

**Shelter WA**

**Response  
to the  
proposed**

**Disruptive  
Behaviour  
Management  
Strategy**

**Department of  
Housing WA**

**January 2010**

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**ORGANISATION:** Shelter WA

**REASON FOR INTEREST:** Shelter WA is Western Australia's independent consumer focused non-government peak body for affordable housing.

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### **OVERVIEW OF SHELTER WA**

Shelter WA is an independent consumer-focused peak body committed to the principle of accessible, affordable, appropriate and secure housing for every person. Shelter WA concentrates on people who are disadvantaged in the housing market or who are at risk of homelessness. Our role is to give an informed voice on housing policy based on sound research, collaboration and consultation with community organisations and consumers and to promote housing options for people on low incomes. We do this by: holding regular forums and consultations in response to housing policy and practice issues; sitting on government and community sector committees; and, by informing and educating through the electronic circulation of regular newsletters, reports and fact sheets which are also made available on our website.

### **INTRODUCTION**

Shelter WA staff and stakeholders are aware and generally supportive of the initiative to implement a Disruptive Behaviour Management Strategy particularly in light of the previous lack of clear policy, staff training and response guidelines or procedural and legislative remedies. Shelter WA is of the view that all communities, neighbourhoods, households and individual tenants have a right to the quiet enjoyment, amenity and privacy of home without discrimination, abuse, exploitation, threat or violence.

## **THE DISRUPTIVE BEHAVIOUR MANAGEMENT STRATEGY**

### **1. Strategy Proposals**

#### **Not supported: Use of s64 in public rental housing**

Shelter WA does not support the use of s64 (no cause) evictions in the public housing sector and suggests that tenants who fail to meet tenancy requirements in public rental accommodation should be afforded natural justice by being informed of the issues of concern and be given the opportunity to respond and rectify problems identified.

Whilst we acknowledge that the current interpretation of the Rental Tenancies Act can cause barriers to action when a breach is determined to be 'rectified' if there are no further substantiated incidences of the breach issue within a 14 day period, we strongly urge the Department to strengthen the investigation, mediation and support interventions that are identified in the proposed strategy rather than rely on a mechanism designed to allow private rental investors to gain vacant possession of a property for personal occupation, sale, renovation or refurbishment.

#### **Not supported: Department of Housing staff legal power to apply for restraining/prohibition orders**

Shelter WA does not support an initiative to provide public housing tenancy staff with the legislative power to apply for restraining or prohibition orders over individuals or groups on behalf of a tenant or complainant.

Shelter's assessment of the current provision that is allowing only police to exercise this power is adequate. Shelter encourages Department of Housing rental tenancy staff to engage with Police where there are concerns of violence, threats, intimidation or abuse, and to refer the tenant or complainant to the Police, or a domestic violence service agency, or the Department for Child Protection, for the relevant assistance. Shelter's concerns are that Department of Housing staff would require extensive training well beyond their tenancy management role, they would be at risk of misinterpreting or unwittingly applying this extended power where the issues may be complex or sensitive, they could become diverted from their primary tenancy management role in time-consuming and drawn out legal matters and court hearings, and they could put themselves at risk of retaliation in the case of a particularly malicious or vengeful individual. This action could also seriously compromise the relationship between a tenant household and their housing manager, erode trust and communication and is essentially disempowering.

#### **Supported: Sustaining tenancies, developing a framework including definition and categories of disruptive behaviour, providing procedural clarity for actions and implementing a proportionate response to substantiated disruptive behaviour**

Shelter WA strongly supports the focus of the Department of Housing toward sustaining tenancies, rather than a more punitive approach that leads to increased evictions, social dislocation, homelessness and ultimately, costly tenant 'churn'. Churn is used to describe the circular situation where tenants who have been evicted and become homeless are assisted by services to re-apply for public rental housing on an urgent priority basis, and are re-housed in public rental, frequently without having addressed the problem issue and often to be subject of repeated complaints and risk of eviction.

Shelter supports the proposals contained in the strategy for developing clarity in distinguishing between disruptive behaviours that are minor, serious, severe or dangerous criminal behaviour and for developing response guidelines that are proportionate. Shelter encourages the Department to refrain from acting on petty nuisance reports and to consistently strengthen the recommended referral to a responsible agency for issues that fall within other jurisdictions (such as encouraging the complainant to contact local government for problems with pets and rubbish collection).

**Supported: Increased use of specialist intervention staff and teams**

This initiative is supported and Shelter WA recognises the success of the pilot strategy currently operating in the Cannington district.

**Supported: Proportionate tenancy sanctions and warnings**

As proposed in the discussion paper, the wording of any legislative provisions must be clearly articulated and a reasonable process identified for acting on breaches implemented. This process must ensure proportionate response to the severity, frequency and continuity of disruptive behaviour and allow for response or rebuttal by the tenant at all stages. A verbal warning should not occur without a discussion opportunity between Department Housing staff and the tenant, and a formal warning similarly should not be actioned without substantiation and opportunity to discuss.

**Needs further clarification: Tenancy behaviour conditions additional to current RTA provisions and the operation and implications of a breach of legislated acceptable behaviour agreements**

Shelter WA is concerned that people living in public rental housing may be subjected to cumbersome, prescriptive, unwarranted and unjustified restrictions that would not normally be imposed on renters in other (private or community based) tenures. Shelter WA is similarly concerned that unwieldy government controls directed to a particular tenancy run the risk of implementing an additional layer of administrative and bureaucratic red-tape that may be hard to understand by those households to which they are targeted and difficult to administer by those charged with their implementation.

Shelter encourages mediation and a supportive, tailored, case-management approach that works with struggling tenant households to improve their functioning, develop necessary domestic and living skills and address whatever issues are negatively impacting on their behaviour in the community.

Shelter is concerned that two groups of people will be disproportionately impacted – Indigenous tenant households and people living with Mental Illness. The lack of adequate community based supports directed to these groups is well known and Shelter urges the Minister and the Department of Housing to apply pressure to their Ministerial and Departmental counterparts to increase the provision of targeted Aboriginal services and Community Mental Health services to adequately respond to the unmet needs of vulnerable tenancies. Further, where the lack of a needed community support service is a direct cause of tenancy problems – the tenancy should not be punished for what is essentially a system failure.

**Needs further clarification: Probationary tenancies**

Whilst Shelter appreciates the need to ensure community peace and safety and the protection of public property, the use of probationary tenancies must be clearly and carefully applied, with transparent conditions for substantiated problems and a reasonable timeframe to trial probation.

The operation of tenancy databases and blacklists, where people are excluded from access to housing based on information that may be false, outdated or irrelevant, is a significant concern and a major barrier to vulnerable households. Shelter urges the Department to ensure the validity and currency of any identified history that is used as justification for implementing a probationary response, and to apply the shortest reasonable timeframe to respond to a breach of probation conditions. Shelter suggests 4 - 6 weekly periodical tenancies with weekly or fortnightly monitoring of compliance, extended by mutual agreement in reasonable increments.

**Not supported: Visitor sanctions imposed by the Department**

As discussed, Shelter promotes the Department to work with tenant households and encourage the affected tenant to take primary responsibility for initiating a restraining order or prohibiting troublesome visitors. A Departmentally imposed ban on a household visitor is counterproductive to the development of individual social responsibility, underlines the power imbalance between tenant and public landlord – leading to a high potential risk of tenants ‘acting out’ or disobeying, sets up a polarised conflictual relationship that has the potential to reinforce concealment and secrecy and further alienate vulnerable people from possible support services, and also may positively valorise the individual that is prohibited – engendering sympathy from the tenant. Visitor sanctions are practically and logistically extremely difficult to monitor without invasive and intrusive surveillance which is also a human rights violation.

**Supported: Improving the Department’s Internal Processes for Tenancy Management and Compliance**

Shelter WA highly supports the initiative to develop clearly articulated operational policies and procedures including working definitions of disruptive behaviour, an assessment and response model. Shelter WA urges the Department to be fair and reasonable in the definitions of Minor, Serious and Severe Disruptive Behaviours and to refrain from pursuing or acting on complaints that may be discriminatory, petty or unlikely to be responded to in other tenures. Shelter also urges the Department to direct individuals making complaints that fall outside the Department’s jurisdiction to the rightful responsible authority such as the Local Government, or the Office of Mental Health.

**Supported: Specialist Officers /Teams**

A dedicated officer or team within each regional office to investigate and respond to complaints of Disruptive Behaviour is supported. This person or team should be well trained, consistent and supported with regular supervision and de-briefing.

**Supported: Charter of Responsibilities and Education and Awareness Campaign**

Together with clarifying, codifying and articulating improved operational policies and procedures a well publicised and interdepartmentally recognised charter of responsibilities – similar to the former SAAP Interdepartmental Protocols

<http://www.community.wa.gov.au/DCP/Resources/Accommodation/Homeless+%28SAAP%29/>

or

<http://www.community.wa.gov.au/DCP/Resources/Accommodation/Homeless+%28SAAP%29/Protocols.htm>

Currently funded non-government independent Peak bodies such as Shelter WA and the Community Housing Coalition of WA could be resourced to undertake a state-wide schedule of education and awareness activities – improving the Department’s public profile, gaining credibility for being at arms’ length and without a significant human resource outlay.

### **Needs further clarification: Tenant Mentoring and Support Service**

This initiative appears positive but contains a number of risks that would need careful management. Shelter WA supports a peer-to-peer model of informal low-level support, but is strongly averse to unpaid, untrained, public housing tenant ‘volunteers’ becoming a default departmental workforce with a high and complex need ‘client’ group. The opportunity for social interaction, improved community cohesion and local engagement has merit but lay-person interventions into sensitive personal or domestic issues, the giving of advice by a volunteer or recommending a suggested course of action is a major concern.

The potential for tenant ‘mentors’ to be misinterpreted or misrepresented, held liable for a negative outcome or possibly targeted if there is a breakdown in the relationship is high and unacceptable.

The South Australian model of community engagement is a strongly positive model concerned with feedback to the SA Department of Families and Communities (Division of Housing) (see appendix) on matters of quality of service and policy and procedural improvements.

Similarly models in Victoria (<http://www.housing.vic.gov.au/living-in-housing/getting-involved/tenant-participation>) and NSW (<http://www.housing.nsw.gov.au/Living+in+Public+Housing/Get+Involved/>) are mechanisms for evaluating the achievement of best practice by Departmental staff and systems.

### **Supported: Independent External Mediation**

An initiative to engage appropriately trained and skilled independent fee-for-service agencies or individuals to undertake mediation between tenants and the department or complainant neighbours is supported. Whilst it is recognised there is currently a lack of capacity in this area, there exists a number of agencies that could be slightly expanded to embrace this role. These agencies include local Community Legal Centres, the Tenants Advice Service, the Welfare Rights and Advocacy Service and the Citizens Advice Bureau.

## **2. Other Issues and Solutions**

As discussed in the body of this response, some risks are associated with aspects of the strategy that warrant further clarification and cannot currently be supported. The aspects of concern are:

- in the extension of police powers to departmental staff (to initiate restraining orders and prohibition orders),
- the use of s64 no-cause evictions in public rental tenure,

- the imposition of additional behavioural conditions on a tenancy
- the prohibition of particular visitors
- reliance on adequate and timely responses from other public agencies (including Mental Health and Local Government)
- the use of tenant volunteers as mentors or supports, without adequate training or a recognised and respected formalised role with departmental back-up

### **3. Implementation**

Obstacles to implementation lie with gaining sufficiently robust Interagency and interdepartmental agreements to work in a collaborative, partnership and sensitively responsive way with struggling tenants.

Shelter WA encourages the Department to

- undertake development of clear definitions, policies and procedures around disruptive behaviour,
- complete introductory disruptive behaviour assessment training and regular refresher training for staff,
- divert and deter malicious, petty, inappropriate or discriminatory complaints against tenants
- implement the specialist team with culturally sensitive training
- act early and proportionately (early intervention)
- require other agencies to respond to concerns that are within their jurisdiction
- support and resource independent non-government agencies to offer mediation services including the Tenants Advice Service, Welfare Rights and Advocacy Service, the Citizens Advice Bureau and Community Legal Centres.
- Resource Shelter WA and the Community Housing Coalition to undertake education and awareness raising about affordable housing options, new initiatives, changes to policy and procedures, rights and responsibilities, support service availability, grievance and dispute mechanisms.

### **Conclusion**

Shelter WA supports the general thrust of a clear and well articulated disruptive behaviour management strategy, however we are concerned that the balance of power, onus of proof and potential for discretionary decision making and disproportionate responses may remain if some of the more excessive powers suggested (s64 eviction, lease conditions and prohibitions) are given to departmental staff.

Shelter WA encourages the Department to facilitate tenant empowerment and participation and to strengthen the role of independent community organisations in mediation and dispute resolution.



## Housing SA engages with tenants

Housing SA is working on a new community engagement strategy to involve our customers. This comes as the Department for Families and Communities (which Housing SA is a part of) has set out a standard to engage early with customers and to be clear about what can be achieved.

The community engagement strategy will set the standard for customer involvement and consultation in Housing SA business.

Our goal is to increase the number of people who we talk to about new ideas and the way we let people know what we are doing and what we intend to do.

So far we have spoken to previous Regional Advisory Board members and customers who registered interest after reading previous Customer Chat articles about getting involved.



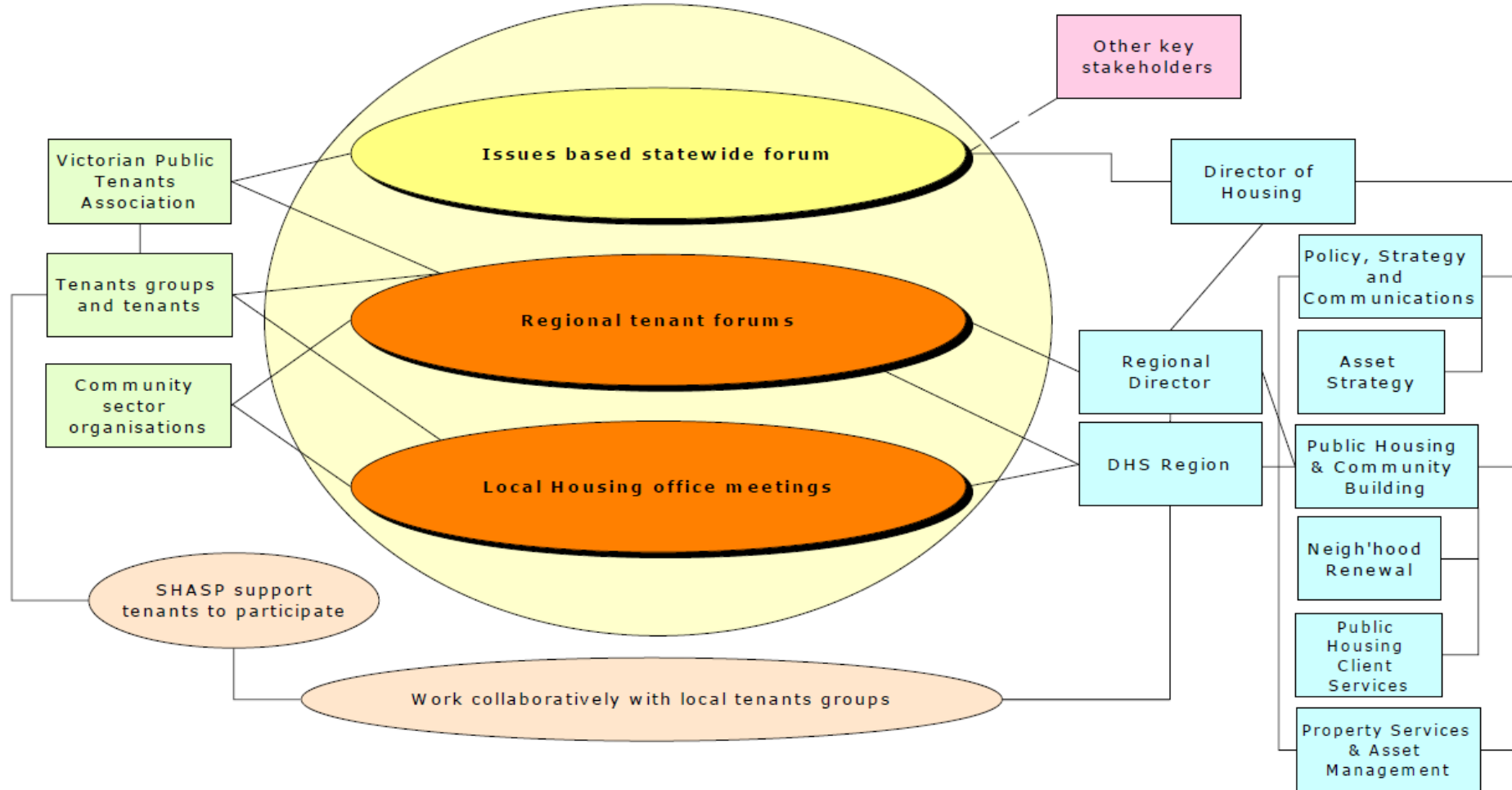
Kerry Glavinas and Christopher Birtwistle from the Customer Services Unit working on one of community engagement tools for staff.

A number of demonstration projects will be run across the State in the coming months. If you are interested in learning more about the community engagement strategy, please register your interest with **Christopher Birtwistle** on **8207 0480**. You can also find information on our website, [www.housing.sa.gov.au](http://www.housing.sa.gov.au)

[http://www.familiesandcommunities.sa.gov.au/DesktopModules/SAHT\\_DNN2\\_Documents/DownloadFile.aspx?url\\_getfileid=3408](http://www.familiesandcommunities.sa.gov.au/DesktopModules/SAHT_DNN2_Documents/DownloadFile.aspx?url_getfileid=3408) (accessed 29 January 2010)

## Office of Housing tenant participation framework

To create increased opportunities for public tenants to contribute to decisions affecting their living environment



[http://www.housing.vic.gov.au/\\_data/assets/pdf\\_file/0004/261175/Diagram-of-the-Tenant-Participation-Framework.pdf](http://www.housing.vic.gov.au/_data/assets/pdf_file/0004/261175/Diagram-of-the-Tenant-Participation-Framework.pdf) (accessed 29 Jan 2010)