe their experiences verbally. Those dealing with Aboriginal clients in regional areas commented that real estate agents were not helpful with Aboriginal people seeking accommodation. One community advocate from the Great Southern reported that Aboriginal clients say it is not what is said, but the real estate agent's body language and tone of voice which says 'you're a second class citizen'. At the Kalgoorlie meeting it was commented that real estate agents decline to deal with tribal Aboriginals from remote areas.

With the groups of real estate representatives, EOC staff described the EOC's role in Section 80 inquiries and the terms of reference established for the current Inquiry. The representatives were urged to make submissions to the Inquiry, however most indicated that they expected their views would be presented by REIWA. The representatives described that agents do not have control of tenancy decisions, as control resides with the owners of properties. They reported that many owners were not well informed about legal issues relating to the *Residential Tenancies Act 1987* or other legislation such as the *Equal Opportunity Act 1984* and they were generally reluctant to spend money on rental properties to effect maintenance.

Overview of the submissions

Eighteen submissions from organisations were received, largely from community based legal centres or advocacy centres, as well as eighteen submissions from individuals. As many indicated that they did not want their identities to be publicly available, only those organisations or individuals who indicated they had no objection to being named in this report have been identified. In total, 70 case studies were described in the submissions and provide a wealth of information about the experiences of people from minority racial groups attempting to access, or participating in, the private housing rental market.

Most submissions gave examples of their perception of unfair treatment of these groups and others such as single mothers with dependent children escaping domestic violence; refugee and migrant women who arrive in Australia as a single parent with one or several children, often due to the death of the husband due to war, natural catastrophe or political upheaval; and those with disabilities.

A minority of the submissions did not include examples of unfair treatment of minority racial groups, giving a different perspective on the concerns of the Inquiry. The submission from the Multicultural Services Centre of Western Australia Inc (MSCWA) addresses the issue of race discrimination and refers to its accommodation assistance programs with refugees and migrants in close cooperation with selected real estate agents. The Bunbury Community Legal Centre submission on the terms of reference suggested that the problems faced by disadvantaged groups in the private rental market indicate a socio-economic, not discrimination, issue.

The Housing Crisis Committee for Culturally and Linguistically Diverse Communities (HCCCaLD) was formed in October 2006 from various community and government service providers working with CaLD people, particularly recent refugee and humanitarian entrants from African countries, including those with physical and mental disability. Acknowledging the particular pressure on the housing sector imposed by the economic boom conditions in Western Australia, the group perceived negative attitudes within the real estate industry to ethnic minority groups which had resulted in very restricted participation in the private rental market. The Committee forwarded many case studies detailing the experiences of CaLD people in the private rental market.

As described in Chapter 1 of this Report, a number of attempts were made by the EOC to encourage both individual real estate agents and REIWA to lodge a submission, but none was forthcoming.

Perth and the regions

The submissions outlining the experiences of Aboriginal people in the private housing rental market provide examples of the difficulties they face in gaining access not only in the Perth metropolitan area but also throughout regional Western Australia. The submissions from CaLD groups refer to the experiences within the metropolitan area of recent immigrants. As noted in Chapter 2, 93% of all humanitarian entrants who have arrived in Western Australia since 2002 – 03 are still located in the Perth metropolitan area (DIAC 2007).

The findings of the EOC's previous inquiry into the existence of discriminatory practices in relation to the provision of public housing and related services to Aboriginal people in Western Australia had also resulted in the gathering of reports of discriminatory practices in the private rental housing market. Three recommendations arising from that prior Inquiry in particular should be noted here (EOC 2004):

- Recommendation 52. The Inquiry noted that many submissions referred to the existence of racist attitudes in the private rental market and the effect this has on the capacity of Aboriginal prospective tenants to gain housing. The Inquiry recommends that DHW conduct training sessions to raise awareness of this.
- Recommendation 53. In view of the frequency with which Aboriginal people report race based discrimination in accessing the private housing rental market, the DHW to cease the practice of requiring that Aboriginal prospective tenants make multiple attempts to access the private rental market before the DHW will list these tenants for priority housing.

- Recommendation 54. That all DHW officers, including regional officers, be made aware of and required to follow the new policy of not including a requirement to provide evidence of trying to obtain private rental housing before being considered for priority assistance.

DHW has advised the EOC that the practice of requiring prospective tenants for priority public housing to show evidence of attempting to access the private housing rental market has ceased, however information gathered by this inquiry in 2008 shows that this change is not well known or understood. A briefing session for community workers in the Bunbury area held by the EOC in September 2008 reported that Aboriginal people are still requested by DHW to show evidence of trying to access the private rental market. The following examples also indicate that racist attitudes in the private rental market are felt to be widespread.

> Certainly in the Great Southern the Noongar people with whom I work are ... disconnected from the private rental market. There are two reasons for this in my opinion, one is the hidden racism and the other is the development boom that is taking up all the private rentals.... The closest most of my Indigenous client base would come to the private rental market is trying to work out how they can prove to DHW that they have been blacklisted so they can then be considered eligible for priority housing....Proving blacklisting is virtually impossible as no real estate agent would put in writing that an Indigenous person is automatically at the end of whatever queue there may be for a property and in the Great Southern at the moment there is most definitely a queue. (Agency Submission 18 p.1)

> The very real fear of rejection leads many homeless Indigenous clients to not even try for private rental. In the past few years, very few Indigenous clients have asked for assistance to access private rental. Two notable exceptions were young Indigenous people with mental illness, neither of whom were successful in getting a private rental. Other people spoke of their prior unpleasant experiences and also knew of other people's bad experiences. One homeless family with four small children had tried repeatedly to get private rental but had been knocked back each time. They became a client of this service after that experience, when they were trying to get accepted for Priority Assistance for DHW. Many clients only spoke about their experience with private rental during the priority interviews when asked by DHW if they had tried to access private rental. (Agency Submission 17 p.2)

The next two examples are from regional towns:

> On entering the ...[real estate agent's] office in town the lady at reception took one look at him and told him they didn't have any available rentals. He went back to ...[the Aboriginal town site] and told the community support worker about this and she called to check if the real estate agent had any property available. It turned out they had houses for rent but it appears that they didn't want to rent to him. When she and another advocate questioned this they were told that he had to supply three reference character (sic) letters before he would be considered for a rental. (Individual Submission 4 p.6)

> I once attended a real estate agency...in regards to advertising a house for rent. Was told by the Property Manager that if I didn't want 'dogs or Aboriginals' renting my place they could make that a 'part' of the conditions. I was shocked and speechless. I am an Aboriginal. (Individual Submission 1 p.4)

A more positive statement was submitted about the Northam area where Aboriginal and non-Aboriginal families have lived and worked together for decades. It was submitted that unacceptable behaviour by either Aboriginal or non-Aboriginal people in relation to any issue, including discrimination in housing, would quickly become known among the wider community and be 'sorted out' within families. (Agency Submission 11 p.15)

> A refugee family from Eritrea living in the Northern Suburbs decided they might find cheaper rental housing south of the river. They identified a suitable property and spent some two hours travelling to view the house during a 'home open'. As they approached the house from the street the agent was indicating that they should go away, which they ignored and told the agent that they wished to inspect the house with a view to submitting an application. The agent argued with them that they could not inspect and while this occurred another family (Caucasian) was allowed to enter and inspect. To their credit the family insisted on being allowed to inspect and the agent eventually agreed, telling them that they only had 5-10 minutes to do so. Their application was not successful. (Agency Submission 12 p.5)

Access to the private housing rental market

The submissions to the Inquiry contained many examples given by Aboriginal and CaLD people of real estate agents not wanting to deal with them, apparently when an agent became aware of their race. While the agent does not say to the person that their race is the reason why a rental is no longer available, the agent appears to have no other information about the applicant, such as their income level, before moving to exclude them. An example of this is where an agent advises by telephone that a property is available for rent, but then states it is no longer available when the caller appears in person.

> Another [Aboriginal] woman stated: 'I don't feel it's about me, it really is about: will this person look after my house, will this family look after my property. That's really what it's about, and no one can tell from the colour of your skin whether that person will cherish the home to the point where it's not gonna cost you a million dollars and know that you've made a wrong decision, and there goes my investment , you know? That's what it's about for them and I understand that, but they can get too...too guessy, you know? Judge a book by the cover when most of us are just trying to put a roof over our head and would cherish it. (Agency Submission 14 p.9)

> The combination of low availability and high demand allow landlords and real estate staff to be highly selective in their choice of tenants and many Indigenous people have reported to me that they felt they were dismissed once their Aboriginality became apparent. So they may have talked on the phone and been encouraged to come and view the property or visit the real estate office. Then when they met the real estate agent, they were instantly informed that the property was no longer available. A few couples I know, with one Indigenous and one non-Indigenous partner, had been successful in getting private rentals by the non-Indigenous person going alone to arrange the lease. (Agency Submission 17 p.1)

> I wouldn't dare try it now – especially in Perth, when I didn't have a job. Why would I go and look for a unit when I'm unemployed and being Aboriginal, y'know? Waste of time. It'll do my head in and it's gonna make me feel lower than what I'm already feeling, so I'm not ready to put myself up for that kind of degradation when I know it's going to come up with zero anyways. (Agency Submission 14 p.8)

> Applied for many houses but was denied. Furthermore in some cases I was told that the property was no longer available to find it still being advertised. (Individual Submission 13 p.4)

> A single Somali woman with three children has made an appointment with the real estate agent over the phone to view a property and when she meets the real estate agent they (sic) take one look at her skin, the way she dresses and immediately she feels their attitude change. Sometimes they have become quite rude and ask questions like can she afford the rent, does she work, and how many children does she have. The constant stress of viewing the properties and making applications had taken a very heavy toll on her mentally and physically. (Agency Submission 5 p.12)

Other examples are given where a support person or advocate perceives that a person from a racial minority group is treated differently from other applicants for a rental property. A community worker who was previously employed as a property manager in a metropolitan real estate agency commented that she believes discrimination is widespread against Aboriginal people. Of the 350 properties managed by the real estate agency where she worked, there were no Aboriginal tenants and she cited the example of an owner with many properties 'who used language which was racist, unacceptable and unchallenged'.(Agency Submission 2 p.1)

> Earlier this year a worker at the agency was looking for rental accommodation and attended a 'home open' attended by more than fifty people. The worker noticed that the real estate agent, rather than leaving application forms on a table for people to pick up, was distributing them himself. The agent appeared to only be offering forms to white people. The worker overheard some Asian students ask the agent for a form, and they were advised that he had none left. When the worker herself returned inside, the agent offered her an application form. The same worker experienced a similar situation at a home open facilitated by a different real estate company, when the agent selectively distributed application forms. In particular, the worker noticed that a woman with children who was wearing a burqa was not offered an application form. (Agency Submission 9 p.9)

Fadro is a single mother from Somalia with five dependent children in her care....She had been given the address of a property that was for lease and went for a drive past the property that afternoon to see what it looked like. The owner happened to be at the rental property when she visited and, noting her interest, he asked her about her interest. Having explained her situation, the owner was sympathetic and offered to go with her immediately to the real estate agent who was responsible for managing the property to sign the lease. On arrival at the office the owner explained Fadro's situation and informed the agent he wanted Fadro to sign a tenancy agreement for the rental property. The property manager was apparently appalled at the owner's decision and asked why he wanted to 'sign a lease with her?' the manager said she could find the owner 'an Australian family with only two children, she won't be a good tenant' and told him he was unwise to rent to Fadro. Fadro was shocked by what had just been said and expected the owner to say something in her defence, however he simply shook his head and apologised that he couldn't help her. (Agency Submission 11 p.6)

A Burundi woman with three children looked at approximately 11 different properties and was unsuccessful in each application. On a few occasions agents had told her to only complete half the application (e.g. told her she only needed to complete one page or she did not need to provide references), giving the owners the perception of a faulty application and leading to an inevitable rejection. (Agency Submission 16 p.69)

A Somali couple with 9 children have been told by real estate agents that they will not get a house as they have too many children and because of their race. (Agency Submission 5 p.11)

The woman is from Somalia and she has a husband, who is working, and six children. She has been living in a home as a tenant for the past two years...On 22 October 2008 her fixed term lease agreement came to an end. On 22 September 2008 she received a letter from [the real estate agent] informing her that the owner will not be renewing the lease and she should vacate the property at the end of the lease. She started looking for a new tenancy on receipt of the letter in September without success. She asked [the real estate agent] if she could make application for one of their MANY properties they have for lease, but was told no because she has six children. (Individual Submission 16 p.1)

> Real estate agents have told them (A married couple from Iraq) directly that they will never rent any house to a person who has recently arrived from another country and is reliant on Centrelink. (Agency Submission 10 p.6)

The Multicultural Services Centre of WA (MSCWA) operates a number of housing support programs for refugee and migrant clients who would normally have difficulty in gaining access to the private housing rental market due to their lack of references and financial security. The programs operated by MSCWA offer such supports as providing tenancy training in the preferred language of the clients; undertaking minor repairs without waiting for the owner or agent to do so and giving agents the option of dealing direct with MSCWA on tenancy issues. By dealing with selected real estate agents who are aware of the level of support provided for their clients, MSCWA report that their clients are able to gain access to the private housing market at reasonable rental costs.

Common barriers to accessing the private housing rental market

Other chapters have described how the high level of demand for rental accommodation over the last few years in Western Australia has affected those on low incomes. Many submissions referred to the high level of rents being so far above the capacity to pay of people who rely on Centrelink income that the private housing rental market was not an option that they could pursue. The cap on the available level of Commonwealth Rental Assistance is far below current market prices for rentals. In addition, the requirement to pay an option fee, just to view a property and be considered as a possible tenant, is prohibitive to many low income earners who may need to borrow for that amount of money. Their search is then limited to one property at a time, and as many real estate agents reimburse the option fee to unsuccessful clients by cheque, the prospective tenants need to wait the necessary number of days for the cheque to clear before they can continue their search for rental accommodation.

> [A woman of African appearance] came to me to ask if I could help her to get her option fee returned. I rang ... [the real estate agent] in Mt Lawley and asked if they could send a cheque or do a bank transfer. I was told that they do not write out cheques and the client has to come into the office and collect the cash. I drove her to the office and she went in. She came out half an hour later and asked if I could go in as they would not return the money. I went in and was told that she had previously collected the money. The woman denied this. I was told that they could not find her application as she had collected the money and the application had been shredded for privacy reasons. We left and I phoned and spoke to the director. He said he would look into it. The following morning I got a call to say the money was at reception and I could collect it. When I got to the office there was a cheque on top of her application. (Individual Submission 2 p.4)

The requirement for references to be produced from previous landlords or property managers can be problematic for many minority ethnic groups, either because of their personal lack of a rental history or because the Department of Housing and Works will not provide references for tenants of state owned properties. A number of submissions also pointed to the reliance on public transport of many people, particularly those humanitarian entrants who are new to this country, which further hindered their ability to access rental properties. The ability to view rental properties can be a major issue as the less expensive tenancies in outer-suburban areas are poorly serviced by public transport. It was also submitted that private housing rental is more available in neighbourhoods where there is a high degree of personal, family and community dysfunction. This is stressful for humanitarian entrants with mental health conditions who have heightened sensitivity because of their circumstances.

> 'Many of the Indigenous people I work with have minimal personal documentation never mind private housing references.' (Agency Submission 18 p.1)

> Many clients seeking to access the private housing rental market are unable to provide the required references. These include Humanitarian entrants to Australia, those exiting the criminal justice system, young people leaving home and those escaping family and domestic violence. (Agency Submission 9 p.4)

> A Sudanese woman and her son made several applications to different real estate agencies and received phone calls from them rejecting her application on the basis that she had no references from previous real estate agencies and that other applicants didn't have to apply to Homeswest for bond assistance to rent. It was not possible for the client to have references as she was a new arrival. (Agency Submission 16 p.70)

In the few instances where Ethnic Disability Advocacy Centre's individual advocates have attended viewings with clients, the advocate has reported a significant change of approach when the agent ascertains that the potential client has a disability:

> Perhaps needless to say, the rental is not offered to our client. The fear harboured by agents/owners as a result of lack of both knowledge and association with people with disability and from CaLD backgrounds is palpable.

Experience in the private housing rental market

Submissions were received from minority ethnic people who had been successful in gaining accommodation in the private rental market, however they felt that agents would take advantage of their often minimal English skills and lack of understanding of tenancy practices. Those who find it difficult to secure a property are driven to lease properties with significant maintenance needs. Such landlord responsibilities as a leaking roof, if not attended to, can cause further damage to a property which can be unreasonably claimed from the tenants' bond money. There are also many reports of tenants being asked to pay increased rental amounts on an ad hoc basis, contrary to the Residential Tenancies Act 1987 which states that the rent cannot be increased unless 60 days' notice is given and not less than 6 months has passed since the tenancy commenced or since the last increase. In such situations, tenants with poor English skills and a fear of being 'blacklisted' are ill-equipped to argue and reluctant to take a challenge to the Magistrates Court.

'Mary sought assistance from our Centre because she had frequently requested various items of maintenance, in particular that a badly leaking roof which was causing severe damage in the kitchen be repaired, but nothing was ever done. Following our attempts to negotiate on her behalf the real estate agent terminated the tenancy and presented Mary with an application form for the Disposal of the Security Bond that included an amount over $500 for repairing the water damaged ceiling and various other claims for repairs that Mary had made frequent requests for. Following our representation to the real estate agent these claims were dropped and the bond money, less agreed costs, was refunded to Mary.' (Agency Submission 12 p.7)

Many CaLD and Aboriginal tenants are reluctant to pursue their right to have urgent maintenance issues attended to. They will accept poor living conditions in order to secure some form of accommodation. (Agency Submission 9 p.4)

A Sudanese woman, responsible for six children, was not very confident about going to court due to her lack of English communication skills and this affected her decision to agree to an out of court settlement proposed by the owner that was not in her favour. Before vacating the property the client and a friend attempted to clean the carpet but were not well informed about professional cleaning and some damage was done to a section of the carpet.

After the woman vacated the house the owner chose to take the client to court for damages in the amount of $5000, which primarily consisted of the cost of relaying carpets for the whole house, not just the damaged section. Just before the court hearing the real estate agent and the owner agreed a deal with the woman in the sum of half the amount originally sought. A community support group advised the woman to seek another court hearing but she was adamant that she did not want to, and so she continued to pay the agreed amount, paid off in instalments. (Agency Submission 16 p.62)

A further issue which is commonly referred to in the submissions is the difficulty experienced by CaLD and Aboriginal people with the ingoing property condition report. This is a written report which has been created by the agent or owner detailing the physical condition of the property being leased and it is crucial to a proper assessment of the amount of bond money to be refunded that the tenant checks the accuracy of the report. The *Residential Tenancies Act 1987* requires that the tenants' endorsement or amendments are returned to the agent within 14 days. The importance of ensuring an accurate record of the state of the tenancy is not usually understood by many who are new to the private rental system. The HCCCaLD submission advises that some real estate representatives have advised them that unless another agency would assist with interpreting and translation with potential tenants in relation to leasing contracts and communicating with the tenant during their tenancy, they would be reluctant to release any accommodation to them.

> Clients being provided with copies of their contract agreements may not be literate in their own languages, let alone in English. As such they are unable to understand the issues and information being provided to them. (Agency Submission 7 p.6)

> A Sudanese woman and her seven children encountered difficulties in claiming back her bond payment when vacating a property. The woman was illiterate and had a verbal understanding that she would not have to maintain the pool at the property, however the lease specified that she would be responsible. She had no understanding of how to maintain a pool and said she would not have taken the property if she had understood the lease. The woman felt she had left the property in an improved state of cleanliness and believed that she was being taken advantage of to be charged fees for work she had already done. A community advocate wrote to the agent on her behalf stating that the woman objected to the extra fees charged and the charge of $834.14 to clean the pool. The agent's response was that there was a discrepancy between the state of the house as noted in the property condition report and how it was left by the woman. It seems that she was given a list of items to address and the agent stated that the cleaning was not completed to a standard that their contractors would have done and therefore it had to be redone. When the woman first entered the property the house was not clean and the garden was full of rubbish that the client had to remove to make it habitable for her children. When she left, the property was in a much better condition throughout and yet the agent requested some esoteric extra cleaning e.g. the inside of the lamp shades. As the woman did not, for personal reasons, pursue the matter in court, she had only $239.48 of the $1650 bond returned. (Agency Submission 16 p.63)

Many Aboriginal people have experienced difficulty in the private rental market where they appear to have been unfairly dealt with in being more likely to be in receipt of breach of tenancy allegations for overcrowding or anti-social behaviour simply because they have had visitors at their home. (Agency Submission 13) Aboriginal people have also reported difficulty in maintaining a tenancy when they are culturally obliged in times of bereavement to leave a tenancy abruptly and for long periods of time, or for the cultural obligation to accommodate additional family members. (Agency Submission 14) The submission by the Tenants Advice Service (TAS) referred to its membership of the review of the *Residential Tenancies Act 1987* conducted by the Department of Consumer and Employment Protection (DOCEP). TAS argued for the need to take account of cultural obligations where Aboriginal families may need to be away from a property for a lengthy period of time. TAS submits that DOCEP's view that '...such a provision would place an undue burden on the property owner and the courts' is discriminatory.

Community groups and housing advocates

The community groups and housing advocates who assist low income earners in need of assistance with accommodation are substantially dependent on government funding in order to continue to function. They have experienced increased pressure over the last five years as the upward movements in wage rates has lured employees from the not for profit sector and soaring residential and commercial rents have affected their ability to provide services. In regional areas such as the Pilbara where increased rents have adversely affected low income earners normally resident in the area, non-government services which provide assistance to this client group are forced to provide 'fly in fly out' welfare services or make significant reductions in the services they provide. (Agency Submission 14)

The community groups also advise that they would normally encourage low income earners who have difficulty accessing the private housing rental market to lodge an application for public housing. They report it has become more difficult to encourage clients to lodge applications for public housing because of the very long waiting times. As described in Chapter 2, the waiting period in November 2008 in the Perth metropolitan area for a two or three bedroom house is five to seven years (DHW, 2008). For those eligible for priority housing, the waiting times are at 12 to 18 months or even 2 to 3 years, depending on family size. As clients may be transient, they often miss follow up letters as described in the following case study.

> A client ...[from Afghanistan]...applied to Homeswest in 2001 and was placed on a waiting list and went to the South West and obtained employment. Twelve months later, he was sent a letter from Homeswest to assess his situation but as the client was not in Perth at the time, he did not receive the letter and his name was taken off the Homeswest waiting list. He went to Homeswest to enquire about it in July 2006 and this information was provided for him. He was assisted with re-applying and was placed on the waiting list again, as from September 2006. (Agency Submission 16 p.70)

Dealing with real estate agents and owners

Community groups and housing advocates who work with minority groups are generally of the view that most real estate agents are reasonable to deal with and that all provided tenants with the 'Advice for Tenants' handbook, the information contained within Schedule 2 of the Residential Tenancies Regulations 1989. It is less likely that the tenants are able to read and understand the information and many submissions made the observation that additional clauses on the lease agreement are not necessarily explained, nor the importance of checking the accuracy of the Property Condition Report and returning it in the required timeframe. The Geraldton Resource Centre Inc commented that tenants are always surprised when they find out that the legislation gives them rights and imposes obligations on the owners.

Whilst the majority of real estate agents are reasonable, where an example of an uncooperative or ill-informed agent is experienced, many submissions described that it is difficult to get assistance from the State Government department, DOCEP, which handles complaints about the private housing rental market or the professional and regulatory bodies established under state legislation: the Real Estate Institute of Western Australia (REIWA) and the Real Estate and Business Agents Supervisory Board (REBA). The submissions describe that the complaints can include allegations of misappropriation of monies, incorrect record keeping which results in overcharging or breaches for rent arrears, threatening or abusive behaviour and insulting comments about clients. A metropolitan community legal centre gave the following example:

> We had occasion to contact REIWA to complain about a property manager who had been abusive (swearing etc), both to our staff and to the tenant who was a client here. The REIWA response was to advise us to complain to REBA, which we did. Their response was to tell us to write to the principal of the real estate agent about the conduct of the property manager. The response came from the property manager in the form of an extremely curt letter informing us of their intent to pursue the tenant through the court. No reply was forthcoming from the principal of the real estate agent who, as it later transpired, is the mother of the property manager in question. (Agency Submission 12 p.2)

The community legal centre also assisted a CaLD family to lodge a complaint with DOCEP about the following incident. The centre advised that DOCEP had not, by the date of their submission, responded on this or other matters.

A family from West Africa were on a periodic lease when the real estate agent told them that the owner was returning to WA and wanted to move back into the house as soon as possible. The real estate agent offered the family another house of similar size and rent if they would move straight away. They were told there would be no costs incurred by them and that their bond money would be returned. The family agreed and moved out within 2-3 days after having made sure that they left the house in a reasonably clean condition similar to that when they first moved in more than 12 months previous. They had a witness to this and also took a number of photographs.

Shortly after they had moved the real estate agent presented them with an application form for the Disposal of the Security Bond which claimed the full amount of their bond money plus an additional amount to be paid to the owner. The claim was for 3 weeks rent for failing to give 21 days written notice to end the tenancy plus an additional 3 days rent for the period they spent cleaning the property before returning the keys. They were also charged for cleaning and for some repairs despite their having returned the property in a similar condition as at the start of the tenancy. Moreover, the repairs they were being charged for was for damage that existed at the start of the tenancy and which had been noted on their Property Condition Report. They refused to sign the Bond Disposal form and were subjected to abusive and insulting behaviour by the property manager when trying to negotiate a settlement. The family then sought our assistance and we encountered a similar attitude by the property manager before eventually succeeding in negotiating a settlement of the matter. (Agency Submission 12 p.8)

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* prohibits discrimination against tenants with children, however the housing advocates are of the view that the remedies for this, of contacting DOCEP 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.

> At the end of a tenancy there was disagreement between the landlord and an Eritrean woman over moneys owed to the landlord for general cleaning and cleaning of carpets which had been done by the tenant. A letter was sent to the landlord by a housing advocate stating that the client had enquired with Bond Administration and found that the bond had not been lodged. The advocate attended the property with the landlord, however he was adamant that he would not refund the bond. The advocate was later advised that that the woman did not wish to pursue the matter to court and had accepted that none of the bond would be returned. (Agency Submission 16 p.60)

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.

One client did not get any of their bond money back, the agent informing that they used it all to clean the carpet and for removal of rubbish – yet the client had left very little rubbish (enough to fit in a standard bin) and he himself had cleaned the carpet with friends. It wasn't until after our caseworker asked on behalf of or client for copies of all the receipts for these undertakings that all the bond money was returned to the client (the receipts never supplied). (Agency Submission 5 p.13)

> This agency believes that international students are treated less fairly than tenants of non-CaLD backgrounds. In particular, international students regularly approach the agency in regard to bond issues. These clients often state that owners/agents cause delays in bond arrangements because they are aware that the student is leaving the country and will have trouble pursuing their claim from their home country once they leave Australia....Additionally, international students who intend to return to Australia to work or live can be unwilling to challenge contentious bond disposals for fear of a prejudicial tenant database listing. (Agency Submission 9 p.6)

In keeping with the Inquiry's second term of reference, this chapter has described the experiences of Aboriginal and CaLD people who believe they have suffered less favourable treatment in the private housing rental market based on their race and where that ground of discrimination intersects with others such as 'race and disability'. The following chapter makes recommendations arising from all three of the Inquiry's terms of reference.

Chapter 7: Summary and Recommendations

This chapter addresses the Terms of Reference and makes recommendations on the issue of race-based discrimination within the private housing rental market. As described in Chapter 1, the perceptions of discrimination were identified by Western Australian organizations assisting humanitarian entrants with the difficulties they faced in securing and maintaining accommodation in the private housing rental sector, and include the documented concerns of Aboriginal people from an earlier section 80 Inquiry conducted by the Equal Opportunity Commission.

Term of reference 1

> *Whether persons from Culturally and Linguistically Diverse backgrounds (CaLD) and Aboriginal people are discriminated against on the basis of their race either directly or indirectly in the private housing rental market.*

The Literature Review in Chapter 4 of this Report confirms there is a significant body of research in Australia illustrating the existence of race discrimination which makes access to the private housing rental market difficult, and in many cases impossible, for Aboriginal and CaLD people, particularly new arrivals under the humanitarian entry program. A 1999 study in Kununurra, for example, found that the prevalence of direct and indirect discrimination against Aboriginal people is so endemic that the private rental market is inaccessible to many of them (Stanley, 2001). In the same year the Human Rights and Equal Opportunity Commission published findings of the discrimination and disadvantage experienced by minority ethnic people who were new arrivals to Australia (HREOC 1999). It is noted that many of the stories of perceived discrimination are untested, as is the information collected in the submissions referred to in Chapter 6.

The submissions to this Inquiry include 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 include:

- 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.

Canadian and Australian research into the assessment of applications for private housing rental showed there is evidence that property managers as a group are aware of the risks of contravening anti-discrimination laws and with this in mind, use tried and tested methods of shifting responsibility for tenant selection from their profession to the property owner (Short et al. 2008). The Literature Review also identifies paired research undertaken in USA which provides clear evidence of race based differences in the treatment of applicants for private rentals by the real estate industry (Government of the United States of America 2000).

Whether the real estate industry in Western Australia believes their practices differ from those researched in other states of Australia is unknown. The Commission approached REIWA on several occasions seeking their views and input to this Inquiry, but no written response to the Commission's questions or general invitation for a submission was received. Three meetings were held with real estate agents in Mandurah, Kalgoorlie and Geraldton, however they declined to make written submissions in the expectation that REIWA would respond on their behalf.

The 2008 Policy Position Paper by the Department of Consumer and Employment Protection on the Review of the *Residential Tenancies Act 1987* refers to the identification of a power imbalance between property owners and tenants. One example of how a power imbalance may facilitate unlawful discrimination is that a rental property may be advertised as many times as the owner wishes until a 'suitable' tenant is selected and no reason need be given as to why an applicant is 'unsuitable'. It may be that an owner is not accepting applicants on the basis of their race, however such a claim would be difficult to prove. In this context, the Commission cannot rely on the usual indicators of discrimination, such as the number of complaints upheld in the State Administrative Tribunal, but must use the option of an Inquiry pursuant to section 80 of the Equal Opportunity Act 1984 to explore the possible causes for the alleged race discrimination and recommend remedies to ameliorate unlawful behaviour. The information gathered in the course of this Inquiry suggests it is highly likely that race discrimination is experienced by Aboriginal and CaLD people in the private housing rental market and that this unlawful practice will continue unless the there are steps taken to change current practices.

Term of reference 2

> *The experiences of people from CaLD backgrounds and Aboriginal people who believe they have suffered less favourable treatment in the private housing rental market based on their race.*

This term of reference is addressed in Chapter 6 which documents the experiences of those who made submissions. Their experiences can be divided into two categories which align with stages in a tenancy: gaining access to the private housing rental market and maintaining and exiting a tenancy agreement. The former category includes the experiences of those who are apparently placed at the end of the queue by real estate agents and owners who chose to rent properties only to those of majority ethnic appearance, or to those who are in the paid workforce rather than on government benefits, or to those with few family members. The difficulties faced by Aboriginal and CaLD people who may have no evidence of rental history or personal references are included here. They may also be disadvantaged by having either no history on a residential tenancy database or adverse comments which may or may not be accurate.

The latter category refers to the experiences of those who have gained access to the private housing rental market. Many CaLD and Aboriginal people describe difficulty in understanding their rights and responsibilities as tenants because of a low level of literacy or because of poor English language skills.

This may result in difficulties at the end of the tenancy where there is a dispute over repayment of the housing bond. Where there are disputes over housing maintenance issues during a tenancy, Aboriginal and CaLD people have describe a reluctance to lodge a claim or complaint with the Magistrates Court or DOCEP due to their lack of confidence about their ability to participate effectively in these forums or the risks involved in being identified as a troublemaker. Such a step is perceived as being likely to result in their eviction or an entry on a residential tenancy database which would harm their chances for securing accommodation in the future.

Term of reference 3

> *The possible causes and appropriate remedies for addressing race based discrimination in the private housing rental industry.*

1. Education of owners and agents

It is apparent from research in Australia and elsewhere that property owners are often unaware that discrimination on the basis of a personal characteristic such as race is unlawful. A requirement for owners to be educated about such matters is therefore an appropriate remedy. Agents acting on behalf of owners are often aware that they should not discriminate but may also not be fully aware of the legislation and its application. The research suggests that agents may adopt strategies to prevent CaLD and Aboriginal people from accessing a property in a way which does not explicitly contravene the legislation.

As a majority of applications for rentals are dealt with by licensed agents, there is a greater need to ensure they are acting within the law. To ensure this, formal training in equal opportunity law for agents who operate in the private housing rental market ought be a requirement of a real estate licence.

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.

2. Residential tenancy databases

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.

It is important for Western Australia to actively pursue the issue of regulation of these instruments which are widely consulted in the private housing rental 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.

3. Indirect race discrimination

Indirect race discrimination can occur where members of minority ethnic groups do not have rental histories or references and such documentation is required by real estate agents. It can also occur where there is a refusal to offer rental accommodation because of the larger family groups for which minority ethnic groups may be responsible.

To address the barrier of needing a prior history in order to access the private housing rental market, greater assistance is needed for ethnic minority groups to access a tenancy with the support of community housing organisations. These organisations can provide an assurance to real estate agents that there is minimal risk in a tenancy application which may otherwise be judged as providing insufficient information. The 2008 AHURI study on the difficulties facing low-income earners seeking a private rental property supported this form of assistance to enable tenants to establish a good record in the rental market. Many people belonging to ethnic minority groups also have a particular need for interpreters to assist those without good English skills with understanding tenancy contracts and property condition reports. This Report notes that almost 80% of humanitarian entrants to Western Australia since 2002-03 have lacked proficiency in English.

Many community groups suggest that the Federal Government's immigration policies do not take sufficient account of the need to support recent arrivals. These groups support the provision of communal accommodation, similar to the migrant hostels which were previously provided by the Federal Government, for the humanitarian entrants who are currently housed in the wider community as soon as they arrive in Perth.

Many Aboriginal and CaLD people have difficulty maintaining and exiting their leases due to:

- a lack of English language skills may affect some Aboriginal and CaLD people which hampers their ability to understand their tenancy contracts and property condition reports;
- a lack of understanding of their rights and responsibilities as a tenant;
- a lack of support in maintaining a positive relationship with their agent and/or owner.
-

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 7

That REIWA be encouraged to invite representatives of community groups which assist prospective tenants, to meet with their members and facilitate the exchange of information and views, to the benefit of both groups.

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.

4. Effective complaint resolution processes

Aboriginal and CaLD people may lack the skills and confidence to access existing tenancy complaint resolution mechanisms for fear of losing their accommodation. There is evidence that both tenants and prospective tenants from minority ethnic backgrounds rarely lodge complaints in government instrumentalities or seek to enforce their rights in the Magistrates Court due to concerns about their level of English language skills, their pre-occupation with the difficult task of finding and retaining accommodation, and fear of being blacklisted on residential tenancy databases. It appears to be inequitable that residential tenancy matters are dealt with in Magistrates Courts, a formal jurisdiction which is used overwhelmingly by owners and their property managers and avoided by tenants; and yet the funding for dealing with those matters comes from the interest on tenants' bond money. The establishment of an alternate dispute resolution facility with a focus on the maintenance of a tenancy is therefore recommended as an appropriate remedy. The Residential Tenancy Authority in Queensland conducts most conciliations by telephone which means that regional people are not disadvantaged in their access to a service.

It is also clear that Aboriginal and CaLD people are reluctant to lodge a complaint in the Equal Opportunity Commission about the private housing rental market as direct evidence of racial discrimination is difficult to provide. They are reluctant to invest the time and energy required to pursue a complaint which may not be of practical use in securing them a home. For people under stress due to their accommodation situation, the thought of lodging an EOC complaint is 'overwhelming' according to community advocacy groups.

Recommendation 9

That the Department of Commerce (formerly DOCEP) investigate ways to improve the handling of tenants' complaints.

Recommendation 10

That the Western Australian Government investigates an alternative dispute resolution mechanism for tenancy disputes which is focussed on finding ways to maintain a tenancy; and consider redirecting part of the funding from the interest on tenants' bond to assist in maintaining such an organisation.

Recommendation 11

That the *Equal Opportunity Act 1984* be amended as recommended in the 2007 Review of the *Equal Opportunity Act 1984* to develop a simpler complaint system which could accommodate complaints being made orally and transcribed by EOC staff, where complainants need assistance, as permitted in the NSW *Anti-Discrimination Act 1977*.

Recommendation 12

As recommended in the 2007 Review of the *Equal Opportunity Act 1984*, the proportionality test contained within the definition of indirect discrimination should be removed and the respondent should be the party required to prove that the condition or requirement which is the subject of the complaint, is reasonable.

5. Power imbalance between tenants and owners/agents

The DOCEP Review of the *Residential Tenancies Act 1987(WA):* Policy Paper (January 2008) referred to the identification of a power imbalance between tenants and owners/agents and this imbalance enhances the disadvantaged position of CaLD and Aboriginal people in their experience of the private housing rental market. This chapter's recommendations to regulate residential tenancy databases and introduce an alternative dispute resolution system for housing tenancy matters would promote a fairer balance of power between tenants and owners/agents and reduce the likelihood of discriminatory practices. The current power imbalance would also be addressed if the Western Australian Government acts to implement other recommendations of the DOCEP Policy Paper referred to in Recommendation13.

Property owners and their representatives are currently able to modify tenancy agreements and present property condition reports in a ways which are beneficial to them, to the detriment of a tenant. Many prospective tenants, and particularly those who do not have good language and literacy skills, may not be aware that the agreements or reports they are presented with by a property manager are negotiable and may have been unfairly constructed. Prospective tenants are currently able to be charged option fees in order to view a property which is advertised for rent, a practice that is not permitted in any other state in Australia, and one which particularly impacts on low income earners. As described in Chapter 6 of this report, Aboriginal and CaLD people have given many examples of owners who will not carry out their responsibility to provide necessary maintenance repairs or respect a tenant's right to privacy and such tenants feel too much at risk of eviction to seek to enforce their rights. The following recommendation would address the current unfair balance of power between owners and tenants.

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.**

6. Further recommendations to government

A previous EOC Section 80 report entitled *Finding a Place* recommended that

> *53. In view of the frequency with which Aboriginal people report race based discrimination in accessing the private housing rental market, the DHW to cease the practice of requiring that Aboriginal prospective tenants make multiple attempts to access the private rental market before the DHW will list these tenants for priority housing. (Finding a Place. An inquiry into discrimination against Aboriginal people in public housing, 2004)*

It is evident from the submissions to this current Inquiry that while the Department of Housing (formerly DHW) has agreed to no longer continue the requirement for Aboriginal people to show evidence of attempts to access the private housing rental market, not all of the department's offices are aware of this policy change.

Recommendation 14

That the Department of Housing ensure that the policy of not requiring Aboriginal people to attempt access to the private housing rental market prior to receiving priority assistance is applied in all metropolitan and regional offices.

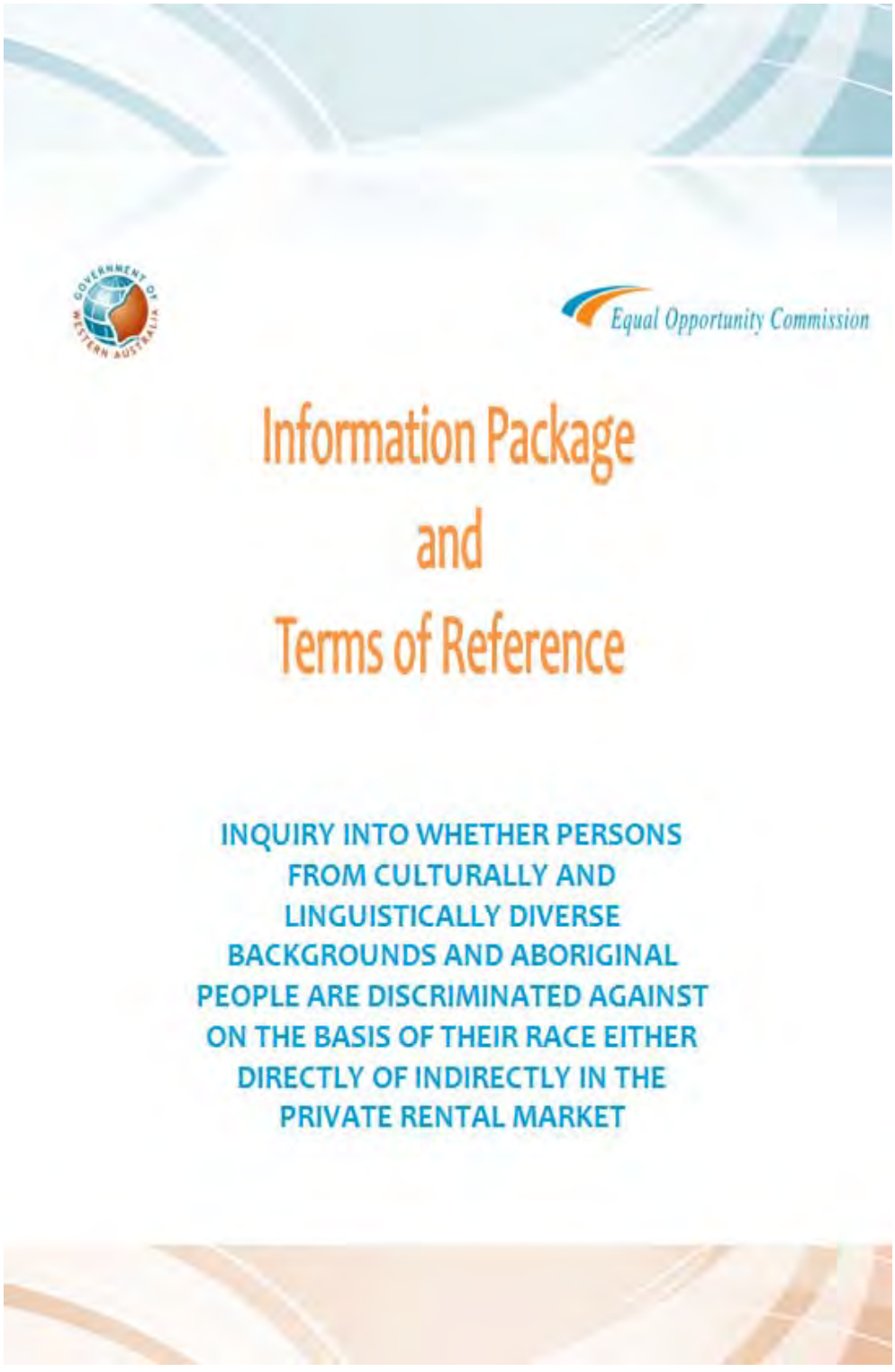
As noted in this Report, the most common form of housing stock in Australia is a three bedroom house. Houses with four or more bedrooms comprise just 11% of the public housing stock in this state (SACES 2008, p.73), however many CaLD and Aboriginal people have responsibility for large families. DIAC confirms that over 50% of humanitarian entrants being in a family group of at least five people; with 14% of the entrants being in a family group of eight or more (DIAC 2007, p.32).

Recommendation 15

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

Appendix A

Information Package and Terms of Reference



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Terms of Reference

1. CONTEXT OF THE INQUIRY

The Commissioner for Equal Opportunity is appointed to administer the *Equal Opportunity Act 1984* (WA).

The purposes of the Act are set out in Section 3 as:

> *"to eliminate, so far as is possible, discrimination against persons on the ground of sex, marital status or pregnancy, family responsibility or family status, sexual orientation, race, religious or political conviction, impairment, age or, in certain cases, gender history in the areas of work, accommodation, education, the provision of goods, facilities and services and the activities of clubs".*

In the exercise of the Commissioner's powers in Section 80 of the *Equal Opportunity Act 1984* (WA), an inquiry into whether persons from culturally and linguistically diverse backgrounds (CALD) and Aboriginal people are discriminated against on the basis of their race either directly of indirectly in the private rental market was commenced with the release for comment of the Terms of Reference in February 2008.

Context of the Investigation

The Commissioner of Equal Opportunity has determined to conduct an inquiry into whether persons from minority racial groups (in particular Aboriginal and ethnic minority people) experience discrimination (direct or indirect) on the basis of their race in the private rental housing market. It will invite Aboriginal and ethnic minority people who believe they have suffered less favourable treatment in the private rental housing market to share these experiences with the Equal Opportunity Commission (EOC). The Commissioner will also invite comment from any other interested persons or groups.

To ensure that the potential diversity of experiences encountered by Aboriginal and ethnic minority people will be appropriately considered, the EOC will extend the scope of the inquiry to examine intersectional forms of racial discrimination. Specifically this would include experiences of racial discrimination that may occur at the intersection of one, or a number of other additional grounds identified within the *Equal Opportunity Act 1984* (WA), such as 'race' and 'sex', or 'race' and 'sex' and 'impairment'.

The inquiry will also examine the possible causes and appropriate remedies for addressing any race-based discrimination identified in the private housing rental industry, including liaison and consultation with the private rental industry where appropriate.

The inquiry is also informed by three specific recommendations of the *Finding a Place Report* (Equal Opportunity Commission, Western Australia, December 2004) that relate to the private rental market and will provide a further reference for the inquiry. These three recommendations are as follows:

- Recommendation 52. The Inquiry noted that many submissions referred to the existence of racist attitudes in the private rental market and the effect this has on the capacity of Aboriginal prospective tenants to gain housing. The Inquiry recommends that DHW conduct training sessions to raise awareness of this.

- Recommendation 53. In view of the frequency with which Aboriginal people report race based discrimination in accessing the private housing rental market, the DHW to cease the practice of requiring that Aboriginal prospective tenants make multiple attempts to access the private rental market before the DHW will list these tenants for priority housing.

- Recommendation 54. That all DHW officers, including regional officers, be made aware of and required to follow the new policy of not including a requirement to provide evidence of trying to obtain private rental housing before being considered for priority assistance.

2. TERMS OF REFERENCE

The Equal Opportunity Commission to conduct an Investigation pursuant to S80 of the *Equal Opportunity Act 1984* into:

(1) Whether persons from Culturally and Linguistically Diverse Backgrounds (CaLD) and Aboriginal people are discriminated against on the basis of their race either directly or indirectly in the private housing rental market;

(2) The experiences of people from CaLD backgrounds and Aboriginal people who believe they have suffered less favourable treatment in the private housing rental market based on their race;

(3) The possible causes and appropriate remedies for addressing race based discrimination in the private housing rental industry.

3. CONDUCT OF THE INQUIRY

The Inquiry will receive individual and organisation submissions.

The inquiry is not about resolving individual cases (although persons can quote their own experiences as an example), nor about issues that are outside the jurisdiction of the Commissioner for Equal Opportunity and the scope of the Terms of Reference.

Individual complaints will continue to be received and investigated by the Commissioner in the normal manner and completed in a reasonable time frame, either through conciliation or other powers of the Commissioner, including referral to the State Administrative Tribunal for hearing.

4. MAKING A SUBMISSION

Role of Community Organisations

The Commission recognises that individuals may need assistance in lodging submissions. In order to assist individuals to have their experiences of discrimination in the private rental market heard by the Commission, we are ***asking*** key ethnic minority and Aboriginal organisations to hold community forums with people who have allegedly experienced racial discrimination when trying to secure housing in the private rental market or as a tenant in private housing.

The aim of the community engagement forums is to enable people from ethnic minority and Aboriginal groups to provide evidence to the EOC of alleged race discrimination in the area of accommodation (private rental).

Information gathered at the community forums can then form the basis of organisation submissions to the inquiry.

Role of the Equal Opportunity Commission (EOC)

The EOC has limited resources for inquiries of this nature. We also recognise that many community organisations also have limited resources. Given these restraints, the EOC, through funds provided by the Office of Multicultural Interests, may be able to make available very limited financial resources to community organisations to assist in holding community engagement forums on an 'as needs basis' up to $300 per forum. The priority for any financial assistance will be interpreting/translations costs, and will need to be arranged with the EOC prior to the date of the forum.

Community Advocates/Representatives Information Briefings

The Commission's Community Education Unit will be holding briefing sessions for community organisations and advocates about the Inquiry in both metro and regional areas. Community sector briefings will also include a training component and will cover the following topics:

1. How the Inquiry came about
2. Purpose and rational underpinning the Inquiry
3. Terms of Reference
4. Conduct of the Inquiry
5. How to make an organisation or individual submission
6. Confidentiality
7. Report to Parliament
8. What constitutes direct and indirect race discrimination in accommodation and will include case studies
9. Legal obligations of Owners, Real Estate agents and other accommodation providers in the private and community sector

The dates and locations for these Information Briefings are outlined below. Further details and information flyers are available on the Equal Opportunity's website located at www.equalopportunity.wa.gov.au and in other media.

If you wish to participate in an Information Briefing but have missed the announcement and have not heard about the dates by the end of July 2008, please contact the Commission.

Real Estate Agent/Representatives Information Briefings

In addition to briefings for non governmental community organisations, the Equal Opportunity Commission will also be conducting briefing sessions for real estate agents and representatives in both the rural and metro areas and will cover the topics as outlined above.

Timetable

Deadline for receiving written Submissions:	**30 September 2008 (Metro)** **17 October 2008 (Regional)**	
Information Briefings:	**Regional**	
	1. Albany	18 July 2008
	2. Kalgoorlie	22 July 2008 23 July 2008
	3. Geraldton	29 July 2008
	Metropolitan	
	1. Mirrabooka	10 July 2008
	2. Gosnells	16 July 2008
	3. Mandurah	25 July 2008
	4. CBD	31 July 2008 15 August 2008
Draft report:	**31 October 2008**	
Final report:	**3 December 2008**	

Submission Forms

A '**Submission Form for Individuals**' and a '**Submission Form for Organisations**' contain questions that cover the core of the Investigation. You may choose to focus on one or more of the questions covered in the Submission Forms.

If you do not wish to use the Submission Forms, you can present your Submission in any way you choose (e.g. by writing a letter or orally by contacting the Commission or attending a Community Information Briefing). The questions in the Submission Form may help you to organise your Submission.

If you can provide an electronic copy of your Submission, it would be appreciated, but it is not essential.

How can I get a Submission Form?

You can obtain a Submission form:

- by downloading it from the Commission's website located at www.equalopportunity.wa.gov.au;
- by contacting the Commission by telephone on 9216 3900 or 1800 198 149 (free call outside the Perth metropolitan area) and asking for either Debra or Pauline; and/or
- by sending an email to eoc@equalopportunity.wa.gov.au.

How can I make an oral Submission?

You can make a Submission:

- by taking part in one of the Community Consultation Forums which key Community Organisations will be hosting.
- by contacting the Commission by telephone on 9216 3900 or 1800 198 149 (free call outside the Perth metropolitan area) to seek advice on how an oral submission can be made.

Closing date for Submissions

The deadline for receiving submissions is:

Metropolitan - **close of business Tuesday 30 September 2008.**
Regional - **close of business Friday 17 October 2008.**

5. CONTACT DETAILS

For further information, you can contact staff at the Equal Opportunity Commission:

By Telephone: (08) 9216 3900
1800 198 149 (free call outside the Perth metropolitan area)

By TTY[1]: (08) 9216 3936

By Email: eoc@equalopportunity.wa.gov.au

By Fax: 9216 3960

By Mail: Commissioner for Equal Opportunity
Private Rental Inquiry
PO BOX 7370
Cloisters Square
PERTH WA 6850

[1] Telephone Typewriter

6. SECTION 3 EQUAL OPPORTUNITY ACT - OBJECTS

Objects

S.3 The objects of this Act are -

(a) to eliminate, so far as is possible, discrimination against persons on the ground of sex, marital status or pregnancy, family responsibility or family status, sexual orientation, race, religious or political conviction, impairment, age or, in certain cases, gender history in the areas of work, accommodation, education, the provision of goods, facilities and services and the activities of clubs;

(b) to eliminate, so far as is possible, sexual harassment and racial harassment in the workplace and in educational institutions and sexual harassment and racial harassment related to accommodation;

(c) to promote recognition and acceptance within the community of the equality of men and women; and

(d) to promote recognition and acceptance within the community of the equality of persons of all races and of all persons regardless of their religious or political convictions or their impairments or ages.

7. SECTION 80 EQUAL OPPORTUNITY ACT - GENERAL FUNCTIONS OF THE COMMISSIONER

General functions of Commissioner

S.80 For the purposes of eliminating discrimination on the ground of sex, marital status, pregnancy, family responsibility or family status, sexual orientation, race, religious or political conviction, impairment or age, eliminating discrimination against gender reassigned persons on gender history grounds, as far as possible, sexual harassment and racial harassment at work, in educational institutions or related to accommodation, and promoting recognition and acceptance within the community of the principle of equality of men and women and of persons of all races and of all persons regardless of their religious or political conviction, the Commissioner may -

(a) carry out investigations, research and inquiries relating to discrimination or sexual or racial harassment of the kinds rendered unlawful under this Act;

(b) acquire and disseminate knowledge on all matters relating to the -

(i) elimination of discrimination on the ground of sex, marital status or pregnancy, family responsibility or family status, race, religious or political conviction, impairment or age and eliminating discrimination against gender reassigned persons on gender history grounds;

(ii) elimination of sexual harassment and racial harassment at work, in educational institutions or related to accommodation; and

(iii) achievement of the principle of equality of men and women and of persons of all races and all persons regardless of their religious or political convictions, their impairments or their ages;

(c) arrange and coordinate consultations inquiries, discussions, seminars and conferences;

(d) review, from time to time, the laws of the State;

(e) consult with governmental, business, industrial and community groups in order to ascertain means of improving services and conditions affecting a person or persons who are subject to discrimination on the ground of sex, sexual orientation, marital status or pregnancy, family responsibility or family status, race, religious or political conviction, impairment or age or who being a gender reassigned person or persons are subject to discrimination on gender history grounds or who are subject to sexual or racial harassment;

(f) develop programmes and policies promoting the achievement of the principle of equality between men and women, persons of all races and all persons regardless of religious or political conviction, impairment or age;

(fa) subject to section 167, publish any written reports compiled in the exercise of the powers conferred on the Commissioner by this section and section 82;

(g) perform -

(i) any function conferred on the Commissioner by any other written law;

(ii) any function conferred on the Commissioner under any arrangement in force under section 7;

(iii) any function conferred on the Commissioner under any Act of the Commonwealth, being a function that is declared by the Minister, by notice published in the Gazette, to be complementary to other functions of the Commissioner; and

(h) do anything conducive or incidental to the performance of the functions conferred or imposed on the Commissioner under this section.

Appendix B

Submission form for individuals

Equal Opportunity Commission

Submission Form For Individuals

INQUIRY INTO WHETHER PERSONS FROM CULTURALLY AND LINGUISTICALLY DIVERSE BACKGROUNDS AND ABORIGINAL PEOPLE ARE DISCRIMINATED AGAINST ON THE BASIS OF THEIR RACE EITHER DIRECTLY OF INDIRECTLY IN THE PRIVATE RENTAL MARKET

This form has been designed to help you make your Submission to the Commissioner for Equal Opportunity's Inquiry into whether persons from culturally and linguistically diverse backgrounds and Aboriginal people are discriminated against on the basis of their race either directly or indirectly in the private rental market in Western Australia.

Refer also to the Information Package and Terms of Reference

YOUR DETAILS

Name of person completing Submission: _____

Name of organisation (if applicable): _____

Position in organisation (if applicable): _____

Postal Address: _____

_____

Contact Person: _____ Contact No: _____

Email Address: _____

We are concerned about your confidentiality, so please indicate which of the following applies to this Submission:

- ☐ This Submission is to remain strictly confidential and is not to be shared/distributed to anyone outside of the Inquiry.
- ☐ This Submission may be shared/distributed to any other party, if my personal details are removed and kept confidential.
- ☐ This Submission is public information and may be freely shared/distributed to anyone interested.
- ☐ I am happy to be contacted by the Commission for further information about my Submission.
- ☐ Other, please specify: _____

_____

Signature: _____ Date: _____

CLOSING DATE

The closing date for all Submissions is close of business Tuesday 30 September 2008 for Metropolitan submissions and close of business Friday 17 October 2008 for Regional submissions.

Please send your written Submission:

By Mail: Commissioner for Equal Opportunity:
Private Rental Inquiry
PO Box 7370
Cloisters Square
PERTH WA 6850

By Email: eoc@equalopportunity.wa.gov.au

By Fax: (08) 9216 3960

By TTY[1]: (08) 9216 3936

By Phone: (08) 9216 3900

1800 198 149 (free call outside the Perth metropolitan area).

[1] Telephone Typewriter.

Submission Questions

BACKGROUND INFORMATION

To help you with your Submission, a brief working definition of 'Direct' and 'Indirect Discrimination' is provided.

Direct Discrimination is when someone treats a person less favourably than they would treat another person in the same or similar circumstances because of a ground, such as the other person's (or a relative or associate's) race, impairment, marital or family status, pregnancy, family responsibility, age, sex, sexual orientation, religion or politics.

Indirect Discrimination is when an apparently neutral rule, policy, practice or procedure has a negative effect on a substantially higher proportion of people with a particular attribute or characteristic compared to people without that attribute or characteristic, and the rule is unreasonable in circumstances.

In the case of race discrimination, the 'less favourable treatment' can include acts, omissions, requirements or conditions that segregate a person from people of another race.

QUESTIONS

These questions are meant to assist your response, but we welcome any suggestions, ideas and contributions you wish to make about the experiences of the private rental market for different culturally and linguistically diverse and Aboriginal people in Western Australia.

It would be helpful if, when you respond, you write the answers to each question on a separate sheet of paper. Attach extra sheets to your Submission, if you need to, along with any relevant supporting documentation (including case studies) or statistical data. Please also provide detailed references for any relevant documents (e.g. research, reports).

1. Do you believe you have experienced discrimination on the basis of your race by real estate agents or owners in any of the following ways:
   - refusing to allow you to inspect a property;
   - refusing to rent a property to you;
   - applying extra conditions when you are applying to rent a property (e.g. such as requiring a higher bond amount or requiring guarantors);
   - denying or limiting access to a facility that is available to other tenants;
   - refusal to extend or renew the lease, just make it short-term
   - failing to provide adequate maintenance that is available to other tenants or is reasonable to expect;
   - harassing you and/or your family or other tenants of the property e.g. visiting property more than necessary or without notice;
   - changing the terms on what you are required to do when leaving the property such as extra cleaning fees, how you are required to clean the property, withholding bond money;
   - advising you that a property has been leased when you find out later that it has not been; or
   - any other examples.

2. If you have answered yes to any of the above, please tell us what happened and why do you think that the treatment you received was on the basis of your race?

   e.g. were direct comments made and /or are you aware of other applicants/tenants being treated differently?

3. How has this experience affected you?

4. When entering into a rental agreement, or when applying for a rental property, do real estate agents/owners make you aware of your rights and responsibilities under the *Residential Tenancies Act 1987* (WA)?

5. What is your current housing situation?

   a) Renting a property
   b) Staying with friends/family
   c) Supported accommodation
   d) Other (e.g. caravan)

6. Are you on a waiting list for Dept of the Housing and Works or other public/community housing waiting list? If so how long have you been on the list?

7. Do you experience any issues which prevent you from lodging a complaint of race discrimination in the area of accommodation with the Equal Opportunity Commission if you believe you have a valid complaint?

8. What do you think would solve the issues you have experienced?

9. Is there anything any else you would like to tell us about your experience/s in the private rental market?

COMPLETED SUBMISSIONS

After you have completed your Submission you can return it to the Equal Opportunity Commission as follows:

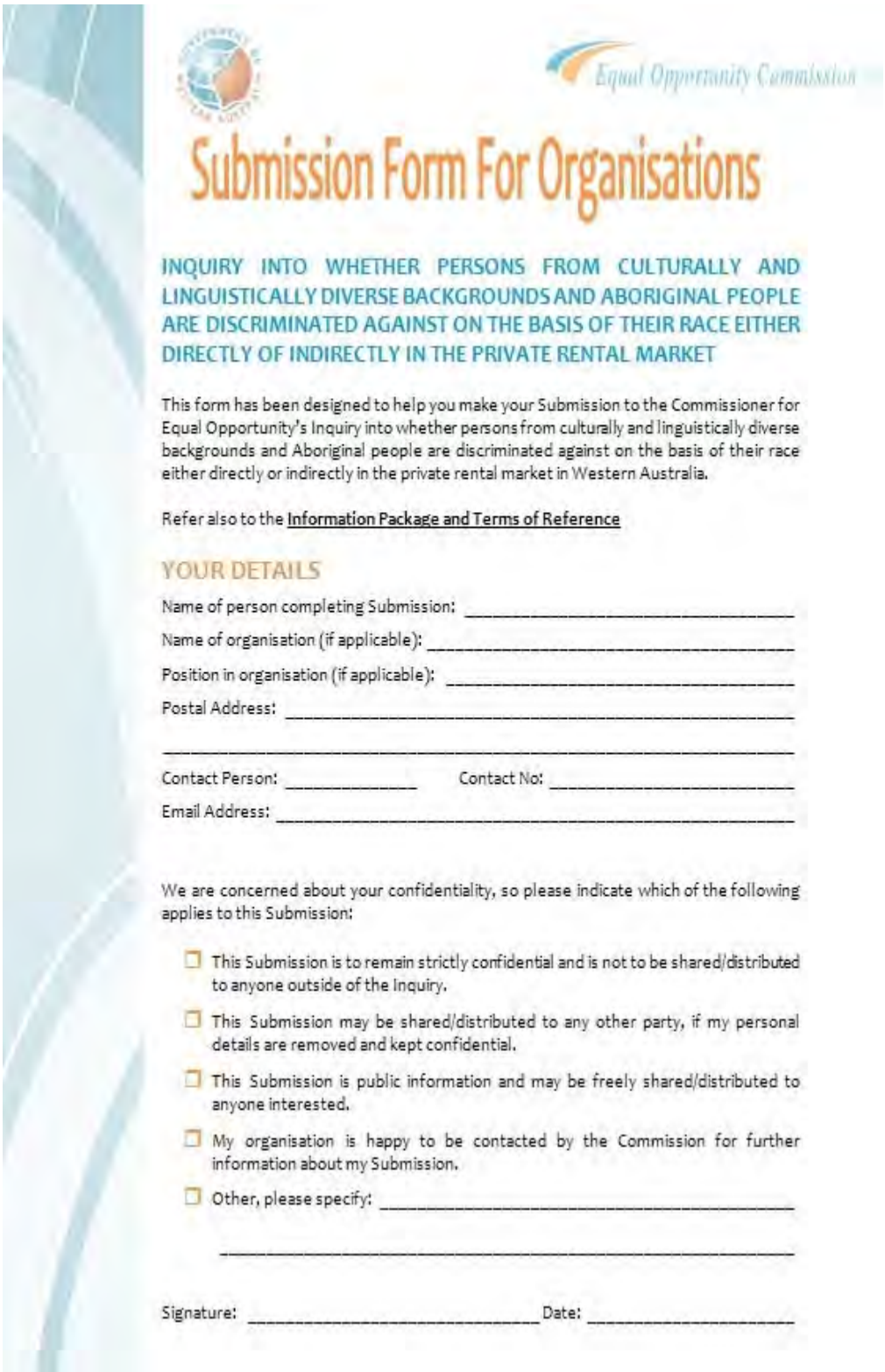
- close of business Tuesday 30 September 2008 for Metropolitan submissions
- close of business Friday 17 October 2008 for Regional submissions.

By Mail:	Commissioner for Equal Opportunity: Private Rental Inquiry PO Box 7370 Cloisters Square PERTH WA 6850
By Email:	eoc@equalopportunity.wa.gov.au
By Fax:	(08) 9216 3960
By TTY[2]:	(08) 9216 3936

[2] Telephone Typewriter.

Appendix C

Submission form for organisations



Equal Opportunity Commission

Submission Form For Organisations

INQUIRY INTO WHETHER PERSONS FROM CULTURALLY AND LINGUISTICALLY DIVERSE BACKGROUNDS AND ABORIGINAL PEOPLE ARE DISCRIMINATED AGAINST ON THE BASIS OF THEIR RACE EITHER DIRECTLY OF INDIRECTLY IN THE PRIVATE RENTAL MARKET

This form has been designed to help you make your Submission to the Commissioner for Equal Opportunity's Inquiry into whether persons from culturally and linguistically diverse backgrounds and Aboriginal people are discriminated against on the basis of their race either directly or indirectly in the private rental market in Western Australia.

Refer also to the Information Package and Terms of Reference

YOUR DETAILS

Name of person completing Submission: _____

Name of organisation (if applicable): _____

Position in organisation (if applicable): _____

Postal Address: _____

_____

Contact Person: _____ Contact No: _____

Email Address: _____

We are concerned about your confidentiality, so please indicate which of the following applies to this Submission:

- ☐ This Submission is to remain strictly confidential and is not to be shared/distributed to anyone outside of the Inquiry.
- ☐ This Submission may be shared/distributed to any other party, if my personal details are removed and kept confidential.
- ☐ This Submission is public information and may be freely shared/distributed to anyone interested.
- ☐ My organisation is happy to be contacted by the Commission for further information about my Submission.
- ☐ Other, please specify: _____

_____

Signature: _____ Date: _____

CLOSING DATE

The closing date for all Submissions is **close of business Tuesday 30 September 2008 for Metropolitan submissions, and close of business Friday 17 October 2008 for Regional submissions.**

Please send your written Submission:

By Mail: Commissioner for Equal Opportunity:
Private Rental Inquiry
PO Box 7370
Cloisters Square
PERTH WA 6850

By Email: eoc@equalopportunity.wa.gov.au

By Fax: (08) 9216 3960

By TTY[1]: (08) 9216 3936

By Phone: (08) 9216 3900
1800 198 149 (free call outside the Perth metropolitan area).

[1] Telephone Typewriter.

Submission Questions

BACKGROUND INFORMATION

To help you with your Submission, a brief working definition of 'Direct' and 'Indirect Discrimination' is provided.

Direct Discrimination is when someone treats a person less favourably than they would treat another person in the same or similar circumstances because of a ground, such as the other person's (or a relative or associate's) race, impairment, marital or family status, pregnancy, family responsibility, age, sex, sexual orientation, religion or politics.

Indirect Discrimination is when an apparently neutral rule, policy, practice or procedure has a negative effect on a substantially higher proportion of people with a particular attribute or characteristic compared to people without that attribute or characteristic, and the rule is unreasonable in circumstances.

In the case of race discrimination, the 'less favourable treatment' can include acts, omissions, requirements or conditions that segregate a person from people of another race.

QUESTIONS

These questions are meant to assist your response, but we welcome any suggestions, ideas and contributions you wish to make about experiences in the private rental market in Western Australia.

It would be helpful if, when you respond, you write the answers to each question on a separate sheet of paper. Attach extra sheets to your Submission, if you need to, along with any relevant supporting documentation or statistical data. Please also provide detailed references for any relevant documents (e.g. research, reports).

1. As an organisation assisting individuals and families in accessing the private rental market, are you able to comment on the major issues which present to you for the clients/members you represent in the private rental market?

2. Do you have any direct dealing with agents and or owners when assisting clients/members to access housing – if so how would you regard your relationship? What would assist for a better working relationship?

3. When clients/members enter into a rental agreement, or when applying for a rental property, are you aware if real estate agents/owners make applicants/tenants aware of their rights and responsibilities under the *Residential Tenancies Act 1987* (WA)?

4. Are many clients/members on a waiting list for the Department of the Housing and Works or other public/community housing waiting list? If so how long would you estimate the average time that they have been on the list?

5. Do you experience any issues which prevent you from lodging a complaint of race discrimination in the area of accommodation with the Equal Opportunity Commission if you believe you have a valid complaint?

6. What does your organisation/group suggest to solve the issues you have experienced?

QUESTIONS TO GUIDE THE STORIES OF INDIVIDUALS

1. Do you believe you have experienced discrimination on the basis of your race by real estate agents or owners in any of the following ways:

   - refusing to allow you to inspect a property;
   - refusing to rent a property to you;
   - applying extra conditions when you are applying to rent a property (e.g. such as requiring a higher bond amount or requiring guarantors);
   - denying or limiting access to a facility that is available to other tenants;
   - refusal to extend or renew the lease, just make it short-term
   - failing to provide adequate maintenance that is available to other tenants or is reasonable to expect;
   - harassing you and/or your family or other tenants of the property e.g visiting property more than necessary or without notice;
   - changing the terms on what you are required to do when leaving the property such as extra cleaning fees, how you are required to clean the property, withholding bond money;
   - advising you that a property has been leased when you find out later that it has not been; or
   - any other examples.

2. If you have answered yes to any of the above, please tell us what happened and why do you think that the treatment you received was on the basis of your race?

   e.g. were direct comment made and /or are you aware of other applicants/tenants being treated differently

3. How has this experience affected you?

4. What is your current housing situation?

   a) Renting a property
   b) Staying with friends/family
   c) Supported accommodation
   d) Other (e.g. caravan)

5. Is there anything else you would like to tell us about your experience/s in the private rental market?

COMPLETED SUBMISSIONS

After you have completed your Submission you can return it to the Equal Opportunity Commission as follows:

- close of business Tuesday 30 September 2008 for Metropolitan submissions
- close of business Friday 17 October 2008 for Regional submissions.

By Mail:	Commissioner for Equal Opportunity: Private Rental Inquiry PO Box 7370 Cloisters Square PERTH WA 6850
By Email:	eoc@equalopportunity.wa.gov.au
By Fax:	(08) 9216 3960
By TTY[1]:	(08) 9216 3936

[1] Telephone Typewriter.

Appendix D

Submission form for real estate representatives

Equal Opportunity Commission

Submission Form For Real Estate Representatives

INQUIRY INTO WHETHER PERSONS FROM CULTURALLY AND LINGUISTICALLY DIVERSE BACKGROUNDS (CaLD) AND ABORIGINAL PEOPLE ARE DISCRIMINATED AGAINST ON THE BASIS OF THEIR RACE EITHER DIRECTLY OF INDIRECTLY IN THE PRIVATE RENTAL MARKET

This form has been designed to help Agents make a Submission to the Commissioner for Equal Opportunity's Inquiry into whether persons from culturally and linguistically diverse backgrounds (CaLD) and Aboriginal people are discriminated against on the basis of their 'race' either directly or indirectly in the private rental market in Western Australia.

Refer also to the Information Package and Terms of Reference

YOUR DETAILS

Name of person completing Submission: _____

Name of organisation (if applicable): _____

Position in organisation (if applicable): _____

Postal Address: _____

_____

Contact Person: _____ Contact No: _____

Email Address: _____

We are concerned about your confidentiality, so please indicate which of the following applies to this Submission:

- ☐ This Submission is to remain strictly confidential and is not to be shared/distributed to anyone outside of the Inquiry.
- ☐ This Submission may be shared/distributed to any other party, if my personal details are removed and kept confidential.
- ☐ This Submission is public information and may be freely shared/distributed to anyone interested.
- ☐ My organisation is happy to be contacted by the Commission for further information about my Submission.
- ☐ Other, please specify: _____

_____

Signature: _____ Date: _____

CLOSING DATE

The closing date for all Submissions is close of business Tuesday 30 September 2008 for Metropolitan submissions and close of business Friday 17 October 2008 for Regional submissions.

Please send your written Submission:

By Mail:	Commissioner for Equal Opportunity: Private Rental Inquiry PO Box 7370 Cloisters Square PERTH WA 6850
By Email:	eoc@equalopportunity.wa.gov.au
By Fax:	(08) 9216 3960
By TTY[1]:	(08) 9216 3936
By Phone:	(08) 9216 3900 1800 198 149 (free call outside the Perth metropolitan area).

[1] Telephone Typewriter.

Submission Questions

BACKGROUND INFORMATION

To help you with your Submission, a brief working definition of 'Direct' and 'Indirect Discrimination' is provided.

Direct Discrimination is when someone treats a person less favourably than they would treat another person in the same or similar circumstances because of a ground, such as the other person's (or a relative or associate's) race, impairment, marital or family status, pregnancy, family responsibility, age, sex, sexual orientation, religion or politics.

Indirect Discrimination is when an apparently neutral rule, policy, practice or procedure has a negative effect on a substantially higher proportion of people with a particular attribute or characteristic compared to people without that attribute or characteristic, and the rule is unreasonable in circumstances.

In the case of race discrimination, the 'less favourable treatment' can include acts, omissions, requirements or conditions that segregate a person from people of another race.

QUESTIONS

These questions are meant to assist your response, but we welcome any suggestions, ideas and contributions you wish to make about the experiences of the private rental market for different culturally and linguistically diverse and Aboriginal people in Western Australia.

It would be helpful if, when you respond, you write the answers to each question on a separate sheet of paper. Attach extra sheets to your Submission, if you need to, along with any relevant supporting documentation (including case studies) or statistical data. Please also provide detailed references for any relevant documents (e.g. research, reports).

Profile: Would you say that your organisation has a high, medium, low number of tenancy applications (in relationship to the overall number of applications you received) from the following groups:

a. Aboriginal Tenancy Applications	a. High	b. Medium	c. Low
b. CaLD Tenancy Applications	a. High	b. Medium	c. Low
c. Aboriginal Tenants	a. High	b. Medium	c. Low
d. CaLD Tenants	a. High	b. Medium	c. Low

Do you formally collect data information on these groups? Yes _____ No _____

If yes to the above what would the actual percentages be in the above categories?

1. What professional tools do you use when you assess an application for suitability as a tenant? Please outline the procedure you use when making the assessment.

2. When clients/tenants enter into a rental agreement, or when applying for a rental property, can you outline the process you undertake to make applicants/tenants/owners aware of their rights and responsibilities under the *Residential Tenancies Act 1987* (WA)?

3. Do you undertake different steps to make Aboriginal or CALD persons aware of their rights and responsibilities? If so, can you outline these?

4. What would you say is the most effective way to convey tenancy information to people whose first language is not English?

5. Have any of your staff/agents who deal with tenancy issues, undertaken training to assist with dealing with clients/tenants from different racial/ethnic backgrounds?

6. Have you had instances when owners have directed you not to accept tenants from particular racial groups? Did they give you a reason why they gave this direction?

7. Have you had instances when owners have rejected an application from a tenant on the basis of their race or ethnicity? Did they give you a reason for this decision?

8. Have you had any instances in managing a property, where problems have arisen due to a misunderstanding arising from different cultural expectations/practices? What was the situation and how was it dealt with. What would have assisted to make the situation easier from your perspective?

9. Do you think there are other obstacles/difficulties in dealing with applicants from Aboriginal/CALD groups?

10. Do you have any direct dealing with Community Organisations who assist clients/members to access housing – if so how would you regard your relationship? What would assist for an easier working relationship?

11. What does your Company suggest to solve the issues you have experienced?

Please use and attach extra pages if required

COMPLETED SUBMISSIONS

After you have completed your Submission you can return it to the Equal Opportunity Commission as follows:

- close of business Tuesday 30 September 2008 for Metropolitan submissions
- close of business Friday 17 October 2008 for Regional submissions.

By Mail:	Commissioner for Equal Opportunity: Private Rental Inquiry PO Box 7370 Cloisters Square PERTH WA 6850
By Email:	eoc@equalopportunity.wa.gov.au
By Fax:	(08) 9216 3960
By TTY[2]:	(08) 9216 3936

[2] Telephone Typewriter.

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