

IN THE EQUAL OPPORTUNITY TRIBUNAL
OF WESTERN AUSTRALIA

Matter Number 7 of 1999

IN THE MATTER OF A COMPLAINT BY:

YVONNE MAY WALLEY

Complainant

- against -

**STATE HOUSING COMMISSION
Trading as HOMESWEST**

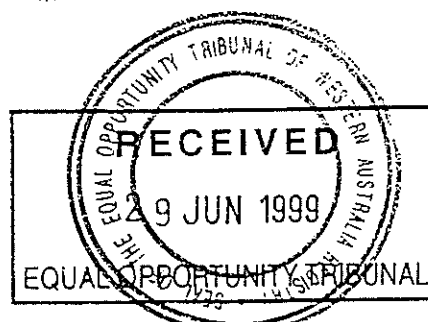
Respondent

REASONS FOR DECISION

Before:	Mr N Hasluck, QC Mrs R Kean Mr K Wyatt	President Member Deputy Member
For the Complainant:		Ms P Giles Mr Matthews
For the Respondent:		Mr A Sefton Mr De Cruz
Heard:	27-30 April and 3, 4, and 14 May 1999	

REASONS FOR DECISION

Delivered: 30 June 1999



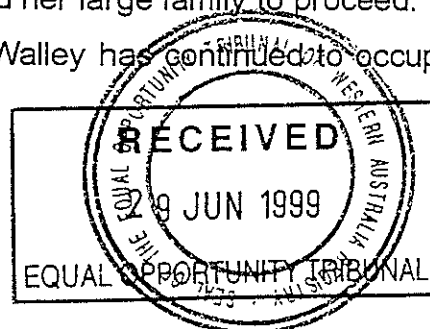
REASONS FOR DECISION

The Complainant, Yvonne May Walley, being a woman of Aboriginal descent, complains of discrimination against her on the grounds of race contrary to various provisions of the Equal Opportunity Act. The complaint arises out of circumstances associated with her occupancy of Homeswest premises at 35 Lucas Street Willagee and at 21 Magnolia Gardens, Yangebup. The principal findings of the Tribunal are set out in a summary at the end of these Reasons.

Overview

By letter dated 27 October 1998 the Regional Manager of the Fremantle Office of Homeswest, Mr Emery, advised Mrs Walley that her tenancy at 21 Magnolia Gardens would not be renewed beyond 4 December 1998. She was put on notice that she had to find alternative accommodation. Mrs Walley's complaint under the Equal Opportunity Act 1984 was lodged with the Commissioner on 1 December 1998, that is to say, before the current tenancy had expired. The complaint contained allegations of discrimination on the grounds of race and impairment. Homeswest then obtained an eviction order pursuant to provisions of the Residential Tenancies Act 1987 which took effect on 29 January 1999.

Against that background, Mrs Walley, assisted by her supporters, applied to the Equal Opportunity Tribunal for interim relief pursuant to Section 126 of the Equal Opportunity Act. She was able to obtain a stay of the eviction order but on the basis that the relevant orders were not intended to effect a reinstatement of her previous fixed term tenancy. The Tribunal simply determined, on the basis of the affidavit evidence then before it, that there was a serious issue to be tried and that the balance of convenience weighed against allowing the eviction of Mrs Walley and her large family to proceed. It follows from these events that although Mrs Walley has continued to occupy

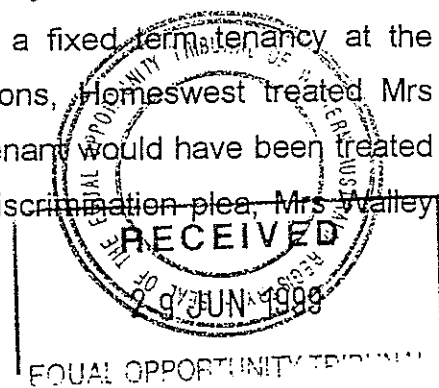


the premises in question a final ruling has not yet been made as to whether any discriminatory conduct has occurred.

At the time the injunction was applied for Mrs Walley was represented by counsel instructed by the Aboriginal Legal Service. Accordingly, programming orders were made which were designed to assist the presentation of evidence at an expedited hearing. In due course pleadings were brought into existence on both sides with the operative documents now being the Amended Points of Claim dated 21 April 1999 filed on behalf of Mrs Walley ("the Points of Claim") and the Amended Substituted Points of Defence filed on behalf of Homeswest ("the Points of Defence"). Arrangements were also made for discovery. In the meantime, the Commissioner of Equal Opportunity had formally referred the complaint to the Tribunal for determination, having regard to the facts just mentioned and the likelihood that the matters in issue would be dealt with by the Tribunal at an expedited hearing.

The hearing before the Tribunal commenced on Tuesday 27 April 1999. As a consequence of the various pre-hearing procedures and exchanges at the hearing it was apparent that the complaint based on impairment would not be proceeded with. The Tribunal will say nothing further about that aspect of the matter. It also became apparent that there were three principal limbs to the complaint of racial discrimination, namely, a plea of direct discrimination which is reflected in paragraphs 37-43 of the Points of Claim, a plea of indirect discrimination which is reflected in paragraphs 44-45 and a composite plea concerning discrimination in accommodation which is set out in paragraph 48. At a later stage in these Reasons the Tribunal will address each of these paragraphs in turn. For present purposes, it will be sufficient to describe the allegations in general terms.

By the direct discrimination plea, Mrs Walley says that in various respects, and especially by requiring her to enter into a fixed term tenancy at the Yangebup property subject to special conditions, Homeswest treated Mrs Walley less favourably than a non-Aboriginal tenant would have been treated in the same circumstances. By the indirect discrimination plea, Mrs Walley

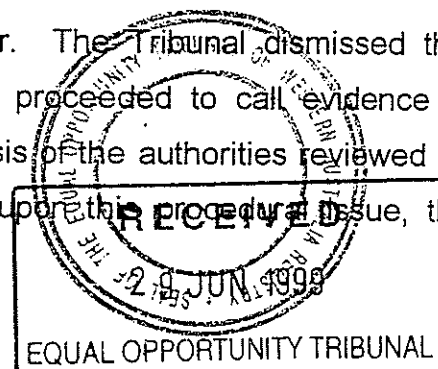


alleges, principally, that in requiring her to look for alternative accommodation in the private sector after 4 December 1998, upon the expiry of her fixed term tenancy, Homeswest thereby imposed a requirement or condition that she could not comply with, but a substantially higher proportion of persons of non-Aboriginal descent could comply with, such condition not being reasonable in the circumstances of the case.

By its Points of Defence Homeswest denies that it acted in a discriminatory manner. The pleading raises various matters by way of defence and, in particular, relies upon the problematic history of the Walley tenancy as a background against which the fixed term tenancy at Yangebup has to be considered. Homeswest contends that the arrangements made and the subsequent decisions not to renew the tenancy were referable not to racial but to behavioural considerations.

Additionally, counsel for Homeswest sought to strike out that part of the indirect discrimination plea reflected in paragraph 45 of the Points of Claim (in which mention is made of Mrs Walley being required to find alternative accommodation) on the grounds that such a plea was misconceived. Homeswest was not seeking to impose a condition or requirement, he argued, it was simply pointing out that a consequence of the fixed term tenancy coming to an end was that alternative accommodation would have to be obtained elsewhere. The Tribunal was not prepared to strike out the plea in question at the hearing, but the adequacy of the plea in law, and the sufficiency of the evidence relied upon by the Complainant in order to support the plea, remain live issues.

The Tribunal also notes in passing, as a matter of record, that at the conclusion of Mrs Walley's case counsel for Homeswest sought to have all aspects of the complaint and the related Points of Claim struck out on the grounds that there was no case to answer. The Tribunal dismissed this application with the result that Homeswest proceeded to call evidence in support of its Points of Defence. On the basis of the authorities reviewed by the Tribunal when it was required to rule upon this procedural issue, the



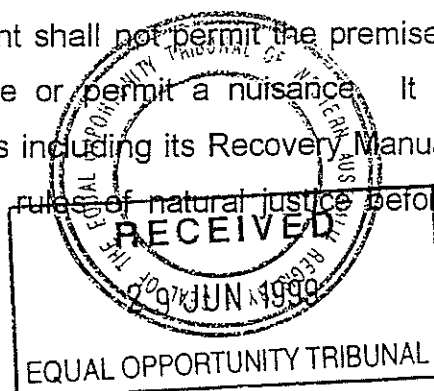
Tribunal concluded that Homeswest was at liberty to advance a submission of no case without being required to make an election as to whether it would rest upon the evidence then before the Tribunal if the submission of no case to answer failed. The Reasons for Decision given in response to the application to strike out and to the submission of no case to answer appear in the transcript of the hearing.

At the conclusion of the hearing the Tribunal reserved its decision and ruled that the interim relief previously granted, the effect of which was to stay the eviction, should remain in force until further order. It follows from the matters referred to in that overview that these Reasons for Decision contain the final ruling of the Tribunal on the matters in issue.

Homeswest

The State Housing Commission trading as Homeswest is constituted pursuant to provisions of the Housing Act 1980. Its functions and policies include the provision of housing and accommodation to lower income groups and people with special housing needs. It recognises a particular responsibility to respond to the needs of Aboriginal tenants, and administers strategies and funding directed to that end accordingly. This responsibility is also implicit in various housing agreements negotiated by State and Federal Governments and in the Homeswest Policy Manual. The Tribunal also notes in passing that a special division has been created within Homeswest known as the Aboriginal Housing Directorate or AHD.

It appears from the standard Homeswest tenancy agreement that certain obligations and matters affecting tenants and Homeswest are set out in the Residential Tenancies Act 1987. These and other obligations are enforceable in the Small Disputes Division of the Local Court. In that respect, by Section 39 of the Residential Tenancies Act the tenant shall not permit the premises to be used for any illegal purpose or cause or permit a nuisance. It is apparent from various Homeswest documents including its Recovery Manual that Homeswest endeavours to observe the rules of natural justice before



recovery action is taken for any breach of a tenancy agreement. It follows that opportunities are usually allowed to tenants to comment on or rectify any alleged default before eviction procedures are taken further. Section 56 of the Residential Tenancies Act forbids discrimination against tenants with children.

The premises occupied by Mrs Walley were administered by the Fremantle Office of Homeswest, and it will therefore be useful to mention those principally associated with the matter. The Regional Manager of the Fremantle Office was Mr Murray Emery who has held that position for approximately five years, having been employed by Homeswest for thirty six years. He said in evidence that in his role as Manager he was responsible for the management of approximately 7,000 rental properties between Mt Claremont and Pinjarra.

The Manager of Rental Services was Ms Patricia Hedges who has been in that position for approximately three and a half years, having been employed by Homeswest for eleven years. She is responsible for the supervision of 12 accommodation managers and the management of rental properties within the Fremantle region. She said in evidence that generally she is not involved in dealing with complaints about anti-social behaviour, as accommodation managers attend to issues of that kind. She became involved in this particular case towards the end of 1997.

Mr Rodney Ambrose said in evidence that he has been the accommodation manager for the Fremantle area of Homeswest for approximately eight years, having been employed by Homeswest for twenty one years. He is responsible for administering the every day affairs of approximately 380 rental properties between Willagee and White Gum Valley. Of these, 8 tenancies are held by Aboriginal families. The tenancy of the Complainant at 35 Lucas Street, Willagee was one of the tenancies which he was responsible for in his role as accommodation manager.

The accommodation manager for Yangebup was Mr Greg Tompkins who has been employed by Homeswest for twenty years. He said in evidence that as



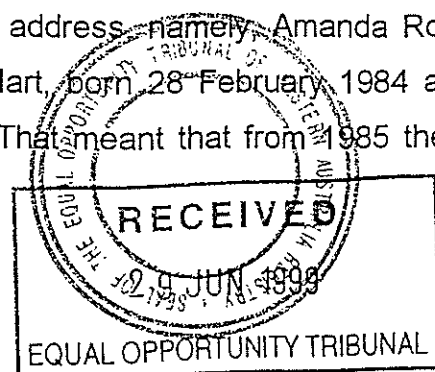
an accommodation manager he was responsible for property and tenant management of approximately 374 rental properties in the areas of Munster, Yangebup, Spearwood and Hamilton Hill.

The Complainant

Yvonne Walley was born on 29 May 1955 in a town called Goomalling in the wheat belt region of Western Australia. She attended Goomalling Primary School from Grades 1 to 7. In 1970 she attended Hamilton Hill Senior High School before leaving in October of that year without completing her Year 10 Achievement Certificate. She mainly lived in Goomalling with her family before moving to Perth in 1969 or 1970. Her father died in 1973 and she stayed with her mother at Sebastian Street until 1975 in what she understood was a Homeswest home.

In 1975 she moved in with her partner Nichol Eddie Hart. She met him approximately two weeks after giving birth to her first child Tania Marie Walley who was born 7 October 1975 to a previous partner. She said that she met Nichol in Medina when socialising with mutual friends. She was unemployed at the time and had just commenced receiving a sole parent pension. Nichol was also unemployed at that time. Shortly afterwards, they moved up to Mogumber where Nichol acquired some farm work while Yvonne Walley looked after Tania and the home. They lived in various Homeswest houses for a period of about five years as they moved between Goomalling and Coolbellup. They did not have a Homeswest tenancy agreement at that time.

She said that her first tenancy with Homeswest commenced in 1980 or 1981 when she and her partner moved into a three bedroom home at 30 Hargraves Road, Coolbellup. They lived there for a few years during which time they had their first child, Burgess Murray Hart, born 14 October 1981. They then had three more children while living at that address, namely Amanda Rose Hart born 1 April 1983; Norma Elizabeth Hart, born 28 February 1984 and Nicholas John Hart born 21 March 1985. That meant that from 1985 there



were 7 permanent residents at 30 Hargraves Road, Coolbellup including Tania.

She said in evidence that because of the growth of the family they moved to a new address in 19 Dan Street, Willagee in 1986. The home consisted of three bedrooms plus a sleepout. Nichol and she had two more children while living in Dan Street, Willagee. Waylen Eddie Hart was born 17 September 1986 and David Charles Hart was born 29 October 1987. Permanent residents in Dan Street comprised nine. This house burnt down in an accident in 1987 or 1988. Homeswest then arranged emergency accommodation in Spearwood.

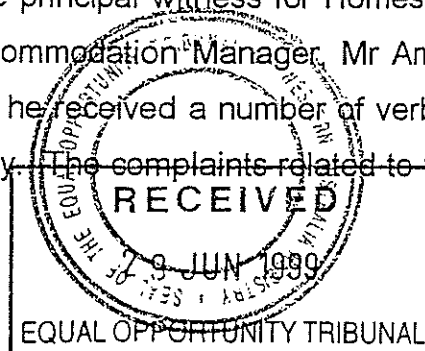
They were placed on a waiting list and in 1993 the family moved into a purpose built five bedroom house at 35 Lucas Street, Willagee. She said in evidence that "Homeswest built this home particularly for us. It was a wonderful home as it had 5 bedrooms and a large back yard."

Events in Willagee

Mrs Walley said in evidence that until early 1998 she did not recall that there were any problems with her tenancy at 35 Lucas Street, Willagee. She added:

"To the best of my knowledge there was never any threats to evict us. We were only transferred as the need arose with the family size increasing. I do not think that there has been any time in the past, apart from the last 12 months, where I have had problems with neighbours or complaints from Homeswest about 'anti-social' behaviour. The rent has always been deducted from my pension and so I don't remember even being in trouble in relation to our rent."

This description did not sit comfortably with evidence led by Homeswest concerning the tenancy in question. The principal witness for Homeswest in that regard was from the Fremantle Accommodation Manager, Mr Ambrose. He said that in late 1993 and early 1994 he received a number of verbal and written complaints concerning the tenancy. ~~The complaints related to various~~

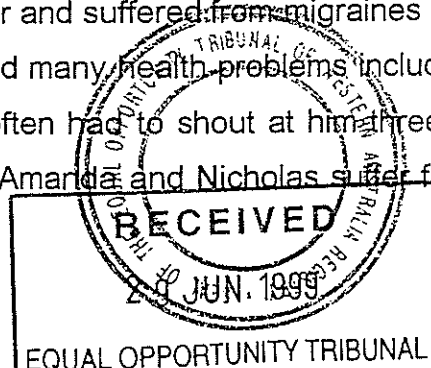


matters including damage to construction sites by children from the premises, noise problems, excessive swearing, vandalism and children wandering the streets and knocking on doors for money. In early 1994 he spoke to Mrs Walley who advised that there had been some disturbances. When he warned her about the risk to her tenancy she agreed to enter the Special Housing Assistance Programme (SHAP) being a programme designed to assist tenants with difficulties.

According to Mr Ambrose, the situation appeared to improve after SHAP had become involved and Mrs Walley had spoken to her children about their behaviour. By letter dated 25 August 1994 Homeswest advised Mrs Walley that she had progressed "to the point where special housing assistance was no longer required. Homeswest has had no further complaints regarding the behaviour of children and this indicates that you now have them under control and you are to be congratulated for this achievement."

It was common ground at the hearing that in 1996 Mrs Walley's partner, Nichol Hart, had a heart operation and was diagnosed with motor neurone disease. According to Mrs Walley, he was sick from that time on and the medical opinion was that he only had three years to live. Mrs Walley nursed him through the disease. She said it was a very difficult time for herself and her family. Throughout 1997 Nichol's condition got steadily worse. She had to bathe him, feed him and shave him and he was eventually confined to a wheelchair. She was able to obtain assistance from Silver Chain but she was still heavily committed to looking after him throughout the day.

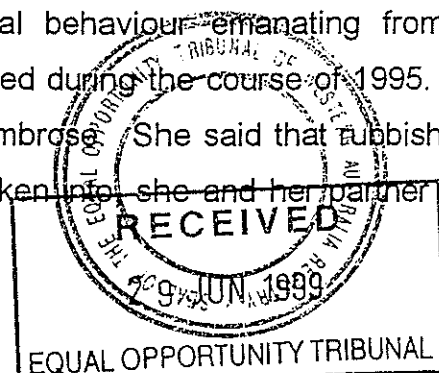
Mrs Walley said in evidence that she did not have problems with the children prior to their father becoming ill because Nichol was able to control them very well. However, as his condition worsened, some problems began to arise. In addition, a number of the children had their own health problems. Burgess, her eldest boy, had problems with his temper and suffered from migraines and violent outbursts. Her nephew, Maxwell, had many health problems including bad eyesight and very bad hearing. She often had to shout at him three or four times before he could hear her. Both Amanda and Nicholas suffer from



severe headaches and were prone to chest infections. Waylen was hit by a motor car when he was 6 years of age and Mrs Walley was of the view that this incident was responsible for his violent mood swings. Her son David, and her grandchildren Lenny and Jeffrey have asthma problems and the two latter children have severe whooping cough problems.

Mr Ambrose said in evidence that early in 1997 further problems connected with Mrs Walley's tenancy were brought to his attention. He received a number of complaints about the behaviour of her family relating to such matters as swearing, rubbish being thrown over the fence into a neighbour's yard and trespassing into neighbours' yards. In the course of inquiring into those complaints he became aware of Nichol Hart's health problems. As a consequence of a meeting with Mrs Walley on 11 March 1997 she agreed to re-enter the SHAP programme. Nonetheless, in the later part of 1997 the number of complaints significantly increased as well as the seriousness of the issues that were raised. It seemed to Mr Ambrose that as Nichol Hart's health deteriorated the behaviour of the children in the Hart/Walley household appeared to worsen. Mr Ambrose tried to be conciliatory and with that thought in mind kept Mrs Walley informed of alleged complaints of anti-social behaviour without putting pressure on her given the health situation of her partner. For example, he received a written complaint from a neighbour living opposite that Nicholas Hart had been trespassing on her property. Towards the end of December 1997 he also received a complaint from Katherine Scheiblehner that her husband had been attacked by Burgess Hart with a screw driver when the boy was caught breaking and entering a house in Bartlett Street. Copies of the letters Mr Ambrose wrote to Mrs Walley about these incidents were received in evidence.

The Tribunal pauses to note that evidence was also received from residents in the area. Kathy Sharman lived next door at 33B Lucas Street, Willagee. She described various incidents of anti-social behaviour emanating from the Hart/Walley household that she experienced during the course of 1995. She reported some of these incidents to Mr Ambrose. She said that rubbish was thrown into her property, her car was broken into, she and her partner were



abused by some of the Hart/Walley boys and the words "fuck off" were written on her front lawn with powder on one occasion. Irene Fern referred to various incidents including an occasion when the police advised her that they had caught two young lads from the Hart/Walley household siphoning petrol from her car. A copy of a letter of complaint written by her to Homeswest was also received in evidence.

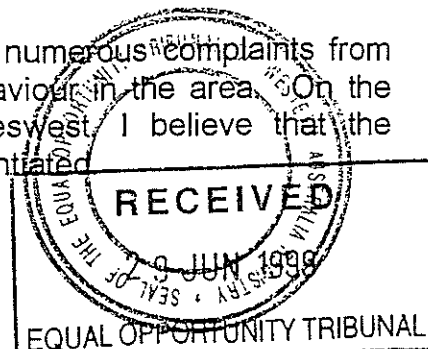
The Tribunal pauses to note that both these witnesses gave quietly convincing accounts of their experiences. Indeed, it was apparent from the evidence of Ms Sharman that she was generally well-disposed towards Mrs Walley but at times the behaviour of her neighbour's children became intolerable and she was forced to take action. Mrs Walley did not seriously dispute this view of the matter.

December 1997

Mr Ambrose said in evidence that on 4 December 1997 Mrs Walley met with himself and Patricia Hedges (the Manager Rental Services) to discuss reports of anti-social behaviour of her children in the Willagee area. According to him, at the meeting Mrs Walley acknowledged that her boys had been in recent trouble with the police and that her tenancy was in jeopardy as a result. She referred to the ill health of Nichol Hart by way of explanation. On 5 December 1997 Mr Ambrose wrote to Mrs Walley including reference to the meeting held the previous day in these terms:

"Specifically it is alleged that your children are the cause of numerous disturbances creating considerable levels of noise which disturbed other residents. The noise included yelling and arguing, verbal abuse and physical assault against residents in the area which resulted in one resident being knifed by one of your children with a screw driver. Palmyra police have confirmed the incidents above as they were required to attend a number of properties in the area following complaints made to them about your children's behaviour.

In addition Homeswest has also received numerous complaints from residents in regard to your children's behaviour in the area. On the balance of evidence presented to Homeswest, I believe that the complaints made to Homeswest are substantiated.



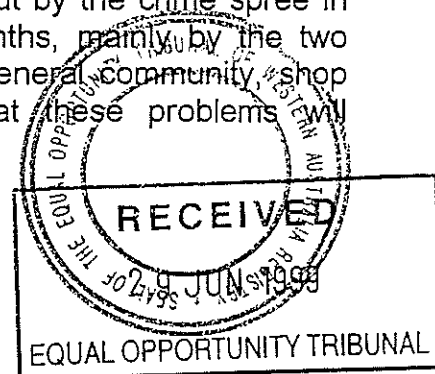
Homeswest is very concerned about the behaviour of your children and as the legal tenant you are responsible for the behaviour of the occupants and visitors on the premises to ensure that they do not unduly disturb other residents and as a result of these complaints I am formally warning you that future substantiated complaints of anti-social behaviour may result in notice of termination of agreement using Section 62 and/or 64 of the Residential Tenancies Act 1987.

I hereby give you an opportunity to comment on any of the matters raised above or any other matters you consider relevant to this decision to issue this warning within 7 days of the date of this letter ...”

These allegations were not denied. Further, on about 8 December 1997 Mr Ambrose received a complaint from a neighbour, Ms Bray, regarding an incident involving damage to her home being built at 34 Lucas Street by an Aboriginal child believed to live with Mrs Walley. On 15 December 1997 he received a written complaint from Carolyn and Latimer Flavelle regarding their home being burgled some weeks earlier. On 6 January 1998 Corby Howell who lived at 20B Lucas Street complained that her house had been broken into five times with the latest break in occurring over the last weekend. She said that when she confronted Mrs Walley's family about the latest break in, Amanda Hart had assaulted her twice. Letters of complaint were received about these matters.

On 14 January a meeting was convened by Sergeant Gors of the Palmyra Police Station with representatives of various groups, including Mr Ambrose from Homeswest, a youth development officer and Aboriginal liaison officer from the City of Melville, representatives of the Fremantle Education Department, representatives of the juvenile justice team and four Aboriginal police liaison officers. The minutes of that meeting include the following passages:

“There are problems in Willagee brought about by the crime spree in this suburb particularly within the last 6 months, mainly by the two families involved. There is concern in the general community, shop owners and the indigenous community that these problems will continue. Racial tension is developing. ...



Rod (Ambrose) said he wasn't aware of any alternate accommodation available or that any could be arranged, they would need a 4 bedroom home, these are very scarce in any area. Rod is the first contact for Homeswest, Accommodation Manager, second contact is Patricia Hedges.

Homeswest can't take any action as these problems are not tenancy related and they have no jurisdiction for the problems down the road."

The meeting resolved to offer various forms of support to the two 'Hart' families thought to be responsible for the difficulties being addressed by the meeting, namely, the Hart/Walley family and the family of Mrs Walley's sister in law, Brenda Hart, who lived nearby in Lever Street.. The Tribunal notes in passing that a considerable body of evidence was received from the Police Department in the form of action reports and offence reports which were said to corroborate the various matters of concern and some of the incidents mentioned earlier. According to Sergeant Gors a suspect is recorded in an offence report 'where there is a reasonable identification of that person as being the offender or the suspect for the offence committed'. He went on to adduce in evidence a summary showing that the children of Mrs Walley and Brenda Hart had been named as suspects on 81 occasions in the period preceding the transfer to Yangebup for offences such as property damage, assault, stealing, burglary, possession of drugs and disorderly conduct. Various prosecutions were brought as a result of these events and in that regard the Tribunal was furnished with the relevant police Briefs and Statements of Material Facts.

Homeswest Action

Homeswest continued to be concerned about the situation. By letter dated 4 February 1998 Ms Hedges on behalf of Homeswest wrote to Mrs Walley in these terms with copies of the letter going to SHAP, the Aboriginal Housing Directorate and Aboriginal Medical Service:

"On 4 December 1997 you attended a meeting at the Fremantle Office regarding the reports of your children's behaviour which was causing a nuisance and was of great concern to many Willagee residents. You



admitted to Homeswest officers at the time, you were aware of the serious nature of the reports and as a result, received a formal warning letter from Homeswest on 5 December 1997.

Since that time, Homeswest has received additional reports of your children's ongoing anti-social behaviour in the Willagee area. As a result you attended a further meeting at Fremantle on 30 January 1998. The following lists the recently reported complaints and those discussed at the meeting:

1. 6 January 1998 – Amanda Hart (aged 15 years) entered a neighbouring property and physically assaulted the resident.
2. Verbal abuse and verbal threats were directed to residents in Lucas Street by members of your household the same day.

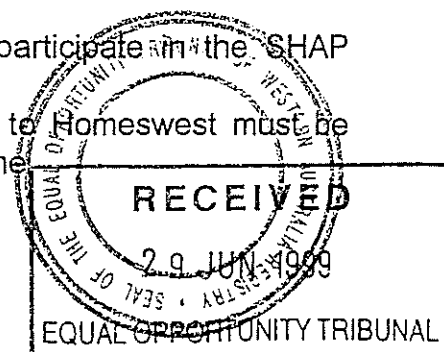
Despite the serious warning issued to you on 4 December 1997, the anti-social behaviour has continued and at the meeting held on 30 January 1998, you admitted you were aware of these incidents.

Therefore you are now advised under the Residential Tenancies Act 1987 this is a breach of your tenancy agreement and the attached notice is now issued. Should further anti-social reports be received, Homeswest will terminate your tenancy and proceed without delay through the Local Court.

There is another matter we discussed at our recent meeting, and it is that of Homeswest possibly transferring you and your family away from the Willagee area. This offer is only made in consideration and in sympathy to your very sick husband and also a result of the strong indications of support from the Police Liaison Unit, Ministry of Justice and the SHAP worker, Jim Hayden.

You will be offered one final opportunity to continue to occupy Homeswest housing. However, it is on the understanding of the following, which we discussed at the meeting 30 January 1998.

- The tenancy you transfer into will be for a fixed term only. The initial term will be for 3 months.
- Should you transfer and a substantiated breach to your tenancy agreement (by any member of, or visitors to, your household) is received during the 3 months, immediate action will be taken to remove you from the property.
- At the end of the 3 month period, if Homeswest is satisfied no breach of tenancy has occurred then another fixed term tenancy will be entered into.
- You must agree to continue to fully participate in the SHAP programme.
- Payment of your rent and other debts to Homeswest must be through the DSS direct deduction scheme.



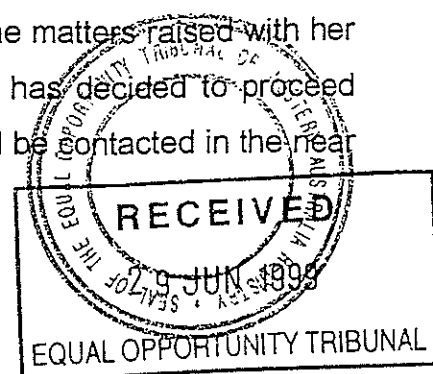
Homeswest is now actively seeking a suitable property for your family to transfer into. As soon as one has been located, you will be contacted by an officer from Homeswest."

The Tribunal pauses to note that at this stage the family living at 35 Lucas Street, Willagee consisted of Nichol Hart, Mrs Walley, their 6 children, Burgess, Amanda, Norma, Nicholas, Waylen, David, her nephew Maxwell and her 2 grandchildren Lenny Jones born 18 November 1992 and Jeffrey Jones born 15 April 1996. Mrs Walley was looking after the two latter children because her daughter Tania was allegedly at risk of violent assault from her estranged husband. Thus, in essence, the family at that stage consisted of up to 11 people. The Tribunal also notes, as is evident from the contemporary correspondence and the minutes of various meetings, that various support agencies were in contact with Mrs Walley by this time and were providing her with advice. It is significant that, notwithstanding assistance of that kind, there does not appear to be anywhere on the contemporary record any significant denial that the various incidents alleged against Mrs Walley or members of her household had actually taken place.

On 12 February 1998 Mr Emery, as the Regional Manager of Homeswest, wrote to Mrs Walley in these terms:

"I refer to the conversation on 11 February 1998 in the presence of Mr Rod Ambrose – Accommodation Manager – and Mr John Hughes – Regional Recovery Officer – Rene Reddingus from Aboriginal Housing Directorate, Ms Leh Bonsen and Ms Fran Bodman of Family and Children Services in regards to complaints made to Homeswest of alleged anti-social behaviour emanating from the occupants and/or visitors of your tenancy."

Eight incidents involving such matters as trespass and assaults committed by members of the Hart/Walley household are specified with an opportunity then being offered to Mrs Walley to comment on any of the matters raised with her within 3 days. It was also noted that "Homeswest has decided to proceed with your transfer as a matter of urgency and you will be contacted in the near



future on this matter. The alternative is your eviction from the Homeswest property.”

By letter dated 20 February 1998 the social worker, Ms Bodman, responded to Homeswest. In that letter she did not attempt to dispute the allegation that various incidents of the kind specified had taken place. She referred principally to arrangements concerning the proposed transfer and noted that the transfer should be to premises in the Fremantle greater area “ie Southlakes, Spearwood or Yangebup”. The house was to be not less than 5 bedrooms and with Homeswest meeting the moving costs. The Tribunal notes, however, that this letter was written on the assumption that Mr Hart might be moving to the new premises.

It was common ground at the hearing that Nichol Hart went into hospital soon afterwards where he died on 19 March 1998. Mrs Walley said in evidence that the children were profoundly affected by his death and she herself was very depressed and very stressed and had difficulty controlling the children. She also said in evidence that:

“All of the children started exhibiting behavioural problems once their father was ill, but particularly after their father died. However, the children did not do nearly as many things as what they were blamed for. It got to the situation that it seemed that everything that went wrong in Willagee the police would come to my home and my children were blamed for it ... There was another family of Hart children living in Willagee. They are cousins to my children. The two families together were known as ‘the Hart boys’ and whenever something went wrong in Willagee, the Hart boys got the blame for it.”

Fixed Term Tenancy

By letter dated 29 April 1998 Ms Hedges on behalf of Homeswest wrote to Mrs Walley in these terms:

“On 9 April 1998 Homeswest wrote you a letter regarding the reported complaints on 27 March, 28 March and 7 April 1998 which involved members of your family.



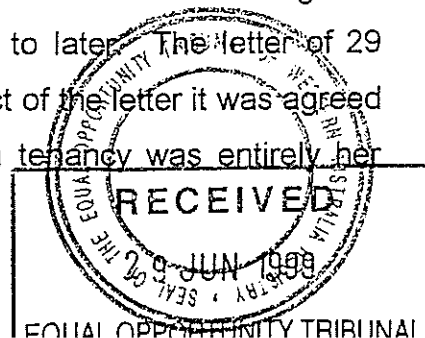
As these disturbances were substantiated by the police, you were requested to attend the Fremantle Homeswest Office on 24 April 1998 in the presence of officers from Aboriginal Housing, Police, Family and Children Services, Juvenile Justice and Homeswest officers. This correspondence serves to confirm the issues discussed and agreed to at that time.

- That members of your household entered the grounds of a neighbouring property and issued verbal threats regarding the safety of its occupants which resulted in police being called to the property.
- That a member of your household broke the window of a Nissan Pulsar car parked in Lucas Street Willagee.
- Consequently, you were advised that the matter of your continued tenancy would be referred to the Local Court at the earliest opportunity.
- The options of a transfer and a 'trial' fixed term tenancy of 3 months was suggested by your support agencies.

As a result of Homeswest advising you of its intentions, officers from Aboriginal Housing, the police, Juvenile Justice and Family and Children Services interceded on your behalf and requested you be transferred to another property or be given another 'chance' to stay at your current property for a 'trial' period of 3 months. The aforementioned agencies also gave strong assurances of support and stated that it has taken a long time to get all supports including mentors for your children and education issues operational and by pursuing eviction action it would mean the supports not being given sufficient time to become effective.

As explained, Homeswest would not conceive of transferring you as it was considered this was not a solution to the problem. However, it was agreed that the intended action against your tenancy would be withdrawn and that you would be given a fixed term tenancy for 3 months at your current property. It was agreed that by choosing this option you would be able to demonstrate to Homeswest you and your children's ability to maintain a tenancy in all respects."

The letter then set out the various special conditions that were to accompany the fixed term tenancy of 3 months at 35 Lucas Street, Willagee. These conditions correspond essentially with conditions contained in a letter written by Homeswest subsequently concerning the premises at 21 Magnolia Gardens, Yangebup which the Tribunal will come to later. The letter of 29 April 1998 also noted that at the meeting the subject of the letter it was agreed that Mrs Walley's decision to accept a fixed term tenancy was entirely her

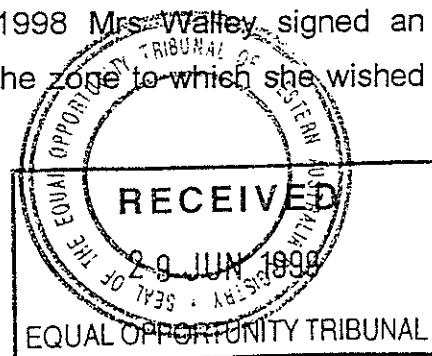


own. Further, Homeswest had received a telephone call from Ms Vanessa Walley, an Aboriginal Housing Officer and a niece of Mrs Walley, that the intention was to enter into a tenancy agreement for 3 months and that Mrs Walley was fully aware of the conditions in their entirety.

The Tribunal pauses to note that the grant of a fixed term tenancy was somewhat unusual. Mr Ambrose could recall a fixed term tenancy being granted where a redevelopment was imminent but apart from that and the Walley tenancy he knew of no other tenants of that kind in the last five years. Mr Emery and Ms Hedges confirmed that the grant of such a tenancy was rare and most tenants, accustomed to the ongoing tenancy agreement, would view it with apprehension owing to the lack of security. In the present case, Homeswest viewed the fixed term tenancy as an avenue of last resort. The options were either eviction or a fixed term tenancy. The latter was granted to Mrs Walley on compassionate grounds because of her husband's death and the representations made by her supporters. Mr Emery conceded that although approval of the Homeswest Board was required before an eviction could be proceeded with pursuant to Section 64 of the Residential Tenancies Act, no such approval would be required if a fixed term tenancy was granted but subsequently not renewed.

The Proposed Transfer

It seems that, possibly due to the presence of the support agencies, complaints of misconduct at the subject premises then abated. By letter dated 30 July 1998 Homeswest wrote to Mrs Walley again, noting that "as no substantiated complaints about your tenancy have been received during the past 3 months, Homeswest is willing to enter into another fixed term tenancy agreement for a further a 3 months." The same conditions were to apply. This correspondence foreshadowed the possibility of a transfer to alternative accommodation. By a form dated 30 July 1998 Mrs Walley signed an application for transfer in which she described the zone to which she wished to transfer as being "Fremantle".

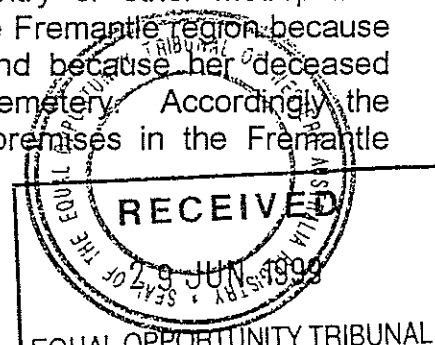


Ms Hedges for Homeswest gave evidence corroborating the evidence given by Mr Ambrose and confirming the sequence of events referred to earlier. She said also that at the meeting of 24 April 1998 attended by Mrs Walley she explained that there were sufficient substantiated incidents of anti-social behaviour that warranted eviction of the family. Nonetheless, in light of the strong representations made by the support agencies present, she agreed that Homeswest would enter into a fixed term tenancy and that it would not pursue the current eviction action in the event that Mrs Walley entered into a fixed term tenancy. The basis of the decision "was to give the complainant's family one last chance especially given I was mindful the children's father had recently died and the age of the children involved." She said that the responsibilities under the proposed fixed term tenancy were discussed at length. Ms Hedges outlined the special conditions of the fixed term lease which were there to ensure that problems caused by the family in Willagee were not repeated and to provide a "definition" of behaviour that was considered unacceptable.

Ms Hedges said in evidence that she went on leave for a period mid-year and when she returned in late July she was advised that the behaviour of the Walley children appeared to have improved and that a suitable house was being sought to offer to Mrs Walley for a transfer, but one had not yet been located. Homeswest agreed to transfer Mrs Walley and at a meeting on or about 30 July 1998 the proposal was explained to Mrs Walley, this being essentially a confirmation of the previous agreement.

The evidence given by Ms Hedges then continued as follows:

"A commitment was given to transfer the complainant and her family to the next available 5 bedroom house subject to special conditions of the same nature which she had agreed to in relation to the Lucas Street fixed term tenancy. I explained available transfer options to the complainant such as transfer to the country or other metropolitan regions. She did not wish to move from the Fremantle region because of the supports in place for her family and because her deceased husband was buried at the Fremantle Cemetery. Accordingly the respondent attempted to locate suitable premises in the Fremantle region ...



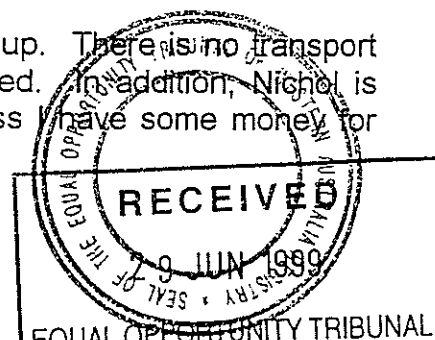
On 5 August 1998 I received a complaint from Gillian O'Connor that her house had been broken into the previous night and that 'the Hart children' had been arrested. I confirmed this information with Palmyra Police and was advised that they were charged. On 6 August 1998 the complainant had confirmed with an officer of the respondent, Vanessa Walley, that two of her children, Burgess and Waylen Hart, had been charged and were pending court hearing on 7 August 1998 ...

On the same day there was a meeting of the Fremantle police and other support agencies to discuss further support for the complainant's family. At the meeting consideration was given to terminating the complainant's tenancy in light of the complaint made the previous day ... Given that a suitable property had already been identified in Yangebup and that the transfer was imminent, it was decided that the respondent would not take any further action. The respondent's officers identified a suitable property at 21 Magnolia Gardens, Yangebup. I clarified the position with Fran Bodman, a social worker who was acting on behalf of the complainant, that the transfer could only occur once the Yangebup property had been vacated and maintenance completed. I informed Fran Bodman that if the complainant was not happy with the arrangement that she should notify me as soon as possible so that the offer could be withdrawn."

Ms Hedges went on to say in her evidence that she then attended a conference convened by Murray Emery and attended by Mrs Walley and numerous interested persons on 4 September 1998 regarding the proposed transfer. The Tribunal will come to the details of this conference in a moment. For the time being, it is sufficient to note that the stance adopted by Homeswest at the hearing was that the transfer of Mrs Walley and her family to Yangebup was made pursuant to Mrs Walley's consent freely given and in order to meet the requirements of herself and those advising her.

Mrs Walley in her evidence presented a slightly different view of the matter. According to her, she had no real choice. If she stayed at Willagee she would be evicted, notwithstanding the preceding period of good behaviour and the grant of the second fixed term tenancy. She said in evidence:

"None of us wanted to be moved to Yangebup. There is no transport for us in Yangebup and we are very isolated. In addition, Nichol is buried in the Fremantle Cemetery and unless I have some money for

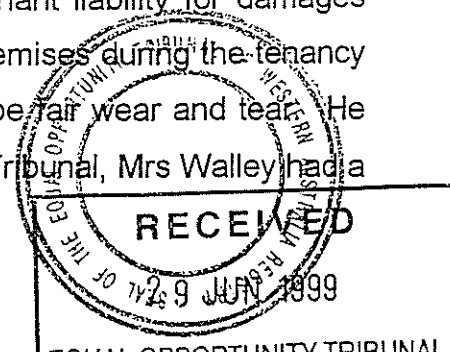


the whole family to catch the two buses required to get to the cemetery, we have to walk.”

The Tribunal pauses to note that Mrs Walley was cross examined at some length in regard to this aspect of her evidence. She agreed that there was a meeting at which Mr Emery had explained the terms governing her move to Yangebup. During the course of the cross examination she conceded on a number of occasions that she saw some advantages to moving to Yangebup and much of her evidence at this point tended to suggest that in fact her consent had been freely given. She was prepared to move from Lucas Street after her husband's death because of problems with her relatives and 'problems with memories'. She went on to say that 'I had come to accept that a transfer was the best option.'

In regard to this issue the Tribunal notes that evidence was also received from Fran Bodman. This evidence also tended to suggest that Mrs Walley had no objection to the proposed move to Yangebup. A memorandum from Fran Bodman to Patricia Hedges dated 26 August 1998 reflects that Mrs Bodman was acting on behalf of Mrs Walley in regard to her proposed new tenancy agreement. There is nothing in that memorandum to suggest that Mrs Walley objected to the move or was under any pressure to agree to the move. Ms Bodman also said in evidence that Mrs Walley appeared to be relieved at moving house and starting afresh after the difficulties at Willagee.

Before turning to the immediate circumstances bearing upon the taking up of the new tenancy at Yangebup it will be useful, for the sake of an orderly narrative, to note some further evidence given by Mr Ambrose. He was aware that an offer was made to transfer Mrs Walley to Yangebup, but was not involved in that process. He said in evidence that Mrs Walley had an initial debt upon her transfer to the Magnolia Gardens premises of \$10,587.09. This included \$103.60 rental balance and \$4,987.63 tenant liability for damages and maintenance carried out at the Lucas Street premises during the tenancy and upon its vacation that were not considered to be fair wear and tear. He noted that, as at the date of the hearing before the Tribunal, Mrs Walley had a



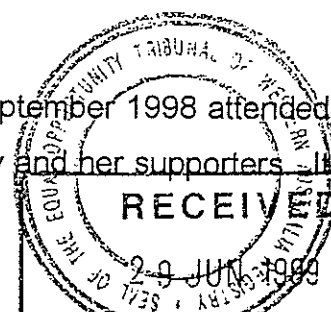
vacated arrears debt of \$10,247.34 which she was paying off at the rate of \$30 per fortnight. She had a current tenant liability to Homeswest in relation to the Magnolia Gardens of \$568.65 in relation to damages and maintenance carried out at the premises that were not considered to be fair wear and tear.

Magnolia Gardens

The Homeswest officers had singled out a suitable property at 21 Magnolia Gardens, Yangebup, which was then being occupied by an Aboriginal tenant and his family. This tenant had maintained the tenancy in a manner satisfactory to Homeswest. A request was made to the existing tenant to transfer to alternative accommodation and upon this request being agreed to arrangements were made to transfer Mrs Walley and her family to the property. Mr Emery accepts that prior to the signing of the Homeswest tenancy agreement by Mrs Walley on 4 September 1998 he had received communications from a representative of the Yangebup Progress Association and from a resident in that area expressing concerns about the relocation to Yangebup of a family that had allegedly been creating problems in the Fremantle area. A resident of Magnolia Gardens, Mr Blight, gave evidence that at one stage he was asked to sign a petition to Homeswest protesting the move but he refused to do so because he believed in giving newcomers to the district 'a fair go'.

Mr Emery for Homeswest said that these communications and matters of this kind did not play any part in the Homeswest decision to proceed with the transfer and nor did they influence decisions bearing upon subsequent events. Homeswest did not want to expose Mrs Walley to racial tensions. An inference can be drawn from these events that consistently with its statutory obligations Homeswest did not regard itself simply as a commercial landlord but recognised a responsibility to respond to the special requirements of Mrs Walley and her family.

This is also evident from the conference held on 4 September 1998 attended by Mr Emery, other officers of Homeswest, Mrs Walley and her supporters.

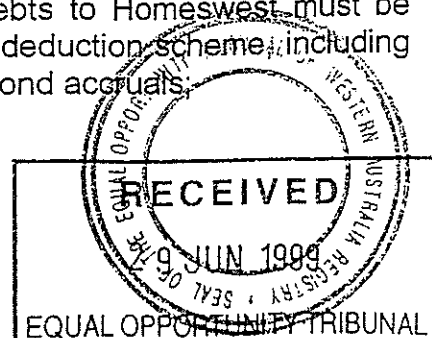


was made clear to Mrs Walley that what was on offer was a 5 bedroom brick home and that "it would initially be for a fixed term of three months commencing 7 September 1998". The minutes of the meeting record that Mrs Walley agreed to this and to a set of conditions corresponding to the special conditions governing her two previous fixed term tenancies at 35 Lucas Street, Willagee. She signed a formal Tenancy Agreement and a letter reflecting the matters agreed at the conference to show that she had received and understood the nature of the conditions. The relevant letter reads in its entirety as follows:

"I refer to the fixed term tenancy agreement for the property at 21 Magnolia Gardens Yangebup which you have signed on Friday 4 September 1998 for a period of 3 months.

This tenancy has been offered to you on the understanding and agreeing to the following conditions which are to apply to the tenancy at 21 Magnolia Gardens Yangebup:

1. The tenancy at 21 Magnolia Gardens Yangebup is for a period of 3 months only;
2. the provision of any further fixed term tenancy at the expiry of the initial fixed term tenancy for 3 months is at the sole discretion of Homeswest;
3. if any substantiated breach of your tenancy agreement by any member of your household or visitors is received during the 3 months, immediate action will be taken resulting in a termination notice being issued forthwith;
4. that only the only persons listed hereunder are to reside in the property at any time – Yvonne May Walley, Burgess Murray Hart, Maxwell Peter Hart, Amanda Rose Hart, Normal Rose Hart, Nicholas John Hart, Waylen Eddie Hart, David Charles Hart and Jeffrey Jones;
5. you must continue to participate in the Supported Housing Assistance Programme (SHAP) as well as with other support agencies assisting you;
6. payment of your rent and other debts to Homeswest must be made through the Centrelink direct deduction scheme including an extra \$10 per fortnight towards bond accruals;



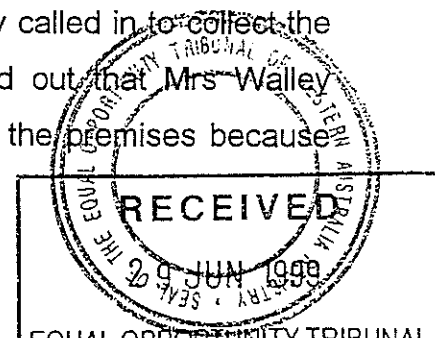
7. a copy of this letter has been passed to your support agencies including SHAP, FCS, Education Department, YONGA, Juvenile Justice and the police;
8. breaches to your previous tenancy at 35 Lucas Street, Willagee must not be repeated under this new tenancy at 21 Magnolia Gardens, Yangebup, and in addition, members of your household are requested not to verbally/physically harass any persons or to enter other persons' property without permission.

I trust Ms Walley that this letter has fully explained all the expectations relating to the provision of this new tenancy at 21 Magnolia Gardens Yangebup. Should you wish to discuss any matter relating to this letter and your new tenancy, please do not hesitate to contact Ms P Hedges the Manager of Rental Services on 9430 0302."

In regard to condition 8 Mr Emery said he made it clear to Mrs Walley at the meeting that members of her household were not to be involved in criminal activities. Any anti-social behaviour would bring the tenancy to an end.

The Tribunal pauses to note that by paragraph 29 of her Points of Claim Mrs Walley described the conditions appearing in this letter as "the September 4 conditions". For ease of reference, the Tribunal will therefore use the same shorthand expression. She pleaded, additionally, and gave evidence to the same effect, that she was also orally informed by a representative of Homeswest that she was not permitted to have certain members of her extended family visit her at the Yangebup property, this being described in the Points of Claim as "the oral condition". In other words, she alleged that the effect of certain discussions was to import into the new tenancy an understanding or condition that the tenancy would be terminated if there was any unacceptable behaviour or incidents involving members of the household or visitors, and that 'I had to keep the noise down and that I wasn't allowed to have any family or friends around to visit, not even at Christmas time.'

This allegation arose out of a meeting she had with Ms Hedges at or about the time of the 4 September meeting when Mrs Walley called in to collect the keys. According to Ms Hedges, she simply pointed out that Mrs Walley should exercise care in regard to who was invited to the premises because



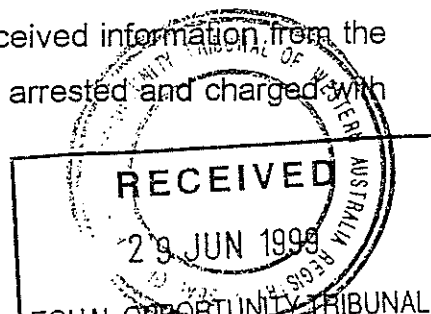
the tenant was responsible for the behaviour of visitors. She didn't try to, and nor did she, impose a restriction on visitors or to seek to make any such restriction a condition of the tenancy. She certainly did not say that Mrs Walley could not be visited by members of the family.

Mrs Walley transferred to the new property in early September 1998. There were 10 people living at the premises being Mrs Walley, the 6 children of her marriage to Nichol Hart, 2 grandchildren and a nephew, the ages of the children ranging from 17 to 2 years of age. As to rent, the evidence was that she was notionally liable to Homeswest for \$158.80 per week but the subsidised figure was \$76.20 per week. This, plus a regular amount for previous arrears, was deducted from her income via Centrelink.

It was common ground at the hearing that a few weeks after the move, on 29 September 1998, one of Mrs Walley's children, Waylen Hart aged 12, was charged by the police with breaking into a property at Moorhen Drive, being a property in the Yangebup neighbourhood, but some distance away from 21 Magnolia Gardens. Some months later, on 24 February 1999, her son was brought before the Children's Court at Fremantle where he pleaded guilty to a charge of burglary and received a Youth Community based order effective for 6 months. It is important to note, however, that no formal plea of guilty had been made in the days following the break in when Homeswest reviewed the future of Mrs Walley's tenancy in the light of this incident. It was apparent from evidence presented to the Tribunal that various matters of concern about the behaviour of the tenants at 21 Magnolia Gardens were exercising the minds of residents and administrators with an interest in the future of the tenancy, and the Waylen Hart incident had important consequences.

Subsequent Events

The Regional Manager of Homeswest, Mr Emery, gave evidence to this effect. He said that on 22 September 1998 he received information from the police that one of Mrs Walley's children had been arrested and charged with



breach of bail and aggravated burglary at a house at 50 Moorhen Drive, Yangebup. He went on to say:

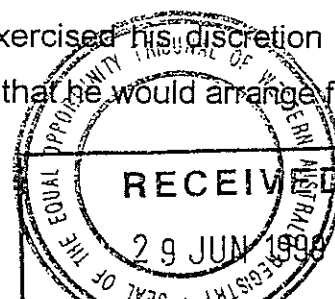
"As a result of the incident at Moorhen Drive I decided, in the exercise of my discretion, not to offer the complainant a further tenancy at Magnolia Gardens upon the expiration of the fixed term tenancy. The discretionary nature of that decision and factors I would take into account in exercising it, such as whether any further incidents of nuisance or criminal behaviour caused by occupants of her tenancy occurred, had been clearly explained and accepted by the complainant prior to her signing the Tenancy Agreement.

I made the decision because I regarded the incident to be very serious and it was in conflict with the expectations as to the conduct of the complainant and her children living at the premises that I had clearly set out in prior discussion with the complainant.

In making my decision I paid no regard to the unsubstantiated allegation that there had been 10 other incidents in the area within the first two weeks or the complaints of children being on the roof or running down the street that had been received. To the best of my knowledge no other complaints had been received by the respondent in relation to the complainant and her family at that time.

I was mindful of the impact of this decision on the complainant's family and therefore took a while in finally coming to this decision. Though I was concerned about destabilising the effect of making the complainant's family find alternative accommodation, I had seen the problem in Willagee transfer to Yangebup. Before the transfer to Willagee, Waylen Hart had been caught breaking into a home and this behaviour was repeated within weeks of entering the Yangebup tenancy after the complainant had been told that such behaviour could not be tolerated."

Mr Emery went on to say that this was one of the toughest decisions of his entire career. He met with Mrs Walley on 27 October 1998 at his office together with a representative of the Aboriginal Housing Directorate and on that occasion handed her a copy of a letter setting out his decision. He explained the contents of the letter and the reason underlying his decision. He also agreed to make bond assistance available to Mrs Walley to assist her should she endeavour to obtain private rental accommodation. Normally Mrs Walley would not have been eligible. Mr Emery exercised his discretion to make an exception in her favour. He also explained that he would arrange for all support agencies to be advised of the decision.



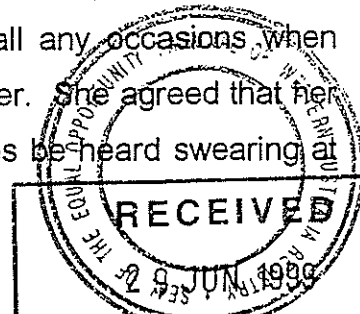
The relevant letter dated 27 October 1998 advised Mrs Walley that Homeswest would not be entering into a new tenancy beyond 4 December 1998. The letter reads in part:

"I made it very clear to you that the type of behaviour and problems that were evident in Willagee must not eventuate in Yangebup as a consequence of your transfer to that suburb. In fact I went to great lengths in front of you and the support agency representatives present to emphasise that Homeswest would not tolerate unacceptable behaviour or incidents from your family in the area. You readily acknowledged this and accepted that the consequences of any problem would be the termination of your tenancy.

It is now understood that shortly after you moved into your present property that one of your children was caught breaking into a property at Moorhen Drive in Yangebup. Quite clearly this is exactly the type of behaviour that I said must not occur in your move to Yangebup. You accepted this and acknowledged that the consequences would be termination of your tenancy – hence the decision not to enter into another tenancy agreement with you when your present agreement expires on December 4, 1998. In the interim you will now need to seek alternative accommodation as you must vacate the property at 21 Magnolia Gardens, Yangebup on or before December 4, 1998."

Mr Emery arranged for Ms Hedges to inform various agencies and departments who had been involved with Mrs Walley and her family of the decision taken by Homeswest not to renew the tenancy.

Mrs Walley agreed, under cross examination, that Mr Emery personally handed this letter to her, explained the effect of it, and suggested that she start looking for alternative accommodation. He did not insist that she start looking or promise any benefit if she did so. Whether she found alternative accommodation would not affect the decision he had already made not to renew her tenancy. She accepted, while under cross examination, that everything at Yangebup had been okay for the first couple of weeks and she was content with the move. Access to Fremantle Cemetery was a bit more difficult but not a real problem. She could not recall any occasions when Homeswest had relied on false accusations against her. She agreed that her children often did swear quite loudly, could sometimes be heard swearing at

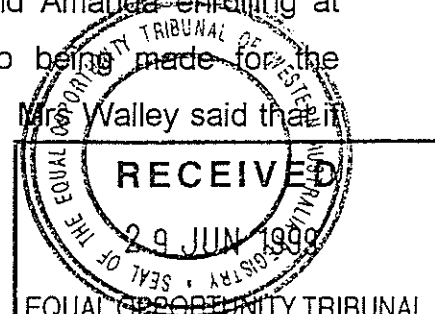


people in the street, and that this had happened at Yangebup. Ms Bodman confirmed that taxi vouchers were available to Mrs Walley for compassionate purposes such as visiting her husband's grave.

According to Mrs Walley, the incident referred to in Mr Emery's letter involving Waylen took place about two weeks after the family had moved into Yangebup. In her view, the children had not yet had a chance to settle in to Yangebup. She went on to say that she had "always felt that it was very harsh to be evicted over this one incident that occurred so early on in our tenancy." She also referred to receiving a further letter dated 20 November 1998 from the Acting Regional Manager, Mr Muir in which Homeswest confirmed that it would not be entering into another tenancy agreement with her when her present agreement expired on 4 December 1998. Reference was made in that letter to an incident of anti-social behaviour occurring at the property on 19 November 1998. The letter said the Police had to attend a disturbance involving a group of people who had been drinking at 21 Magnolia Gardens most of the day with this being followed by a fight which spilled out into the park next door to the property. Mrs Walley had this to say about the matter:

"I had some visitors at my home who allegedly were drinking and started a fight in the park next door to my property. This was my brother Barry and his girlfriend and her brother. I was not at home that day, I had to go somewhere. I am often having to go away from home to go to PMH with the children or somewhere else for the children's health. I feel that it is very harsh though to be blamed for their behaviour when I was not even home. I had asked him to behave when I left the home, but I cannot control people when I'm not even present."

In this part of her evidence Mrs Walley also set out various reasons why in her view the eviction should not have proceeded. She said that the children would not want to move from Yangebup, and mention was made of Burgess hoping to commence Fremantle TAFE next year and Amanda enrolling at Lake Lands High School. Arrangements are also being made for the schooling of other children in the family in the district. Mrs Walley said that it



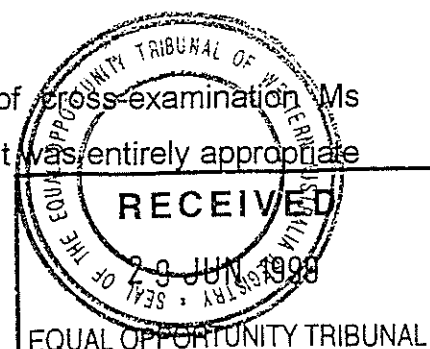
she was evicted from the house she would have to split up the children and make arrangements for them to live with relatives. She herself has nowhere to go. She said that if the family is forced to split up this would make any problems the children already have over the loss of their father even worse and that, having no home, they would just live from place to place.

She went on to say that she did not expect that private homes would be available for rent that had enough bedrooms and space to house all her family. Given the problems that had started at Yangebup, she believed that landlords would be unwilling to offer her accommodation. She believed that if she was evicted she would not be able to get a private house to rent in Yangebup or be able to get one anywhere because of her race and because of the number of children she has. Her understanding was that Homeswest would not offer a further tenancy. She did not in fact take any steps to find alternative accommodation in the private sector because she did not know how to go about it, apart from liaising with an Anglican Social Responsibility Commissioner, Anne Annear, in circumstances the Tribunal will come to in a moment.

The Tribunal also notes in passing that the Aboriginal Housing Directorate tried to avert the eviction. The Tribunal received in evidence two memorandums written towards the end of November 1998 from Margy Dia, Manager, Urban Programmes/Aboriginal Housing to the Senior Management of Homeswest. The second memorandum accepts that Mrs Walley has to accept responsibility for her family but goes on to observe:

“However, it has only been four months since Mrs Walley lost her husband and from discussions with her, I believe that neither she nor the children have been able to grieve. Perhaps the expectation we placed on Mrs Walley to ‘fix’ the problems with respect to behaviour of her children in a relatively short period has contributed to this and the instability of the family.”

The Tribunal also notes that during the course of cross-examination Ms Hedges expressed a degree of doubt as to whether it was entirely appropriate



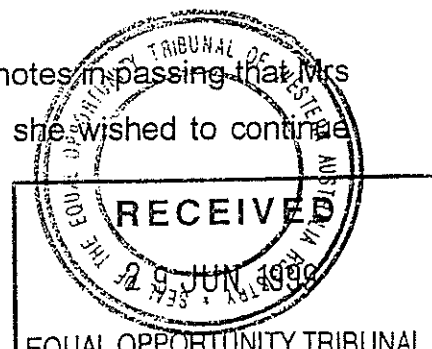
in the circumstances of the case for Homeswest to bring a tenancy to an end because a member of the household had allegedly been involved in a criminal offence. She seemed to accept that provisions of a tenancy agreement are not usually used to control criminal activity. She stated, in answer to a question from the Tribunal, that this was the first occasion in her experience in which a Homeswest tenancy had been brought to an end because a member of the tenant's household was involved in a criminal offence taking place some distance away from the rented premises.

Eviction

Mrs Walley was not in a position to find alternative accommodation with the result that Homeswest set in motion procedures for eviction pursuant to provisions of the Residential Tenancies Act. As the Tribunal has noted in its Overview Mrs Walley lodged a complaint of discrimination on the ground of race with the Commissioner of Equal Opportunity on 1 December, shortly before her fixed term tenancy expired, but this did not stay the eviction procedure. An eviction order was obtained from the Local Court on 8 January 1999 but, as a consequence of a later variation, this order did not take effect until 29 January 1999.

The eviction order was made in the absence of Mrs Walley and in view of the fact that the issue before the Local Court, if any, was simply the expiry of a fixed term tenancy, rather than any question of a breach of the tenancy agreement, the circumstances underlying the Homeswest decision not to renew were not explored. In the meantime, as mentioned earlier, and in due course, assisted by her supporters, application was made to this Tribunal for injunctive relief. The subsequent history of Mrs Walley's formal complaint has already been described in the Overview section of these Reasons for Decision.

Before leaving this aspect of the matter, the Tribunal notes in passing that Mrs Walley seemed somewhat ambivalent as to whether she wished to continue living at Yangebup, in view of what had happened.

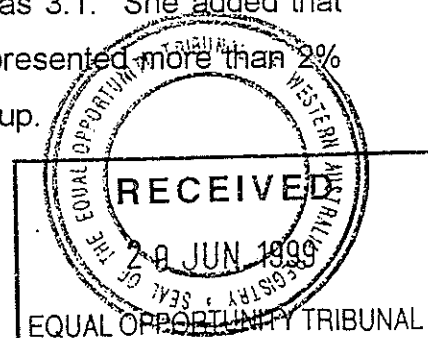


Alternative Accommodation

Evidence was led from various witnesses concerning the availability of alternative accommodation. This evidence was thought to be relevant to the indirect discrimination plea and to the question of what relief might be afforded to Mrs Walley if she was successful in her claim.

Dr Christina Birdsall said in evidence that she was an anthropologist currently employed by the Noongar Land Council of Western Australian (Inc). She was a Senior Anthropologist and had held that position for two years, having worked in the field of Aboriginal affairs since 1980. She is an expert in the field of established cultural structures and related social organisation of Aboriginal people living in settled parts of Australia. Her special area of expertise is kinship structures and related social organisation of Noongar families in Western Australia. The title of her PhD thesis was "All One Family: Family and Social Identity Among Urban Aborigines in Western Australia."

She said that of the 455,543 families counted in Western Australia on census night in 1996, fewer than 3% (11,723) were classified as indigenous families. It is her observation that Aboriginal family size is ordinarily larger than is the norm among non-Aboriginal families, those of European descent in particular. This view is based both on her extensive work with Aboriginal families over many years, which to a large extent is confirmed by her reading of the statistical picture. Many of the Aboriginal families which she has studied are considerably larger than the normal size for non-Aboriginal families. Family groups frequently include a number of children who are the biological children of the parents, and often also include grandchildren, nieces and nephews and other children related to the principal adults in the family. Indigenous families tend to be large with an average number of 3.9 persons. For all Western Australian families, the average number of person was 3.1. She added that families with six or more children under 15 years represented more than 2% of the indigenous group and only 0.2% of the total group.



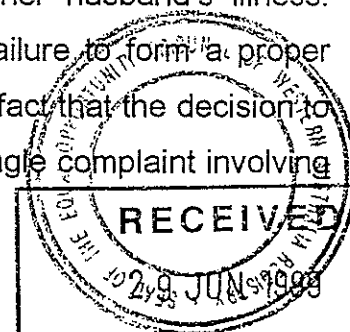
In turning to household size, she said that a lower incidence of lone person households, together with a higher incidence of multiple family households, contributed to a higher average number of persons in indigenous households.

Ms Annear, the Anglican Social Responsibility Commissioner, described her attempts, on one occasion in Mrs Walley's company, to find suitable accommodation in the private sector for the Walley family at a rental of \$150 to \$170 per week, but to no avail. Homeswest led evidence from a principal in a leading estate agency suggesting premises were available at such a rental. Nonetheless, the Homeswest witnesses, including Ms Hedges, conceded that a large Aboriginal family would have difficulty finding accommodation in that bracket without suitable references. The Homeswest policy documents also noted that discrimination against Aboriginal tenants is a reality in the private sector.

Direct Discrimination Plea

Mrs Walley relied principally upon a plea of direct racial discrimination, namely, that Homeswest, contrary to Sections 36(1) and (1a) and Section 47 of the Act, discriminated against the Complainant in imposing a fixed term tenancy at the Willagee property and later at the Yangebup property with special conditions and thereby treated Mrs Walley and her children less favourably than it would have treated a non-Aboriginal person in the same or not materially different circumstances on the ground of race.

Under this heading it was also pleaded that Homeswest discriminated against Mrs Walley by acting on complaints about the alleged conduct of the Complainant's children in Yangebup that were motivated by racist attitudes or prejudices held by some of the neighbours in Yangebup. Particulars in support of this plea refer to the Complainant's history as a long standing tenant of Homeswest with a good record prior to her husband's illness. Reference was also made to Homeswest's alleged failure to form a proper appreciation of attitudes in the neighbourhood and the fact that the decision to terminate the tenancy was effectively based upon a single complaint involving

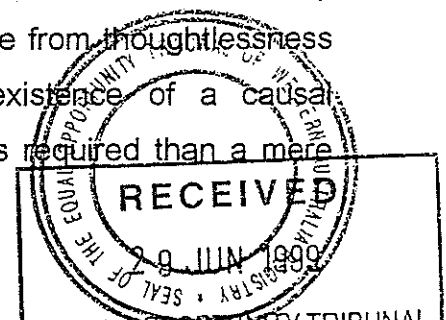


an allegation of criminal conduct against a 12 year old member of the household which had not been substantiated at the time the relevant decision was made.

It was argued forcefully on behalf of Mrs Walley that Homeswest was overly quick to bring the tenancy to an end upon the basis of a single incident, and one could infer from this and the surrounding circumstances that Homeswest acted in a discriminatory manner on the ground of the Complainant's race. It was unlikely that a non-Aboriginal tenant's accommodation would be taken away simply because a boy in the household was being charged with an offence.

The Points of Defence filed on behalf of Homeswest denied these allegations. Homeswest denied that it treated the Complainant less favourably than it would have treated a non-Aboriginal person in the same or not materially different circumstances. It said, in essence, that in the exercise of its discretion concerning renewal of the tenancy it made its decision because of information it received in September 1998 that a child of the Complainant who resided with her at the premises had been apprehended in premises at Moorhen Drive and charged with allegedly breaching bail and committing an aggravated burglary at those premises. This was a reasonable decision to take having regard to Mrs Walley's previous problematic history as a tenant and the terms of the special conditions governing the lease. Homeswest did not discriminate against her on the ground of race. The housing agency would have treated any tenant with an unsatisfactory history in exactly the same manner.

The decided cases indicate that proper weight must be given to the concept of doing something "on the ground of race" with the result that as a matter of evidence a causal connection must be established between the alleged discriminatory conduct and the adverse consequence, but it is not necessary to identify a malign intention. Discrimination can arise from thoughtlessness and neglect. Nonetheless, in establishing the existence of a causal relationship, a number of cases suggest that more is required than a mere



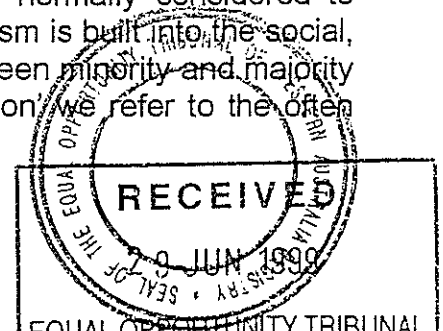
sequential link between alleged discriminatory conduct and the consequence complained of. The alleged discriminatory conduct must be the true justification, reason or basis for the relevant decision. The treatment in question must be based on an unlawful consideration and not merely flow from or be caused by some allegedly 'discriminatory' act. *University of Ballarat v Bridges* (1995) 2 VR 418 at 436.

The decided cases also indicate that it is often necessary to rely upon inferences in order to identify discriminatory conduct, especially in regard to pleas of indirect discrimination, where the effect of institutional or systemic practices may be subtle and difficult to identify. Further, in studying the comparison to be made between the aggrieved person and a person of a different race in similar circumstances, some allowance should be made for the possibility that the circumstances facing the aggrieved person may themselves be linked to attitudes surrounding his or her race.

In the absence of direct evidence, the Complainant may use in support inferences drawn from the primary facts, although discrimination cannot be inferred when more probably innocent explanations are available on the evidence. *Fenwick v Bevridge Building Products Pty Ltd* (1986) EOC 92-147. Inferences may prove to be important in those circumstances where a causal connection has to be established between the alleged discriminatory acts and the detriment expressed by the aggrieved person.

In regard to racial discrimination this Tribunal expressed the following view in *Slater v Brookton Farmers Co-operative Company Ltd* (1990) EOC 92-321 at page 78, 186:

"Racial discrimination covers a spectrum of actions ranging from individual overt acts of oppression against members of minority groups to institutional and covert actions which involve structural relations between racial groups. Individual racism is normally considered to involve intended actions while institutional racism is built into the social, economic, political, and cultural relations between minority and majority groups. By the term 'institutional discrimination' we refer to the often

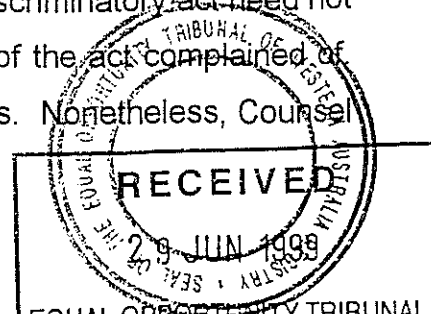


unintentional consequences of policies and practices which negatively affect the members of a minority group.”

In that case the Tribunal found that discriminatory conduct had occurred because it was apparent from the perfunctory manner in which the interview in question was conducted that the Aboriginal applicant for the employment position on offer was virtually being treated as a ‘non person’ who could be ignored. A situation of that kind was thought to fall within the reasoning in regard to covert racial discrimination mentioned earlier. The degree of thoughtlessness and neglect was such that consequences were visited upon the Aboriginal complainant which would not have been visited upon a white applicant for the position in the same circumstances or in circumstances that were not materially different. The Tribunal in that case was clearly of the view that reasoning of the kind just mentioned can be used to support a plea of direct discrimination, even though the Act contains discrete provisions dealing with indirect discrimination.

It is unusual in cases coming before this Tribunal for there to be direct evidence of, for example, racial discrimination in circumstances where a governmental agency is involved. Discriminatory conduct in that context, of its very nature, is ordinarily something which is manifested indirectly and proved (where it exists) by circumstantial evidence. Further, as Deane J and Gaudron J noted in *Banovic’s* case, genuinely assigned reasons for an act or decision may, in fact, mask the true basis for that act or decision. The decision of the High Court in *Chamberlain v The Queen* (1984) 153 CLR 521 at 536 establishes that a tribunal of fact should decide whether to accept the evidence of a particular fact not by considering the evidence directly relating to that fact in isolation but in the light of the whole of the evidence and it can draw an inference from a combination of facts, none of which viewed alone would support that inference.

It is important to note that by Section 5 the alleged discriminatory act need not be the dominant or substantial reason for the doing of the act complained of. It can be considered in combination with other matters. Nonetheless, Counsel



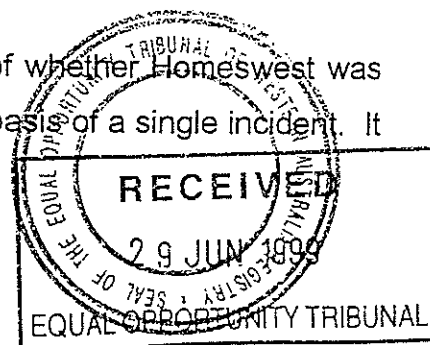
for Homeswest submitted, this provision cannot be used to dilute the force of the words 'on the ground of' in Section 36 or the reasoning in the *Bridges* case (supra).

General Observations on Evidence

Before turning to the various specific pleas of direct discrimination set out in various paragraphs of the Points of Claim it will also be useful to make some general observations about the evidence. It is apparent from the statutory responsibilities of Homeswest and from the history of the matter that Homeswest recognised that there was a relationship between the Complainant and Homeswest which was underpinned not only by specific contractual relationships but also by the notion that Mrs Walley on behalf of herself and her family was a continuing applicant for Homeswest accommodation, even though the terms of a particular tenancy might have expired. It seems that special arrangements were made in regard to the tenancy at 21 Magnolia Gardens which went beyond the usual tenancy arrangements, and thus, arguably, as a matter of inference, were different to the terms usually afforded to non-Aboriginal tenants.

It appears from this, and from the nature of the discussion at the 4 September meeting, and earlier meetings, that there was something about Mrs Walley which caused Homeswest to treat her in a special way and to impose special conditions. She was subject to the general rule of not permitting a nuisance, but, additionally, became subject to a special rule against harassing neighbours or being involved in trouble affecting other properties. She was being treated in a way that was different to the norm. It is apparent from the evidence that her special situation as an Aboriginal tenant with particular problems influenced the views of those at the meeting held on 4 September 1998, and affected the decision to grant her a further tenancy.

Similar reasoning can be applied to the question of whether Homeswest was overly quick to bring the tenancy to an end on the basis of a single incident. It



is significant that on one view of the matter Homeswest acted on an allegation that at that time had not been 'substantiated' by a conviction in a court of law.

Specific Findings

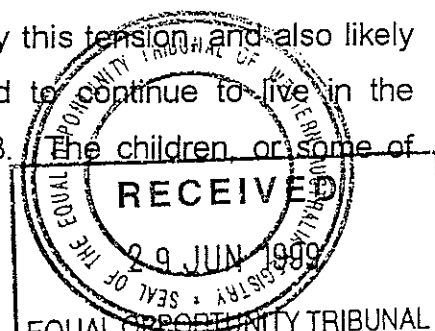
Against the background of these general observations, the Tribunal now turns to the various specific issues raised by the pleadings under the heading Direct Discrimination Plea. The Tribunal will deal with each of the matters in turn using the numbering adopted by the Points of Claim.

The Paragraph 37 Issue

In paragraph 37 of the Points of Claim (as expanded by paragraph 39) Mrs Walley alleged that the requirement of Homeswest that she be subjected to two fixed term tenancies at the Willagee property constituted less favourable treatment on the ground of race, contrary to the provisions of Section 36(1) and Section 36(1a) in that such treatment would not have been imposed upon non-Aboriginal persons in the same or not materially different circumstances to Mrs Walley and/or her children.

The relevant circumstances were said to be that she was a single parent with 9 children. Several of the children had impairments. She had recently experienced an extremely distressing and lengthy period of coping with Mr Hart's illness involving the progressive loss by Mr Hart of his ability to move, communicate, or swallow and then his death. The difficulties experienced with the tenancy at the Willagee property first arose and could be largely attributed to the illness of Mr Hart and his impending death.

It was said further that Mrs Walley had been a long-standing tenant of Homeswest with a good record prior to Mr Hart's illness. Further, she was living in an area in which racial tension existed, resulting in complaints about her children which were likely to be generated by this tension and also likely to be exaggerated or unfounded. She wished to continue to live in the Willagee property having lived there since 1993. The children, or some of



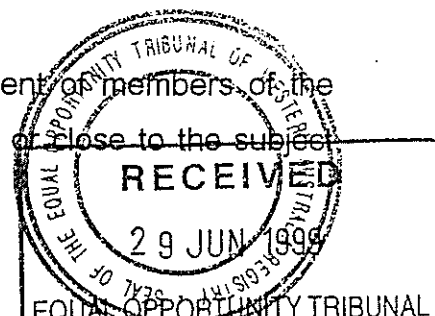
them, were involved in schooling, training and social programmes in the Willagee area which would be difficult or impossible to continue to pursue if she and the children moved away from the area. It was noted that she had no independent means of transport.

By its Points of Defence Homeswest conceded that it had entered into two fixed term tenancies in relation to the Willagee premises but denied that this constituted less favourable treatment. It also denied that Mrs Walley had a good tenancy record prior to the illness of Mr Hart and otherwise generally denied the various allegations comprising the Complainant's plea.

In resolving this issue the Tribunal accepts that it was unusual for Homeswest to enter into a fixed term tenancy for a period of 3 months and there is therefore, at a first glance, some basis for Mrs Walley's plea that she received less favourable treatment than Homeswest tenants generally. The crucial question is, however, whether the creation of two fixed term tenancies at the Willagee property came about because of her race or whether the relevant arrangements were due to other considerations. Tenancies of this kind were clearly unusual, but, according to Homeswest, the acts of nuisance preceding the grant of these tenancies were so extreme that special measures were required.

The Tribunal accepts that Mrs Walley had been a long standing tenant of Homeswest with a reasonably good record prior to Mr Hart's illness. It also accepts that the difficulties experienced with the tenancy at the Willagee property first arose and could be largely attributed to the illness of Mr Hart and his subsequent death. Nonetheless, as appears from earlier discussion in these Reasons, a tenant is required to live in harmony with her neighbours, notwithstanding domestic upsets, and acts of nuisance or anti-social behaviour at or emanating from the rented premises can be used to justify the termination of a tenancy.

The evidence led by Homeswest as to the involvement of members of the Hart/Walley household in various acts of nuisance on or close to the subject

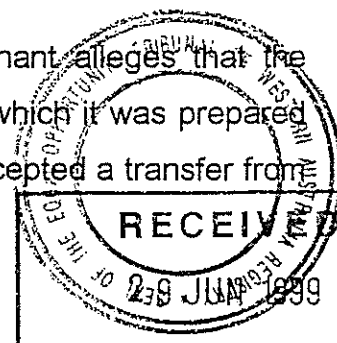


premises in Willagee was tested in detail and at length by Counsel for Mrs Walley in cross examination and by argument. Some comparatively minor inconsistencies in the evidence and discrepancies in the correspondence alluding to the various incidents were exposed but the Tribunal was generally satisfied that the incidents attested to by the Accommodation Manager, Mr Ambrose, and various neighbours, being the incidents detailed in the related correspondence, had taken place as alleged. This did not seem to be seriously disputed by Mrs Walley herself or any of the witnesses called on her behalf. Documentation from the police files confirmed that Homeswest had legitimate grounds for concern, and that special measures were required to address the problem.

Against this background, it becomes apparent that by early 1998 breaches of the existing tenancy agreement had occurred and Homeswest was aware that unless the problem was addressed the situation could become steadily worse, especially if racial tensions in the neighbourhood mounted. Homeswest decided to grant a fixed term tenancy rather than to proceed with an eviction as a means of addressing and seeking to control the various problems at the tenancy. Mrs Walley's racial background may have been a factor in the situation in that Homeswest yielded to the submissions made on her behalf by various agencies with an interest in her welfare but, in the Tribunal's view, this did not amount to less favourable treatment. Against a background of substantiated complaints, a deferment of the eviction procedure that might otherwise have taken place was a way of treating her leniently, having regard to her special circumstances. Further the Tribunal is satisfied that her transfer from Willagee to Yangebup was effected voluntarily and without any improper pressure being brought to bear upon her by Homeswest. It follows from these observations that Mrs Walley's plea in regard to this issue does not succeed.

The Paragraph 40 Issue

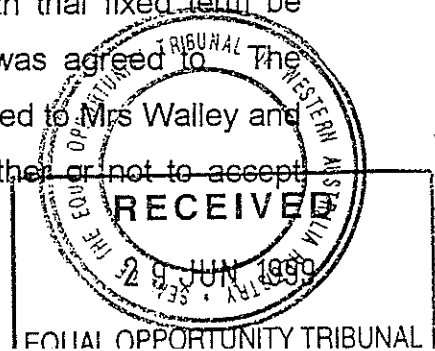
By paragraph 40 of her Points of Claim the Complainant alleges that the decision by Homeswest that the only circumstances in which it was prepared to continue to offer accommodation to her was if she accepted a transfer from



the Willagee property to the Yangebup property, constituted less favourable treatment on the ground of race in that such treatment would not have been imposed upon non-Aboriginal persons in the same or not materially different circumstances. In support of that plea Mrs Walley defined her circumstances by reference to the particulars mentioned earlier. It was also pleaded on her behalf that she wished to remain in the Willagee property because it was reasonably close to the Fremantle cemetery where her former partner was buried and a move to a property away from this area would impose an unreasonable burden upon her in fulfilling her personal and cultural obligations to visit his grave.

In its Points of Defence the Respondent denied that it made a decision that the only circumstances in which it was prepared to continue to offer accommodation to Mrs Walley was if she accepted a transfer from the Willagee property to the Yangebup property. It also pleaded various facts and matters which were said to explain and justify the move to Yangebup which did not infringe the provisions of the Equal Opportunity Act. In other words, in April 1998 Homeswest decided to proceed with eviction action to obtain possession of the Willagee premises. This was canvassed with Mrs Walley and representatives of various support agencies at the meeting held on 24 April 1998. Those supporting Mrs Walley requested a transfer to an alternative area but Homeswest declined this request because Mrs Walley had said in a press article that she didn't want to move, Homeswest thought that by transferring the family it might transfer the problems associated with the tenancy into another area, Mrs Walley had debts at her current tenancy of \$7,310.44 and was likely to attract more tenant liability debts on vacating the current tenancy and it was unlikely another 5 bedroom house would become available in the near future.

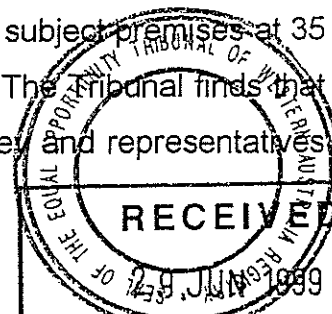
Homeswest went on to plead that a request was then made by representatives of the support agencies that a 3 month trial fixed term be offered in relation to the Willagee premises and this was agreed to. The responsibilities of a fixed term tenancy were then explained to Mrs Walley and she was advised it was entirely her own decision whether or not to accept



such a tenancy. Homeswest decided that if at the end of the 3 month period she had demonstrated her ability to maintain the tenancy in all respects consideration would be given to a transfer, although this would remain entirely at the discretion of Homeswest. Reference was made to the letter sent by Homeswest to Mrs Walley on 29 April 1998 in relation to the meeting in question and the proposed fixed term tenancy. It was common ground at the hearing that Mrs Walley then entered into a 3 month fixed term tenancy over the Willagee property from 30 April 1998 to 30 July 1998. As no complaints were made concerning that tenancy a further 3 month fixed term tenancy was entered into for the Willagee property on or about 30 July 1998.

Homeswest went on to plead that on or about 28 July 1998 as no substantiated complaints had been received Homeswest decided to offer to transfer Mrs Walley to premises outside of Willagee. She was advised of the offer and a variety of possible options including a transfer to the country or other metropolitan regions but she indicated she did not wish to move from the Fremantle region. Homeswest then arranged for existing tenants at the Yangebup premises, which were located in the Fremantle region, to transfer to premises with less bedrooms to enable Mrs Walley to enter into a tenancy agreement, and in that regard she was provided an opportunity to inspect the premises at Magnolia Gardens before deciding whether to accept the offer. On 4 September 1998 she accepted the offer to enter into a fixed term tenancy agreement in relation to the Yangebup premises.

It follows from discussion relevant to the earlier paragraph 37 issue that the Tribunal is not satisfied that Homeswest acted in a discriminatory manner in arranging a transfer from the Willagee property to the Yangebup property. Consistently with the line of argument reflected in the Respondent's Points of Defence, the Tribunal finds that in April 1998 Homeswest decided to proceed with eviction action to obtain possession of the Willagee premises, and against a background of substantiated complaints of nuisance and anti-social behaviour associated with and in close proximity to the subject premises at 35 Lucas Street the decision in that regard was justified. The Tribunal finds that the prospect of eviction was canvassed with Mrs Walley and representatives



of various support agencies at the meeting held on 24 April 1998. Arrangements were then made in consultation with representatives of the support agencies that a 3 month fixed term tenancy be offered and this was agreed to voluntarily as a means of averting the eviction procedure and as a solution to the ongoing problem which was of advantage to Mrs Walley.

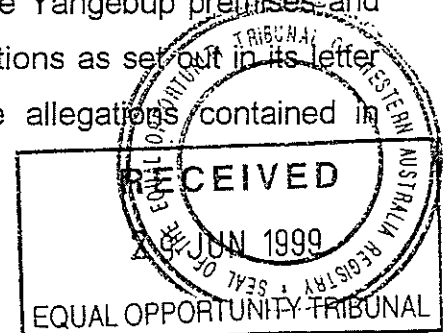
The Tribunal finds that after the death of Nichol Hart Mrs Walley herself was interested in obtaining alternative accommodation in the Fremantle area. The transfer was then negotiated freely. On 4 September 1998 she accepted the offer to enter into a fixed term tenancy agreement in relation to the Yangebup premises. Her willingness to move was corroborated by the evidence of the social worker, Fran Bodman.

It follows from this discussion that Homeswest did not act in a discriminatory manner as alleged and Mrs Walley's plea in regard to the paragraph 40 issue does not succeed.

The Paragraph 41 Issue

Mrs Walley alleged in paragraph 41 of her Points of Claim that she had been discriminated against by Homeswest when it imposed a fixed term tenancy at the Yangebup property with the so-called 4 September 1998 conditions and an oral condition concerning family visits in that Homeswest treated Mrs Walley less favourably than it would have treated a non-Aboriginal person in the same or not materially different circumstances. In other words, the condition imposed by Homeswest that if she breached her tenancy agreement she would not be offered further Homeswest accommodation was a condition which allegedly would not have been imposed on a non-Aboriginal person.

By its Points of Defence Homeswest admitted that it offered to enter into a fixed term tenancy with Mrs Wally in relation to the Yangebup premises and admitted that its offer was subject to special conditions as set out in its letter of 4 September 1998 but otherwise denied the allegations contained in paragraph 41 of the Points of Claim.

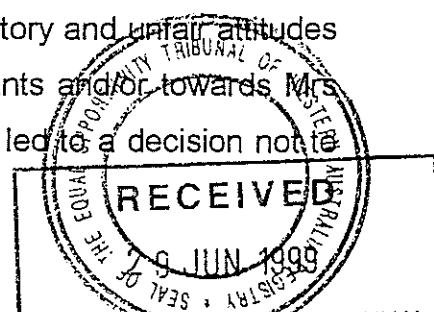


In regard to this issue the Tribunal does not accept that Homeswest acted in a discriminatory manner so as to treat Mrs Walley less favourably than it would have treated a non-Aboriginal person in the same circumstances. It follows from earlier discussion that various complaints against Mrs Walley had been substantiated sufficient to allow Homeswest to proceed with an eviction if it was minded to do so. Deciding to hold its hand in that regard, it was reasonable for Homeswest to impose the so-called 4 September 1998 conditions in an endeavour to prevent the problems that had occurred at Willagee being transferred to Yangebup. The conditions might seem severe in less controversial circumstances but the fact was that the new tenancy was negotiated against a background of previous misconduct by members of the Walley household and these circumstances required special measures. The Tribunal is not satisfied that the so-called 'oral conditions' restricting visits by family members formed part of the tenancy arrangements. It prefers the evidence of Ms Hedges on this point, that she simply made some common-sense remarks to Mrs Walley, with a view to assisting her, that as she was responsible for what took place on the premises she would have to exercise control over her visitors. It follows that the Tribunal was not satisfied that any relief should be granted to Mrs Walley in respect of this part of her claim.

The Paragraph 42 Issue

By paragraph 42 of the Points of Claim Mrs Walley alleges that she has been discriminated against in that Homeswest refused to offer her further Homeswest accommodation after the tenancy on the Yangebup property expired, acting on a complaint about the alleged conduct of one of her children. It is said that Homeswest would not have acted upon such a complaint in the case of a non-Aboriginal tenant in the same circumstances.

Particulars in support of this plea include allegations that Homeswest was aware, or ought to have been aware, of the discriminatory and unfair attitudes of some Yangebup residents towards Aboriginal tenants and/or towards Mrs Walley's tenancy in Yangebup. The complaint which led to a decision not to

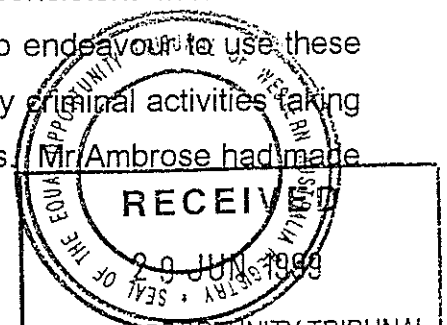


offer her the tenancy involved an allegation against Mrs Walley's 12 year old son Waylen. This complaint allegedly would not have led to a decision by Homeswest to refuse accommodation had Mrs Walley and/or her children been non-Aboriginal. Further, the conditions imposed upon Mrs Walley by Homeswest in taking up the tenancy were less favourable than Homeswest would have imposed upon a person of non-Aboriginal descent or on a person with children of Aboriginal descent.

Homeswest pleaded in answer that in deciding not to offer to renew the fixed term tenancy over the Yangebup premises or to enter into another tenancy agreement and to recover possession of the premises upon expiry of the term, it acted reasonably. Homeswest was satisfied that a burglary had occurred at 50 Moorhen Drive Yangebup, a child of Mrs Walley, Waylen Hart, had participated in the burglary, and the conduct of the child was in conflict with the expectation of Homeswest as to the appropriate standard of conduct. The relevant terms had been agreed with Mrs Walley when the tenancy agreement was entered into. This was coupled with a denial of the other allegations comprising this plea.

It is apparent from earlier discussion that the decision to grant a fixed term tenancy at Yangebup was partly referable to Mrs Walley's status as a person of Aboriginal descent. It was because of her racial background that various support agencies had intervened on her behalf and that Homeswest was persuaded not to proceed with eviction and to grant a fixed term tenancy. The Tribunal has already noted that having regard to the troubled history of the matter it was appropriate for Homeswest to impose special conditions. A close reading of those conditions, however, indicates that they were there to prevent acts of nuisance or anti-social behaviour occurring on or close to the subject premises.

In the Tribunal's view it was not appropriate, or consistent with the usual Homeswest policies and practices, for Homeswest to endeavour to use these special conditions as a means of controlling allegedly criminal activities taking place some distance away from the subject premises. Mr Ambrose had made

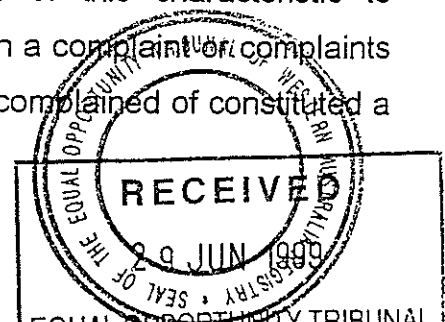


a point to this effect at the meeting convened by Sergeant Gors in January 1999 and Ms Hedges was unable to recall any previous occasion on which a tenancy had been terminated on this basis. The decision-maker, Mr Emery, was clearly troubled by the issue, describing it as the toughest decision he had ever had to make. The Tribunal is satisfied that, ultimately, the justification for the decision was referable to the tenant's race, because that was the basis upon which she had been made subject to special conditions, albeit in an attempt to give her one last chance. In deciding not to renew the tenancy because of her son's alleged misconduct, Mr Emery, on this occasion, treated her less favourably than non-Aboriginal tenants would have been treated. It was a momentary but significant error of judgment. Accordingly, in this respect, and in regard to this plea, the Tribunal is satisfied that Homeswest did act in a discriminatory manner on the ground of race and that Mrs Walley is entitled to relief in respect of this plea.

The Paragraph 43 Issue

By paragraph 43 Mrs Walley said that contrary to Section 36(1)(c) of the Equal Opportunity Act Homeswest treated her less favourably on the ground of a characteristic generally imputed to Aboriginal persons, than it would treat a person of a different race in the same circumstances, in failing to renew her tenancy or in refusing to offer her a further tenancy after the termination of the Yangebup tenancy.

Particulars in support of this plea allege that "anti social behaviour" is a characteristic generally imputed to Aboriginal persons and/or to Aboriginal tenants and is a characteristic generally imputed to Aboriginal tenants by Homeswest. The imputation of this characteristic to Aboriginal persons has led to Homeswest acting without due consideration as to whether the conduct complained of constituted "anti social behaviour" within the meaning of Homeswest's policies. Further, the imputation of this characteristic to Aboriginal persons has led to Homeswest acting on a complaint or complaints without due consideration to whether the conduct complained of constituted a breach by Mrs Walley of her tenancy agreement.



Homeswest by its Points of Defence denied this allegation.

It is apparent from the evidence, and from the evidence of Mr Emery in particular, that the decision not to renew the Walley tenancy was brought about because of the burglary charges brought against Waylen as set out in Mr Emery's letter dated 27 October 1998. It follows from the Tribunal's earlier finding in regard to the paragraph 42 issue that in adopting such a stance Homeswest acted in a discriminatory manner on the ground of race.

Indirect Discrimination Plea

Mrs Walley, by Counsel, also raised a plea of indirect racial discrimination. The principal allegation under this heading was that Homeswest, contrary to Section 36(2), discriminated against Mrs Walley in reaching a decision not to offer Homeswest accommodation in that the Respondent imposed a requirement or condition on the Complainant that she secure private accommodation for herself and her family. This was allegedly done in circumstances where a substantially higher proportion of persons of non-Aboriginal descent could comply with the requirement or condition than Aboriginal persons. It was said further that the requirement or condition was unreasonable in all the circumstances in that adequate housing was accepted by the community as a fundamental requirement and lack of proper accommodation would be seriously detrimental to the physical and emotional wellbeing of the Complainant and her children.

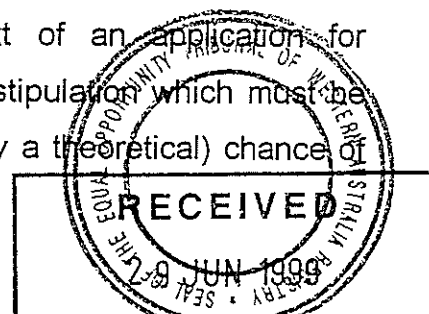
In regard to this aspect of the matter, Counsel for the Complainant placed reliance upon the evidence of Christine Birdsall, the Senior Anthropologist with the Noongar Land Council of Western Australia mentioned earlier, and her views concerning Aboriginal family size. Reliance was also placed upon the evidence of Anne Annear that private accommodation is difficult to find for Aboriginal families, especially where the family circle to be accommodated is large.



Homeswest by its Points of Defence denied that it required Mrs Walley to comply with a requirement or condition with which a substantially higher proportion of non-Aboriginal persons complied or were able to comply with, and which was not reasonable having regard to the circumstances of the case. As indicated in the Tribunal's Overview, Homeswest contended in regard to this aspect of the matter that Mrs Walley's plea was misconceived in that, as a matter of law and logic, Homeswest could not be said to be requiring Mrs Walley to do one thing or another in circumstances where the contractual relationship between them was destined to come to an end upon the expiry of the fixed term tenancy. In other words, thereafter she was a free agent. Like any citizen, it was up to her as to what she did in regard to accommodation and Homeswest could not be said to be imposing any requirement upon her. A person can only be said to require another to comply with a requirement or condition within the meaning of Sections 36(2) and 47 of the Act if the first person requires the other person to comply with a requirement or condition as a prerequisite to being provided by the first person with accommodation or some associated benefit or as a prerequisite to not being subjected to an associated detriment by the first person.

The Tribunal will return to this controversy in due course when it addresses the specific paragraphs of the Points of Claim in which reliance is placed upon the notion of indirect discrimination. In the meantime, it will be useful to look briefly at some of the previously decided cases.

The words "requirement or condition" cover any form of qualification or prerequisite. See *Australian Iron & Steel Pty Ltd v Banovic* (1989) 168 CLR 165 at 185. McHugh J noted in *Waters v Public Transport Corporation* (1991) 173 CLR 349 at 407 that in the context of providing goods and services, a person should be regarded as imposing a requirement or condition when he intimates, expressly or inferentially, that some stipulation or set of circumstances must be obeyed or endured if those goods or services are to be acquired, used or enjoyed. In the context of an application for employment, a requirement or condition means a stipulation which must be satisfied if there is to be a practical (and not merely a theoretical) chance of

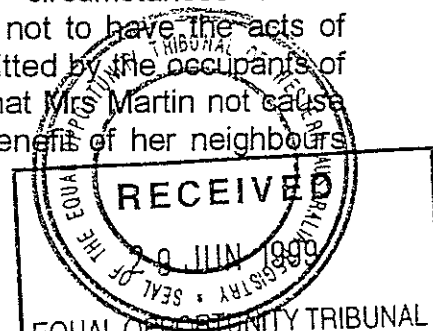


selection. *Secretary Department of Foreign Affairs & Trade v Styles* (1989) 23 FCR 251 at 257. One often has to compare the circumstances of two base groups in order to be sure that a pattern of indirect discrimination exists, but in racial discrimination cases elaborate statistical evidence may not be required in all cases. *Kemp v Minister of Education* (1991) EOC 92-340. The ability to comply with a condition or requirement refers not to a theoretical but a practical ability to comply. *Finance Sector Union v Commonwealth Bank* (1997) EOC 92-889. Thus, in the circumstances of the present case, although it was clearly possible for Mrs Walley to seek accommodation in the private sector or to visit her husband's grave after the move to Yangebup the crucial question is whether in practical terms she was able to do so in a reasonable way.

When one turns to the question of whether the requirement or condition was reasonable in the circumstances of the case it seems that the test is an objective one. Further, in deciding what is reasonable the Tribunal is entitled to have regard to the financial or economic circumstances of the respondent association. The discriminatory effect of a condition is to be weighed against the reason advanced for the requirement. See *Waters v Public Transport Corporation* (supra).

In regard to accommodation provided by Homeswest the Full Court in this State recently had occasion to consider the question of what is reasonable in *State Housing Commission v Martin* (1998) SCL 980699S. In that case White J as a member of the majority had this to say at page 19:

"The question of whether the requirement or condition that Mrs Martin not cause or permit a nuisance to be committed on the premises was reasonable, having regard to the circumstances of the case, requires there to be a balancing test such as was referred to in *Waters v Public Transport* (1991) 173 CLR 349 in which all the circumstances are to be taken into account. The well being of Mrs Martin's neighbours must, I consider, be one of the most important circumstances to be considered. Those neighbours were entitled not to have the acts of nuisance which I have described above committed by the occupants of the premises. The requirement or condition that Mrs Martin not cause or permit a nuisance was essential for the benefit of her neighbours



and I am of the opinion that the Tribunal's finding that that requirement or condition was reasonable in all the circumstances should not be overturned. Even if the cultural obligation to which I have referred did render it lawful for Mrs Martin to permit a measure of overcrowding in the premises, it could not in reason extend to permitting acts of nuisance causing harm to her neighbours."

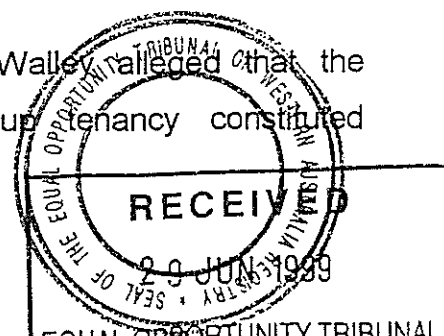
Again, it will be useful, by way of an introduction to the reasoning that follows, to make some general observations on the evidence relevant to the indirect discrimination plea.

It follows from earlier discussion that, in the Tribunal's view, it is not a complete answer to this allegation for Homeswest to argue that the relationship between the parties was brought to an end upon the expiry of the fixed term tenancy with the result that it could not be said Homeswest was requiring Mrs Walley to comply with a requirement or condition. It is clear that, in reality, it was well known to all the interested parties that she remained an applicant for Homeswest accommodation, even though formal documentation to that effect might not have been brought into existence, and thus there is an issue to be resolved as to what Homeswest might require of her before accommodation if any was provided.

It is also important to note that the Homeswest letter of 4 September 1998 evidencing the fixed term tenancy at Yangebup spoke of the provision of any further fixed term after the expiry "of the initial fixed term tenancy" was to be at the sole discretion of Homeswest. This clearly contemplates that subject to good behaviour and the other requirements of Homeswest being fulfilled there was a real prospect of a further tenancy being allowed. These general observations have a bearing upon the resolution of the following specific issues.

The Paragraph 44 Issue

By paragraph 44 of the Points of Claim Mrs Walley alleged that the requirement that she transfer to the Yangebup tenancy constituted



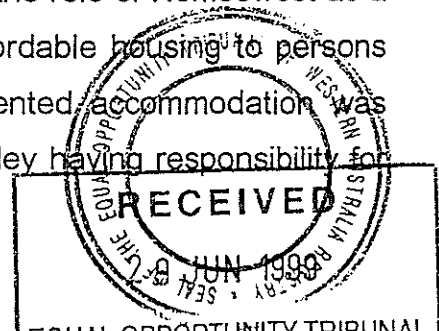
discrimination on the ground of race contrary to Section 36(2) of the Act in that a requirement or condition was imposed upon her that in order to remain in Homeswest accommodation she agree to a transfer to the Yangebup property a considerable distance from her husband's grave. The requirement or condition was said to be unreasonable in all the circumstances. Further, Counsel for Mrs Walley argued, although a substantially higher proportion of non-Aboriginal persons could comply with the requirement or condition, Mrs Walley could not comply with the requirement or condition.

In relation to paragraph 44 Homeswest denied that it imposed a requirement that in order to remain in accommodation provided by Homeswest, Mrs Walley transfer to the Yangebup premises and otherwise denied the allegations relied on.

It follows from earlier discussion, in the Tribunal's view, the transfer to the Yangebup tenancy was effected voluntarily with the result that Homeswest did not act in a discriminatory manner. The Tribunal is satisfied that means of transport were available to obtain sufficient access to her husband's grave. Mrs Walley is not entitled to relief pursuant to this plea.

The Paragraph 45 Issue

By paragraph 45 of the Points of Claim Mrs Walley alleged that in reaching the decision not to offer Homeswest accommodation to her Homeswest discriminated against her contrary to Section 36(2) in that it imposed a requirement or condition on her that she secure private accommodation for herself and her family. It was said further that a substantially higher proportion of persons of non-Aboriginal descent could comply with the requirement or condition than Aboriginal persons and that she was unable to comply with the requirement or condition. Reference was made to those earlier paragraphs of the Points of Claim in which the role of Homeswest as a statutory body with a responsibility to provide affordable housing to persons unable to secure privately owned or privately rented accommodation was described. Reference was also made to Mrs Walley having responsibility for



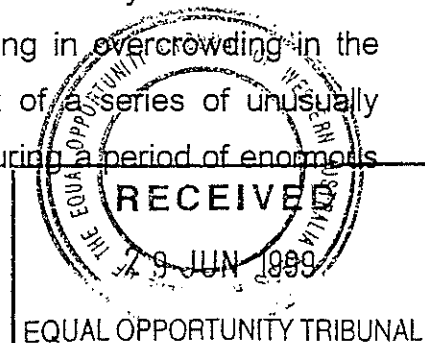
nine children ranging in age from 2 to 17 and to the fact that all the children were Aboriginal. Further, this part of the pleading incorporated allegations that a substantially higher proportion of Aboriginal persons cannot find private accommodation, compared with non-Aboriginal persons.

Particulars in support of this aspect of the plea included allegations that a substantially higher proportion of Aboriginal persons are reliant on income from social security benefits than non-Aboriginal persons, making Aboriginal persons more reliant than non-Aboriginal persons on low cost housing. Homeswest is the principal provider of low cost housing in the community. A substantially higher proportion of Aboriginal families are larger than non-Aboriginal families. Homeswest is the principal provider of low cost housing to large families. Racial discrimination against Aboriginal persons occurs in many areas of the private rental market.

This paragraph of the Points of Claim also asserted that the requirement or condition mentioned earlier – that Mrs Walley secure private accommodation for herself and her family – was unreasonable in all the circumstances.

Particulars in support of this aspect of the plea included an allegation that Homeswest knew or ought to have known that Mrs Walley and the children would be unlikely to be able to locate private rental accommodation as a family. Adequate housing is accepted by the community as being one of the most fundamental of social services to be provided to those who cannot provide for this themselves. Lack of adequate housing is well recognised as being one of the principal causes of crime, social dislocation, illness, drug abuse and premature death. Homelessness is likely to be seriously detrimental to the physical, psychological and emotional well being of Mrs Walley and her children.

The particulars went on to say that it is likely that Mrs Walley and the children will be forced to live with relatives thereby resulting in overcrowding in the relatives' homes. The imposition by Homeswest of a series of unusually harsh conditions on Mrs Walley and the children during a period of enormous

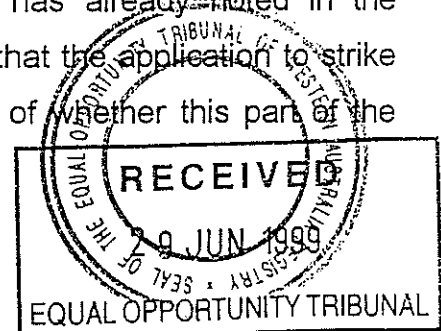


stress on the family was likely to lead to behaviour of concern to the neighbours. The particulars also referred to the acting on complaints by neighbours in circumstances in which Mrs Walley knew or ought to have known that some members of the Yangebup community held prejudiced views about Aboriginal persons, and to the lack of any need for Homeswest to reclaim the property, in the light of the extensive housing stock within its control.

The particulars concerning reasonableness went on to say that the placement of Mrs Walley and the children in a property in Yangebup away from extended family and friends, and the imposition of a requirement that she not have certain extended family members visit her, was likely to produce additional stress, thus increasing the likelihood of behaviour of concern to neighbours. Reference was also made to placement of Mrs Walley and the children in a suburb well away from the cemetery where her former partner was buried, and the knowledge that she had no independent means of transport. It was said that all these matters were within the knowledge, or ought to have been within the knowledge, of Homeswest.

By its Points of Defence Homeswest said that since October 1998 it had not offered to enter into any further tenancy agreement with Mrs Walley in relation to the Yangebup premises or any other premises. It went on to say that further, and in any event, a refusal by Homeswest to offer to enter into any further tenancy agreement with Mrs Walley did not amount to the imposition of a requirement or condition within the meaning of Section 36(2) of the Equal Opportunity Act 1984. It otherwise denied the allegations contained in paragraph 45 of the Points of Claim.

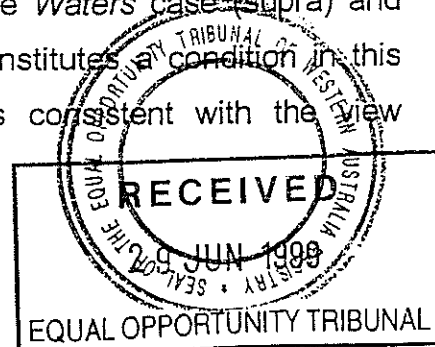
The Tribunal pauses to note that the paragraph 44 issue was the issue that became subject to an application to strike out this portion of the claim at the commencement of the hearing. The Tribunal has already noted in the Overview section of these Reasons for Decision that the application to strike out was dismissed but nonetheless the question of whether this part of the



claim was logically misconceived remains a live issue, and it is therefore necessary that the Tribunal returns to this matter.

Counsel for Homeswest submitted that the plea comprising the paragraph 44 issue was logically misconceived because it confused the consequence of a refusal to accommodate with the condition or requirement, if any, that may have resulted in the refusal to accommodate. In other words, unless a condition brings with it a consequence, by way of either benefit or detriment resulting from non-compliance with so-called condition, then it is not a condition of the kind contemplated by Section 36(2) of the Equal Opportunity Act. In the circumstances of this case, it is argued, Homeswest has simply refused to renew Mrs Walley's tenancy. A consequence may be that Mrs Walley will have to look for private accommodation but that cannot be described as a consequence flowing from breach of a condition or requirement imposed by Homeswest.

Balanced against this, however, are the various matters relied upon by Mrs Walley including matters of the kind alluded to in the letter of 27 October 1998 mentioned earlier. The reality is, Counsel for Mrs Walley argued, that Homeswest is a public housing authority obliged to provide housing at affordable rents to members of the community in need and which has in fact been accommodating Mrs Walley for more than 20 years. Looked at in this light, it is argued, the stance adopted in the present case by Homeswest, as illustrated by the letter in question, is that Homeswest, before the relevant tenancy came to an end of 4 December 1998, insisted that Mrs Walley look for "alternative accommodation" and thus, arguably it was imposing a condition which might have a bearing upon how Homeswest proceeded. Thus, the determination to proceed with the eviction after the lease had expired could be regarded as a consequence arising from non-compliance with a condition of sorts. In support of this line of argument, reliance was placed on the reasoning of the High Court in the *Waters* case (supra) and *Banovic's* case (supra) to suggest that what constitutes a condition in this context should be construed broadly. This is consistent with the view



reiterated recently in the *City of Perth* case (infra) that remedial legislation of this kind should be interpreted liberally.

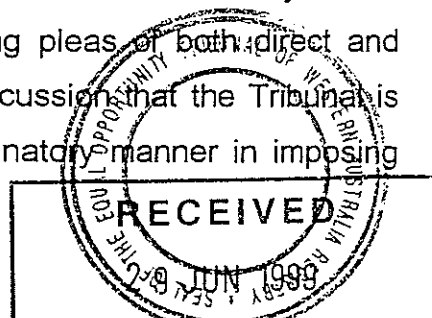
Having carefully evaluated the merits of the two competing lines of argument, the Tribunal is not satisfied that the views expressed by Homeswest in the letter of 27 October 1998 amounted to the imposition of a requirement or condition within the language of the Equal Opportunity Act. Homeswest was simply pointing out the consequence of its refusal to renew. The Tribunal considers that the indirect discrimination plea reflected in paragraph 45 was misconceived and the claim in that regard should be dismissed.

If the Tribunal be wrong in this conclusion, and the issue falls to be decided elsewhere, then findings are required as to whether a condition requiring Mrs Walley to seek alternative accommodation was reasonable and could be complied with by Aboriginal tenants in her circumstances. Having regard to the decided cases, the Tribunal considers that the condition was not reasonable in circumstances where, on the Tribunal's earlier findings, her tenancy had been brought to an end unlawfully. Further, the Tribunal finds that the condition was not one that she could comply with in a practical sense in that, with her limited financial resources, she could not obtain the accommodation she needed in the private sector.

The Paragraph 48 Issue

By paragraph 48 Mrs Walley alleged that she was discriminated against on the grounds of race in accommodation in that Homeswest imposed three fixed term tenancies, required her to transfer her tenancy from Willagee to Yangebup and refused to provide her with Homeswest accommodation.

It seems that this issue was a way of drawing together various components of the previous issues, and was described by Counsel for Mrs Walley in her opening address as a composite plea embracing pleas of both direct and indirect discrimination. It follows from earlier discussion that the Tribunal is not satisfied that Homeswest acted in a discriminatory manner in imposing

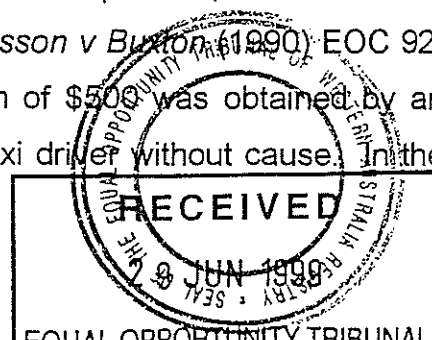


three fixed term tenancies subject to special conditions because, as indicated earlier, in the Tribunal's view such an approach was necessary in the special circumstances of the case. The Tribunal does not accept that she was required to transfer to Yangebup on the basis that otherwise she would be refused accommodation. The transfer was effected voluntarily and with Mrs Walley receiving appropriate advice from the support agencies and with the implications of the transfer being fully explained to her at meetings convened for that purpose.

Relief

This brings the Tribunal to the question of relief. Section 127 of the Act provides that after holding an inquiry, if the complaint is substantiated, the Tribunal may order the respondent to pay to the complainant, damages by way of compensation for any loss or damage suffered by reason of the respondent's conduct. The Tribunal can also make an order enjoining the respondent from continuing any conduct rendered unlawful or requiring the respondent to perform any reasonable act to redress any loss or damage suffered by the complainant.

In a number of previous decisions the Tribunal has reviewed the principles relevant to the application of this provision and noted that awards of damages should not be minimal because this would tend to trivialise or diminish the respect for public policy implicit in the legislation. In *Oakley v Rockeport Holdings Pty Ltd* (1991) EOC 92-352 the Aboriginal patron evicted from a bar recovered \$800 by way of damages, but it is important to note that the incident in question involved a degree of misunderstanding. In *Elliott v Perlon Holdings Pty Ltd* (1993) EOC 92-523 an Aboriginal complainant was awarded \$2,000 damages on the ground of racial discrimination where she was unable to buy alcohol with the same freedom and at the same price allowed to non-Aboriginal customers of the licensed premises in question, this restriction bringing with it a degree of humiliation. In *Chesson v Buxton* (1990) EOC 92-295 an award of general damages in the sum of \$500 was obtained by an Aboriginal passenger who was abused by a taxi driver without cause. In the



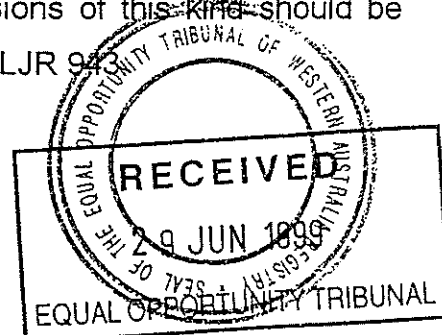
recently decided case of *Thompson v Evans* the complainant was awarded damages of \$2,500 in circumstances where the parent of an Aboriginal child was ordered out of a medical practitioner's surgery in a discriminatory manner.

In *Martin v State Housing Commission* (1998) SCL 980122 a single Judge of the Supreme Court awarded damages of \$20,000 to an Aboriginal tenant who was evicted, with her family, from Homeswest accommodation, but this case has to be approached with care because the decision was reversed on appeal to the Full Court and may be the subject of a further appeal. Further, the tenant was unable to obtain an injunction and was therefore obliged to vacate the premises.

When it comes to the question of whether any attempt should be made to restrain the eviction or reinstate the tenancy there are also various matters to be considered.

In the course of argument Counsel for Homeswest contended that the Tribunal, in effect, has no jurisdiction to circumvent the operation of a lawful order of another court, namely, the Local Court. Alternatively, it was submitted that the Tribunal should decline to exercise any jurisdiction it did have in these circumstances if the effect of restraining the operation of the court order would be to sanction unlawful conduct, namely, the continued occupation of premises which were the subject of an eviction order.

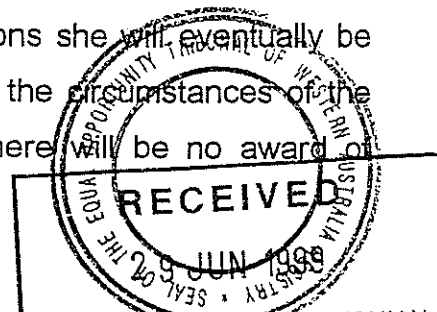
As to that aspect of the matter, the Tribunal notes that in *Riley v State Housing Commission* (1995) SCL 950406 Owen J held that a similar tenancy had come to an end by force of the Magistrate's Order and no consensual act of the parties could revive it, but this ruling does not necessarily circumscribe the powers of the Tribunal set out in Section 127 of the Equal Opportunity Act. The decided cases suggest that remedial provisions of this kind should be construed broadly. *IW v City of Perth* (1997) 71 ALJR 943



The Tribunal does not perceive an inconsistency between the powers being exercised by the Local Court in the circumstances of the case and the powers being exercised by this Tribunal. As a matter of law, the Local Court was not required to investigate issues of discriminatory conduct or to determine whether relief should be provided of a kind sought from the Tribunal in the exercise of an entirely different jurisdiction. As a matter of fact it appears from the narrative that the Local Court did not have occasion to investigate the matters underlying the termination of the tenancy. In these circumstances, where the Tribunal was obliged to examine issues of an entirely different kind it cannot persuasively be argued, in the Tribunal's view, that any order made by this Tribunal is inconsistent with the eviction order or represents the sanctioning of unlawful conduct.

In considering the extent of the power conferred by Section 127(b)(iii) to require the respondent to perform any reasonable act it is also important to remember, in the context of the present case, that Mrs Walley lodged her complaint with the Commissioner of Equal Opportunity before the tenancy had expired. Thus, if the powers of the Tribunal are thought to be limited to preserving the status quo at the time of the complaint, and do not extend to conferring any new rights, there is nonetheless, on the facts of the present case, a basis for reinstating the tenancy.

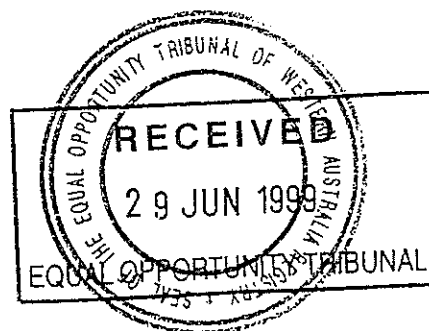
Accordingly, against this background, and bearing in mind the findings in favour of Mrs Walley that the decision not to renew the tenancy contravened provisions of the Equal Opportunity Act, the Tribunal turns to the question of what form of relief should be awarded in the circumstances of the present case. The Tribunal considers that Mrs Walley is entitled to have the tenancy reinstated, that is to say, there will be a further fixed term tenancy of three months effective as from the date on which the orders made pursuant to these Reasons take effect subject to the 4 September 1998 conditions. It follows from earlier discussion that the so-called oral conditions do not apply. The expectation is that if she complies with the conditions she will eventually be allowed to revert to the usual form of tenancy. In the circumstances of the present case the Tribunal has determined that there will be no award of



damages. Most of the allegations against Homeswest have not been substantiated. On the Tribunal's findings, Homeswest generally acted in an appropriate manner. The consequence of the Tribunal's previously granted injunction is that Mrs Walley has continued to occupy the subject premises for a period of 7 months beyond the initial term. The benefits of this continued occupancy are sufficient to extinguish the damages that might otherwise be awarded.

The exact form of the final orders will be determined after further discussion with Counsel for the respective parties but orders in the following form are proposed as a basis for discussion save that Order 4 below will take effect as from the publication of these Reasons for Decision:

1. The Respondent Homeswest be restrained from proceeding with the eviction of Mrs Walley from 21 Magnolia Gardens, Yangebup until further order.
2. Mrs Walley will continue to occupy the premises pursuant to a three month fixed term tenancy which will be subject to the 4 September conditions governing the former tenancy including payment of rent and the conditions concerning behaviour at the premises.
3. The term of the tenancy will commence as from the date on which these orders take effect.
4. In the manner prescribed by Section 36 of the Children's Court Act 1988 concerning restrictions on reports of proceedings children under the age of 18 mentioned in these Reasons for Decision shall not be named or identified in any report of these proceedings.



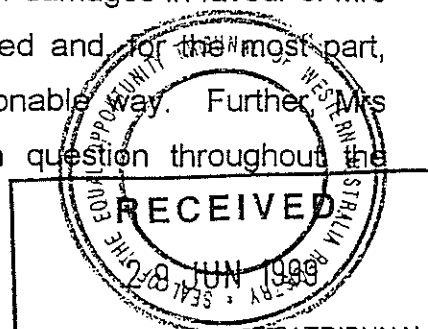
Summary

Counsel instructed by the Aboriginal Legal Service put forward on behalf of Mrs Walley various claims of discrimination on the ground of race arising out of her occupancy of Homeswest premises at Willagee. The Tribunal dismissed most of those claims on the grounds that Mrs Walley and members of the Walley household were responsible for various acts of nuisance and anti-social behaviour on or close to the premises in question contrary to the provisions of the relevant tenancy agreements. The Tribunal found that Homeswest was justified in entering into a fixed term tenancy with Mrs Walley for alternative accommodation at Yangebup, such tenancy being subject to special conditions aimed at controlling acts of nuisance occurring on or close to the new premises.

Shortly after the commencement of the special tenancy at Yangebup, a teenage member of the Walley household was charged with breach of bail and aggravated burglary concerning a property some distance away from the premises occupied by Mrs Walley and her family. Homeswest then decided not to renew Mrs Walley's tenancy on the grounds that this incident justified the refusal of any further Homeswest accommodation.

The Tribunal concluded that the decision by Homeswest not to renew the tenancy in these circumstances amounted to discrimination on the ground of race. The Tribunal found that provisions of a tenancy agreement are not normally used to control alleged criminal activities taking place some distance away from a tenant's home. Activities of that kind are a matter for the police. The Tribunal went on to find that Mrs Walley was treated less favourably than non-Aboriginal tenants would have been treated in the same circumstances with the result that she was entitled to relief under the Equal Opportunity Act.

The Tribunal was not prepared to make an award of damages in favour of Mrs Walley. Most of her claims were not substantiated and, for the most part, Homeswest was found to have acted in a reasonable way. Further, Mrs Walley was allowed to occupy the premises in question throughout the



dispute. In these circumstances, the Tribunal ordered by way of relief that the fixed term tenancy previously allowed to her be reinstated for a further period of three months as from the date of the Tribunal's ruling, such tenancy being subject to the previously negotiated special conditions. Those conditions, on the Tribunal's view of the matter, included provisions that any substantiated breach of the tenancy agreement by any member of the household or visitors would lead to termination of the tenancy and that members of the household were not to engage in acts of nuisance or anti-social behaviour on or in close proximity to the rented premises.

The reasons underlying the Tribunal's decision are set out fully in the Reasons for Decision preceding this Summary. The Tribunal has also ruled that, in the manner prescribed by Section 36 of the Children's Court Act 1988 concerning restrictions on reports of legal proceedings, children under the age of 18 mentioned in these Reasons for Decision shall not be named or identified in any report of these proceedings.

