

Documenting the Evidence

This paper was presented to the Annual Conference of the National Association of Community Legal Centres, held in Alice Springs Central Australia 31 July - 3 August 2000. The theme of the conference was "Human Rights and Democracy... not in our backyard?" The session was named "Documenting the Evidence".

I have worked for Tenants Advice Service in WA for 6 years. TAS is a specialist community legal centre providing tenant specific services, including complex casework, policy and law reform work, community legal education and training. We produce a number of publications for tenants and community workers; and we produce submissions and position papers on tenancy legislation and housing policy. We also run a statewide advice line, and in the last 12 months we have acted as a resource unit to a new network of tenancy workers throughout WA.

The Indigenous families I work with live in the Perth metropolitan area. They are mostly Nyungar people from the south west and Yamadtji people from the mid west. The families retain strong cultural and familial links to particular towns through out those regions, travelling back to country for funerals and other family or cultural gatherings.

Many of the heads of these families were mission children, others grew up as fringe dwellers. Virtually the only housing option for indigenous families is public housing. They have always been locked out of the private rental market for various reasons.....tight market, unemployment, large families, single mothers. But mostly simply because they are Aboriginal. But increasingly they are locked out of public housing. 6 years ago, TAS rarely saw a Homeswest tenant now almost 95% of our casework involves Indigenous families with Homeswest problems.

Most of the families suffer to a greater or lesser degree, combinations of the social and health issues evidenced in ABS data - high mortality rates, chronic health problems like asthma, diabetes and heart disease, few elders, many children, poor educational outcomes, lack of opportunity, despair and substance abuse.

Yet these people are survivors, and their survival is largely due to the strength of kinship ties. It is their cultural obligation to look out for each other but as you will see, the families are punished for this. As in the past, Indigenous people are being required to live the "white feller way" otherwise they will pay a stiff penalty - in this case the right to Housing.

There are a number of international instruments which refer to the Right to Housing, for example:

Article 25.1 of the Universal Declaration of Human Rights refers to the right to adequate housing. Article 11.1 of the International Covenant on Economic Social and Cultural Rights also declares the Right to Housing. As you know, Australia is signatory to both of these documents.

One of the most detailed documents on the right to adequate housing is General Comment 4 of the Committee on Economic Social and Cultural Rights. It explicitly defines the right to:

- Security of tenure - this includes legal protection against eviction - in WA we have legal facilitation of eviction. Indigenous people, who make up approximately 3.18% of the population in WA, also make up 19.4% Homeswest applicants - but 39% of their Termination notices, 42% of Court ordered evictions and 54% of Bailiff assisted evictions.

Security of tenure includes protection against harassment and threats - but it is Homeswest's common practice to threaten eviction if impossible demands are not fulfilled. For example, demanding a nine month pregnant woman get up on a ladder to clean an exhaust fan or that a mother turn away her homeless daughter and grandchildren. And then harass her with streams of correspondence and legal notices, and attendance at premises without notice.

- Availability of services, materials and infrastructure - for example, heating, lighting, sanitation.
- Habitability - for example, adequate space and protection from cold, damp and other threats to health.

* Note: From this point in the presentation, slides were shown to illustrate the commonly poor condition of public housing provided to Nyungar families. Thanks go to Derbarl Yerrigan Health Service for providing the photographs from their collection.

Homeswest housing is in such poor repair that we are constantly having to advocate for repairs to be done - it can take many follow up phone calls, visits to the property, arguments and letters. Meanwhile the families deal with bouts of gastro as the old septic system keeps packing up, they have no hot water, leaking roofs, peeling ceilings, rampant mould, sticking windows and drafts from gaps in the bare floorboards. In such an environment the children are often sick with respiratory infections, and the elders suffer painful arthritis and shortness of breath.

- Affordability - well, Homeswest reckons they take only 25% of the family's income but it is a deemed income, they require direct debit from statutory benefits and they take more for other charges like water. It has been Homeswest practice to increase deductions without the prior consent of the tenant. Financial counselors in WA often find themselves trying to negotiate a reasonable payment arrangement, but Homeswest demands more than can be sustained and continues to threaten eviction.
- Accessibility - Publicly Homeswest proclaims their success in reducing their waiting times. But in actual fact waiting lists are reducing because of tightened eligibility criteria and the waiting times for priority housing, on grounds of urgent need, has blown out from 6 weeks to 10 months. For example, one indigenous man was

allocated a dialysis machine by the hospital; he and his family were homeless for 8 months before he had somewhere to plug it in. Meantime he had to be constantly going into the hospital for treatment. Another case involves an indigenous mother who is the subject of severe domestic violence including physical assault and the abduction of children. She is still waiting 14 months later for a transfer to safe accommodation.

- Location - families are increasingly being rehoused in outlying suburbs to free up prime real estate for the government to sell off under its urban renewal projects. The families are then affected by lack of services and infrastructure - some of these suburbs have only one bus a day. People are thus isolated from their families and other social support networks.
- Cultural Adequacy - there are only 306 houses with 5 or more bedrooms in the whole of the State. This leaves most large Indigenous families, often more than three generations over crowded in 2 or 3 bedroom places. Most of the houses are of the post war fibro variety, with spongy deteriorating walls petitioning off boxy little rooms - the design simply cannot adequately accommodate large families.

In WA, the Government has dismally failed in all these areas. Over the last 5 years Homeswest has cracked down on "recalcitrant tenants who breach their tenancy agreement". Homeswest says their primary obligation is to the tax payer and they are therefore justified in evicting families for as little as \$200 rent arrears or for not keeping their house up to "Street standards" which equate to white middle class standards.

Let me tell you about the experiences of the Indigenous families living in Perth:

The hundreds of homeless live variously in cars, in their Auntie's back shed, bunked down on the floor of Nan's lounge room, two kids with a brother, and 3 with Uncle and his wife today, before they stay a week or so with someone else. The kids miss school, their health suffers and life opportunities begin to erode. Less often sleeping under a bridge or in a park - Indigenous families are not usually as visible as other homeless groups because of their kinship networks. However, although they are only 3.18% of the population, they do make up 26.9% of crisis accommodation services such as women's refuges.

The Indigenous families have no hope of a home of their own until they pay their *alleged* "previous debt" in full. Homeswest even requires the payment of bankrupt debts. But how do these debts arise in the first place?

I know a number of families who have debts reaching into the thousands for alleged damage to their last place. Typically the family will have been away in their country at a funeral, or the mother will have been in hospital and the kids staying with Nan. The families have returned to find the locks changed and all their belongings taken to the tip. Homeswest alleges the tenants allowed damage to occur and then abandoned the

premises. Although the tenants seldom have a chance to see what damage is alleged to have occurred, the onus is then on them to prove they did not cause or permit the damage, deliberately or negligently.

So the first step to get housing is to appeal the debt (which takes months in itself and requires a high level of knowledge and skills or access to someone who does. It involves seeking copies of files under Freedom of Information Legislation, examining the documentation, cross referencing it to Homeswest policy, legislation and witness statements, constructing a written submission and being prepared to discuss it with bureaucrats or present it in a court room. I've never looked at a debt like this and not been able to prove it has been inflated but it is beyond the capability of most of the families. The demand for assistance with such cases is beyond the capacity of the 6 tenancy specific workers in the Perth metro area. So TAS works to train, advise and assist other community workers like community health nurses, refuge workers, and financial counselors who also struggle to play this game of red tape, which is obstructing the right to housing.

Anyway, having reduced the debt, the next step is to reapply. The families will need lots of letters of support from Doctor's and other health professionals, social workers, financial counselors, even the kids' school. It usually it takes a couple of further appeals to get on the waiting list, again requiring written and oral submissions. If the family is lucky, within 6 or 8 months of applying they can get their name on the waiting list, on the proviso that they first repay any outstanding amount.

In the meantime, as is their way, those family members who do still have a home take their homeless relatives in. But over time this leads to overcrowding, extra wear and tear on the premises, and tensions in the household. Consequently the next families tenancy becomes at risk as Homeswest refuses to recognise the impact of its own policies.

This white bureaucracy then proceeds to Court for an eviction order - often on the grounds - the family is causing a nuisance. And they will get their order too because they will have proof! Gathered through advising the neighbours to keep a diary of every "disturbance" and to report every incident to the police. From kids piddling in the garden, teenagers kicking a footy over the fence, to working on a car in the driveway, groups of people sitting on the front verandah and cars coming and going. Sometimes even visitors' numberplates have been taken down and reported.

The neighbours are all too eager to collect the evidence to get rid of the family, the overcrowded hovel is bringing their property values down! And they are frightened, with talk back radio and gutter journalism playing on their fears. We have had cases of neighbours setting up cameras in their front windows, neighbourhood meetings being organised by local politicians and addressed by Homeswest, petitions going around. These are clearly instances of harassment and constitute breaches of the security of tenure as discussed earlier.

However, Magistrates in the court where tenancy disputes are heard, are persuaded by the volume of evidence against the tenant. The neighbours line up to read from their diaries and policemen are called to list the number of times they have attended the premises - even where the family have called the police themselves seeking help - it is held against them. Indigenous families who defend eviction action are inevitably bewildered and humiliated by the experience.

Greg Joyce, Chief Executive Officer is renowned in WA's housing sector for his proclamation that Homeswest is benign landlord which asks only 3 things of its tenants

1. They must look after their house to "street standards"
2. They must pay their bills
3. They must get on with their neighbours.

These 3 "Simple Rules" are repeated ad nauseam by all Homeswest officers from counter staff to accommodation managers to Regional Managers. They spout the Hansonite "level playing field" without considering that we are not all equal to start with. They show their amusement with a smirk and raised brow when an advocate raises the issue of Human Rights. They do not accept that they are bound by the UN Convention on the Rights of the Child - no consideration is given to the children of these families let alone primary consideration. It is estimated that 42% of Indigenous people in WA are under the age of 15. The Bailiff arrives, sometimes with the police to force the families out of the house. Then Homeswest will fix the hot water system and paint the walls and take all the families belongings to the tip - and charge it all to them. Even if the house is being demolished as part of a redevelopment project - the families will be charged.

The family goes to stay with relatives and we have a domino effect developing along whole extended family lines. And you know what happens next don't you? They have to take the kids away - they are being neglected, their parents can't look after them....its for their own good.

I hear John Howard ask why *we* should say sorry for what happened in the past. Well I'm sorry for what happened in the past, but what I'm really sorry about, is that its still happening.

We must persist in the face of strong resistance. For example, it took years to get Homeswest to agree to collect data on the ethnicity of their clients. A number of cases had failed because under equal opportunity legislation we must demonstrate that Indigenous people have been treated less favourably than others have. It couldn't be done without comparable data. This continues to be a problem with some issues. For example, we must show that the Aboriginal person was treated differently to someone in similar circumstances - this has been hard because Homeswest treats almost all its tenants with a lack of consideration for their circumstances. But treating all people the same is discriminatory in itself.

However, we have a case currently with the WA Equal Opportunity Commission where we were fortunate to become aware through our networks of a comparable case.

Homeswest is struggling to adequately respond to this one. Just over 12 months ago TAS was the only tenant specific service in WA. Now we have a network of tenancy workers throughout the state. Through this network we are able to share information, keep informed on trends and issues and look out for cases of public interest to progress.

Another thing we need to be able to show is Homeswest's intent to discriminate. Homeswest does not voluntarily provide information. However, over the years we have continued to learn of new sources of information which can be very revealing. For example, if we don't specifically ask for memos we don't get them under a general request for relevant information. Some of these documents reveal serious defects in decision making but are more related to admin law than anti discrimination law. We don't have an admin appeal tribunal in WA, so we argue the discriminatory effect of the decision-making processes.

To date we have had very few successes. You may know about Mrs Martin's family which had many of the elements I discussed earlier. Mrs Martin had taken in her homeless children and grandchildren when a white woman who lived several streets away started a racist campaign against the family, taking up a petition and encouraging hatred and intolerance amongst neighbours. It became a huge media circus with the family under siege from television cameras. Mrs Martin won her case discrimination case against Homeswest on appeal to the Supreme Court but it was overturned by the Full court of the supreme court and she was refused leave to appeal to the high Court. Her complaint to the Public Sector Standards Commission about Homeswest was upheld - but the Government dismissed the Commissioners report and publicly praised Homeswest for its actions. Having exhausted all domestic remedies, we are currently preparing to send Mrs Martin's case to the United Nations.

In May 1999 Mrs Martin was invited to Melbourne for the first Australian Tribunal on Women's Human Rights organised by the Women's Rights Action Network of Australia. It was a difficult journey for her because she is not a well woman. But she was determined to tell her story - the audience was reduced to tears. Even though immediately after testifying she was taken straight to the hospital because she was near collapse, she told me that night she was glad she had come to give evidence. She was glad she had fought for her family's rights. She was inspired by the stories of other women and she would encourage other Indigenous families not to give up.

Following the Tribunal the Centre on Housing Rights and Evictions came to Western Australia and spoke to a gathering of Indigenous people about their experiences. Subsequently, a working group was established to prepare a submission to the Australian Social and Economics Rights Project. Around Australia community groups documented breaches of the International Covenant on Economic, Social and Cultural Rights. In WA we focussed on Homeswest's treatment of Indigenous people. You can read this report on the BBS.

This collaborative approach has been used in WA to good effect in the past too. For example Homeswest once was in the habit of evicting tenants "without just cause", that is

they denied tenants the right to procedural fairness. Under WA tenancy legislation, tenants had no right to hear the reason why they were being evicted, and no right to defend the action. Through coordinated community pressure and the production of a report on the issue, we were able to stop Homeswest from using this avenue to evict tenants. More recently, a coordinated approach has resulted in a test case on the bankruptcy issue being progressed. The practice involves Homeswest demanding that tenants pay bankrupted debts as a prerequisite to housing. We believe the practice is illegal under Federal Bankruptcy laws. A working party established to look into the practice, stories have been published in the media and discussions held with politicians.

I would encourage you all to use multiple approaches to fight against breaches of Human Rights. Don't look only to the law to fight injustice. The laws are limited and flawed and it's easy to be discouraged. Work collaboratively and be creative. The wheels turn slowly but we can't give up and just allow such abuses to continue.

References

Community Organisations Report (2000) *Housing in Western Australia, a report to the United Nations Committee: The International Covenant on Economic, Social and Cultural Rights.*

Homeswest (1999) *Annual Report*

Ninyette, Robyn, Anti Section 64 Coalition (1995) *No Just Cause: Homeswest's abuse of Western Australian Eviction Laws.*

Tenants Advice Service (1999) *Eviction Action Statistics Summary (January 1994 - November 1998) And Proportion Aboriginal Tenant Actions (October 1996 - November 1998)*

United Nations Centre for Human Rights (1996) Fact Sheet No 21 *The Human Right to Adequate Housing.*

WACOSS Poverty Commission Housing Research Report (2000) *Housing for a Sustainable Community: The State of Housing in Western Australia*

Joanne Walsh
Tenants Advice Service, WA
December 2000