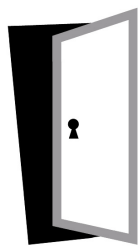


Sexcluded?

Women, Homes and Sex Discrimination 2004

A Snapshot Study



Shelter SA

Housing: a basic human right

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PREFACE

This report has been prepared by Shelter SA to mark the 20th anniversary of the Federal *Sex Discrimination Act* 1984.

It draws on the experiences of women seeking accommodation in South Australia in the first months of 2004. Their stories were gathered by the frontline agencies that helped in the search for a home. The resulting ‘snapshot’ highlights some important messages for everyone involved with housing, with women and with discrimination in our State.

We thank our collaborators in the project: Anglicare Family Centre North; Mission Australia; the National Council of Single Mothers and their Children SA; the South Australian Housing Trust; the Tenancies Branch of the Office of Consumer and Business Affairs; The Women’s Housing Association Inc. and the Women’s Information Service. We are also grateful to the South Australian Equal Opportunity Commission for their help and co-operation. All these agencies increased heavy workloads to record data for the study.

Cheryl Shepley, Shelter SA’s Clerical Officer, has done wonders with the text to present it in a format that is attractively readable as well as economical. The generous assistance of HomeStart Finance allowed us to launch the report very successfully. We thank them most sincerely for helping to bring the message of *Sexcluded? Women, Homes and Sex Discrimination 2004* to a broad public. Thank you to Sarah Adkins for the cover photograph and to Tabitha Collins for additional photographs supplied for the launch of this report.

Finally, we thank the women whose stories are reported here – women who know too well the costs they and their children pay for being sexcluded: missing out on safe, secure and affordable housing.

SHELTER SA

ADELAIDE, AUGUST 2004

HOUSING: A BASIC HUMAN RIGHT.



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SUMMARY

SECTION 1: INTRODUCTION

Shelter SA decided to mark 20 years of the *Sex Discrimination Act* 1984 (Cth). We asked whether the negligible numbers of ‘accommodation’ complaints to the Human Rights and Equal Opportunity Commission (HREOC) and South Australia’s Equal Opportunity Commission indicate that discrimination in respect of accommodation has been successfully eliminated since the Act was passed? Or are women still being ‘sexcluded’ from accommodation?

SECTION 2: METHODOLOGY

This short exploratory study was designed to capture the reality of respondents’ experiences and perceptions, as they looked for accommodation in South Australia. It is a small, preliminary study that breaks new ground. It used a composite methodology, of which the centrepiece was the collection of data by agencies about the experiences of their clients. Coincidentally, all the participating agencies had clients seeking or living in low cost rental accommodation. The study provided a snapshot that indicates issues of general concern and, inevitably, some areas that deserve further research and debate.

SECTION 3: THE LEGAL LANDSCAPE

South Australian law includes three statutes that address sex discrimination in relation to accommodation, two directly and one indirectly. They are the *Sex Discrimination Act* 1984 (Cth), the *Equal Opportunity Act* 1984 (S.A.) and the *Residential Tenancies Act* 1995 (S.A.). The provisions are well established in South Australia and should be very familiar. The Acts deploy a variety of strategies to combat discrimination, including redress, enforcement and community education.



SECTION 4: FINDINGS

Discrimination is alive and well

All 68 women respondents believed they had suffered discrimination. They identified several reasons ('grounds of discrimination'). Over half said the reasons for the unfair treatment included the factor of being female and/or having no partner and /or having children in the household.

It's (nearly) everywhere

Women reported here were searching across the housing market. However, the vast majority were searching for a home to rent or were trying to secure repairs for a rented home. Experiences of discrimination were reported in all sectors of the market, except community housing.

It's beyond rude

Women reporting 'unfair treatment' were not just alleging rudeness or 'bad attitude'. They identified definite detrimental outcomes that slowed or defeated their search for secure and affordable accommodation.

What Commission?

No one tried to use the *Sex Discrimination Act 1984*, the *Equal Opportunity Act 1984* or s.52 of the *Residential Tenancies Act 1995*. Two-thirds of the women had not complained at all.

It's a housing issue

Women who complained saw the problem as a 'housing' problem and were not distracted away from their top priority: finding somewhere to live. They complained to 'housing' contacts, or to people they knew: friends, relatives, support workers. They didn't classify the problem as 'discrimination'.

And then: homeless

For more than half the women the effect of discrimination was to refuse them a lease. This left most of these women homeless.

Don't forget the children!

The 68 women respondents had a total of 100 children in their households when they experienced the 'unfair treatment' reported here. Thirty-eight percent of the children were made homeless as a result of alleged sex discrimination, 11% were in primary homelessness and 27% in secondary homelessness.



The income factor

Of the respondents, 51 had a pension or benefit as their principal income source; 8 were employed; 3 indicated 'other' and 6 did not reply to the question. When asked what had prompted the unfair treatment they experienced, one of the most frequent factors the women mentioned was low income.

SECTION 5: REFLECTIONS

A non-event?

As Section 4 shows, for the women contributing to this study, the *Sex Discrimination Act* 1984 (Cth) was a non-event. They were unaware of it. They didn't know of its processes nor did the contacts they complained to. The same seems largely true of the State's *Equal Opportunity Act* 1984: it had passed them by.

A long time: major changes

Twenty years is a long time. In the 20 years since the *Sex Discrimination Act* 1984 (Cth) came into force Australian society has changed considerably. Among all the shifts and changes in that time, two are crucial to a discussion of the women's experiences reported in Section 4. First: sex discrimination seems to have largely moved off the national agenda. Secondly, the precarious and very competitive tenure of private rental now has to be 'home' to more households for longer periods. Unfortunately for women tenants, these changes don't suggest an improving outlook.

It's (nearly) everywhere

'Hands-on' landlords, especially those not members of the Landlords' Association of South Australia Inc, are hard to access.

Real estate agents are relatively easy to target through the Real Estate Institute of South Australia and through training courses, which are increasingly required for rental managers.

The Housing Trust has a clear commitment to non-discriminatory practice in its Charter, its code of Practice and its policies and procedures. Customers often have long-term relationships with the Trust, as applicant, customer and tenant. They may be inhibited from complaining because of anxiety about their future treatment. Trust management at all levels must be vigilant and consistent in ensuring that discrimination is not tolerated.



What Commission?

Accommodation: the poor relation in the Acts?

None of the respondents identified her situation as one of discrimination. None of the women mentioned HREOC or the Equal Opportunities Commission. No one they spoke to had suggested complaining to either of the Commissions, except for one real estate agent. 'Accommodation' has been the poor relation in sex discrimination work, where attention has increasingly focused on employment issues.

An impractical process for redress

Even if prospective tenants were aware of the sex discrimination legislation the system is immensely impractical for them to use. It is a distraction when they are desperately trying to avoid the threat of looming homelessness or trying to get a repair done; the logistics don't 'fit'.

It's a housing issue

Respondents saw their experiences as 'housing' problems. In the absence of a single, clear source of advice, help and support for all tenants in this State, it's not surprising that many women didn't know where to complain.

And then: homeless

A full 43% per cent of the women and 38% of the children whose experiences are described in this study became homeless when they failed to secure the accommodation they sought. Many of them attribute that to sex discrimination.

Social housing may be an option for some women affected by discrimination but in the current climate it can't be the whole answer.

Other options that would repay investigation are the continued innovation of HomeStart products and the development of modern apartment-style boarding house accommodation for women.

The greatest improvement in choice, and antidote to homelessness, however, would be a significant increase in affordable housing. Women's housing needs must be kept in focus and communicated regularly and effectively to Government.

Don't forget the children!

The 68 women who contributed their stories had 100 children. Evidence suggests that children's physical and mental health, educational and social development and later life chances can all be seriously prejudiced by the experience of poor, inadequate or insecure housing. These children are all our futures. Anything that damages them as seriously as this must be eliminated.



SECTION 6: CONCLUSIONS

This preliminary study shows clear indications that women are being ‘sexcluded’ from accommodation: excluded by sex discrimination.

What responses are required?

- More housing options for low-income women and for women with children.
- An agency that can monitor sex discrimination in the housing context: women see this as a ‘housing’ problem, not a separate ‘discrimination’ problem.
- Increased public awareness of the anti-discrimination laws.
- Training and information for the industry, to strengthen non-discriminatory practice.

SECTION 7: RECOMMENDATIONS

1. To the Minister for Housing

Tenants’ Advice and Advocacy Service

We recommend that a Tenants’ Advice and Advocacy Service be established as soon as possible in South Australia, as in all other States, to provide all tenants with information, advice, advocacy and support. The Service would have the unique capacity to monitor sex discrimination incidents – women’s practice is to mention these to *housing* contacts. This allows strategic responses that are presently not possible. The anticipated State Housing Plan presents a unique opportunity to incorporate a Tenants’ Service S.A. into the strategic development of South Australia’s housing future.

2. To Ourselves and the Sector

South Australian Women’s Housing Group

We recommend that Shelter S.A. explores with other interested parties the formation of a Women’s Housing Group, to facilitate public discussion, monitoring and advocacy of women’s housing issues and options in South Australia and to communicate these to Government in a regular and effective way.



3. To the Attorney General

Status discrimination should be unlawful

We recommend that a new ground of discrimination is introduced into the State's *Equal Opportunity Act* 1984, namely that it should be unlawful in South Australia to discriminate against any person on the grounds of her or his social status (homeless, unemployed or in receipt of social security). In respect of accommodation, this addition should be drafted to clearly include discrimination against a person who offers a Housing Trust bond guarantee in the private rental market.

4. To the Commissioner for Equal Opportunity

Research on effective strategies

A. *We recommend* that the Commissioner for Equal Opportunity, using the power in s 11(2) of the *Equal Opportunity Act* 1984 should 'institute, promote or assist in research, the collection of data and the dissemination of information relating to discrimination on the ground of sex, sexuality, marital status, pregnancy, race, impairment or age' in the rental sector in South Australia, with the aim of developing effective strategies for the protection of women's rights to be free from discrimination.

B. *We recommend* that consideration is given to ways in which general public awareness of the anti-discrimination laws can be increased in South Australia.

5. To the Commissioner for Consumer and Business Affairs and the Commissioner for Equal Opportunity

Better protection for households with children

We recommend that s 52 of the *Residential Tenancies Act* 1995 is repealed and more effective approaches to the problem of housing discrimination against households with children are researched. A new legislative approach is required. The current reviews of both the *Residential Tenancies Act* 1995 and the *Equal Opportunity Act* 1984 present an excellent opportunity for reform.



6. To the Commissioner for Consumer and Business Affairs and the Commissioner for Equal Opportunity

Education strategies strengthening non-discriminatory practice and cultures

A. *We recommend that* that the Commissioner for Consumer and Business Affairs and the Commissioner for Equal Opportunity collaborate to devise and deliver tenancy education initiatives to landlords and tenants detailing discrimination responsibilities and rights in relation to rental housing in South Australia.

B. *We recommend that* tenancy education initiatives from the Commissioner for Consumer and Business Affairs and the Commissioner for Equal Opportunity are designed for the whole rental sector, including public and community housing organisations. Their role as providers of accommodation requires constant vigilance to avoid discriminatory practice.

C. *We further recommend that* the Commissioners work with housing providers (through The Landlords' Association, the Housing Trust, the Community Housing Council) and professional housing managers (through the Real Estate Institute of South Australia) to strengthen non-discriminatory institutional cultures.



1. INTRODUCTION

During 2003, the Human Rights and Equal Opportunity Commission (HREOC) web site carried a call from the Sex Discrimination Commissioner to ‘help us celebrate the 20th anniversary of the *Sex Discrimination Act* 1984’.

The Long Title of the *Sex Discrimination Act* states that it was passed:

‘Recognising the need to prohibit, so far as is possible, discrimination against people on the ground of sex, marital status, pregnancy or potential pregnancy in the areas of work, accommodation, education, the provision of goods, facilities and services, the disposal of land, the activities of clubs and the administration of Commonwealth laws and programs:

Affirming that every individual is equal before and under the law, and has the right to the equal protection and equal benefit of the law, without discrimination on the ground of sex, marital status, pregnancy or potential pregnancy.’

Shelter SA is the peak body for housing consumers in South Australia. We identify three main Acts as potentially helpful to combat sex discrimination in housing in our State. In addition to the Federal *Sex Discrimination Act*, the State’s *Equal Opportunity Act* 1984 and *Residential Tenancies Act* 1995 are both important. We began to think about possible ‘celebrations’ for the Federal Act’s anniversary. We were struck by the contradictory messages we were getting about sex discrimination in housing.

On the one hand, HREOC’S most recent Annual Report indicated that, across Australia, just one complaint about sex discrimination and ‘accommodation’ had been lodged during the year July 2002 – June 2003 under the *Sex Discrimination Act* 1984.¹ The picture for South Australia seemed similar. South Australia’s Equal Opportunity Commission investigated only one or two ‘accommodation’ complaints during 2002-2003 under the *Equal Opportunity Act* 1984.² There were no cases initiated under s. 52 of the *Residential Tenancies Act* 1995 for discrimination against families with children.

“If you are a single mother on a pension, then you can’t afford my rent.”

Should we deduce from so little activity that there was no problem of sex discrimination in the area of accommodation in our State?

It was tempting. But it would have been somewhat disingenuous.

We couldn’t ignore the constant stream of information from Shelter SA members and others in the housing sector.³ It clearly described women suffering sex discrimination as they searched for a home: women who were ‘sexcluded’ from accommodation.

We decided to ask women themselves. This report details their experiences.



2. METHODOLOGY

An exploratory study

This is a short exploratory study.

Its purpose is to capture women's experiences and perceptions of discrimination in the accommodation market in South Australia and to examine the potential for further research and debate.

Its aim is to move anecdotal information onto the record. There is currently a wealth of anecdotal information concerning sex discrimination against women seeking a home, and their responses to it, but this is rarely formalised into 'evidence' and has therefore remained easy to dismiss and ignore.

Its principal questions are:

1. Do women perceive themselves to be the subject of discrimination when they look for or are in accommodation? If so, on what grounds and with what result?
2. How do women respond to situations of perceived discrimination?

It used a composite methodology, including:

- Invitations to participate in the project being sent to agencies right across the State's housing sector. The decision whether to participate was, for most invitees, dependent on resource implications: could their staff add yet another task to their duties? Agencies that agreed to take part collected data via an anonymous questionnaire from female clients presenting during the data collection period of 1 February – 30 April who gave their consent. The agencies collecting this data were: Anglicare Family Centre North; Mission Australia, The Women's Housing Association Inc. and the Women's Information Service. In addition, the South Australian Housing Trust administered the questionnaire for a period of one week during that period. The fundamental question asked and explored was: 'Have you been treated unfairly in respect of housing?'
- Inquiries about discrimination in accommodation to the Tenancies Branch of the Office of Consumer and Business Affairs and South Australia's Equal Opportunity Commission being logged over the same period;
- Short interviews with key personnel from the National Council of Single Mothers and their Children.
- Some library-based research to provide a broad context for the Findings.



A snapshot

A preliminary picture

This study was designed to capture the experiences of women today. It provides a preliminary picture, a starting point, suggesting lines for future, fuller inquiry and debate.

An incomplete picture

The study provides an incomplete picture. We have only our respondents' perceptions. Their accounts have not been pursued, investigated or assessed. Where they perceive 'unfairness', we can't tell how a formal complaint of sex discrimination would have fared. However, we can identify those cases where the respondent linked the 'unfairness' to a tangible detriment and felt that she would have had a better outcome but for the perceived discrimination.

A homogenous group

By chance, nearly all the service-delivery agencies that took part in this project are agencies that assist people with low incomes with housing, mostly in the rental sector. This relative homogeneity was unplanned. Where appropriate its implications are outlined.

A broad-ranging picture

Although prompted by the 20th anniversary of the Federal *Sex Discrimination Act* 1984, this study provides a slightly fuller picture than a narrow focus on that Act alone would have achieved. Asking about 'unfair' treatment allowed women to identify perceptions of discrimination on many grounds including sex discrimination and also other factors not covered by legislation such as having a low income, a Trust bond, a history of domestic violence. This broader base gives us a better appreciation of the complex interplay of factors and the range of possible responses.

As a snapshot, this report captures some women's experiences at a moment in time. It indicates some issues of general concern and, inevitably, some areas that deserve further research and debate.



3. THE LEGAL LANDSCAPE

An established feature

This report focuses on sex discrimination, prompted by the 20th anniversary of the *Sex Discrimination Act* 1984 (Cth). Legislation outlawing sex discrimination has been part of South Australia's legal landscape for almost 30 years now – long enough, we might think, to be familiar, even well-known. The State was in the forefront of reform in the 1970s. South Australia was the first State to enact legislation making sex discrimination unlawful with the *Sex Discrimination Act* 1975. Three years later, the State's *Residential Tenancies Act* 1978 included a provision banning discrimination against households with children. This provision still exists in current law as s.52 of the *Residential Tenancies Act* 1995. In 1984, not only was the Federal *Sex Discrimination Act* passed, but also a new South Australian *Equal Opportunities Act* replaced its 1975 predecessor. This was a more broadly based Act. In respect of sex discrimination, it outlawed discrimination in respect of accommodation on the grounds of sex, sexuality, marital status or pregnancy (ss. 29, 40). This report focuses on the three current Acts: the *Sex Discrimination Act* 1984 (Cth), the *Equal Opportunity Act* 1984 (S.A.) and the *Residential Tenancies Act* 1995 (S.A.).

A strong statement and three strategies

The Acts may be seen to operate at two levels. They have a fundamental rhetorical, or political, importance. They make clear statements of public policy, at Federal and State level, that discrimination on the stated grounds is unacceptable. The value of this aspect of legislation cannot be over-stated: it is immense. It validates women's claims to be treated without discrimination and it highlights the centrality of 'accommodation' to the wellbeing of Australians.

The Acts also have practical applications. They provide South Australia with three principal responses to the problem of sex discrimination. These may be summarised as:

- redress
- enforcement
- education.

There are statutory processes for individuals to seek redress if they have suffered discrimination. There is provision for the prosecution of landlords or agents who discriminate against households with children. Lastly, there is provision to encourage community education on rights and duties under the law, to change community attitudes and to promote best non-discriminatory practice, to encourage compliance and so avoid and eliminate discrimination.



Redress

The *Sex Discrimination Act 1984* (Cth) (supported by the *Human Rights and Equal Opportunity Act 1986*(Cth)) and the *Equal Opportunity Act 1984* (S.A.) each provide a structure and a process so that individuals who have suffered discrimination can seek redress after the event from the perpetrator. This is their individualistic and reactive aspect. Assuming and embodying the principle of ‘equality under the law’, it requires individuals to take action on their own behalf to redress their situation. They may be seeking compensation, an apology, or reinstatement, for example.

Individuals using the Federal Act can approach HREOC in Sydney with their claims; people using the State Act approach the Commissioner for Equal Opportunity in Adelaide. The processes are broadly similar and provide for the investigation, private conciliation and possible public adjudication of written complaints. As far as possible, the expectation is that people present their own case. Lawyers are not used unless the matter goes to a formal public hearing in a court or tribunal.

Under both Acts, direct and indirect discrimination is unlawful. Direct discrimination, seen by the authors as most relevant to accommodation issues,⁴ is more than merely showing a ‘bad attitude’. It requires some tangible ‘detriment’. Section 5 (1) of the *Sex Discrimination Act 1984* (Cth) states that:

the discriminator must treat the victim ‘by reason of’ her or his sex or a characteristic of people of that sex generally or a characteristic generally imputed to people of that sex ‘less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person of the opposite sex’.

Section 23 provides that less favourable treatment in the area of accommodation includes imposing higher costs, declining the complainant’s application, relegating them down the waiting list or evicting them.

Using either the Federal or the State Act to get redress for discrimination implies that the person discriminated against:

- can identify the action as ‘discrimination’;
- has at least a general sense that such behaviour is against the law and there may be a remedy;
- believes that there is sufficient purpose in pursuing the matter;
- knows where to complain;
- can effectively put their complaint in a written document;
- has a witness or some evidence to support their claim;
- can manage the formal complaint process as well as other pressing current matters, such as continuing to look for somewhere to live;
- has the time, the mental and emotional energy, the confidence and the communication skills to initiate and sustain the process. If she or he seeks legal advice, or legal representation at a court or Tribunal hearing, money will also be necessary.

“The discrimination was very subtle and I cannot prove it.”



Enforcement

A potentially useful provision in this context is s. 52 of the *Residential Tenancies Act* 1995 (S.A.). It provides that ‘a person must not refuse to grant a tenancy to another on the ground that it is intended that a child will live on the premises’. A maximum penalty of \$1000 can result for an infringement. The section originated in the *Residential Tenancies Act* 1978 (S.A.). It seems to echo the ‘criminal’ law model of the State’s *Racial Discrimination Law* 1976. This was the only Australian anti-discrimination statute to depend exclusively on criminal sanctions. It was repealed when South Australia’s anti-discrimination law was revised, broadened and redrafted as the *Equal Opportunity Act* 1984. Women constitute the majority of sole parents and are significantly likely to have children with them when looking for accommodation.

The Commissioner for Consumer Affairs has a variety of functions under the Act, including, under s. 8, ‘investigating suspected infringements of this Act and taking appropriate action to enforce the Act’. However, this is not a simple matter.

Clearly the Commissioner can only pursue infringements brought to his or her attention. The efficacy of s.52 therefore depends substantially on breaches being reported, presumably (directly or indirectly) by rejected applicants.

A further difficulty with the section is the problem of proof. This is exacerbated in a ‘penalty’ situation, where the reason for the refusal (the alleged discrimination) would have to be proved to the criminal standard of proof: ‘beyond reasonable doubt’.

Finally, the Act does not include any provision for compensation to the rejected tenant if discrimination is proved. It sends a clear statement of society’s intolerance of this particular form of discrimination but it lacks any direct incentive that could encourage reporting.

There is no record of s.52 or its predecessor in the 1978 Act ever being enforced.

Education

Sometimes felt to be the most successful way to combat discrimination in the longer term, pro-active community education is a major aspect of all the Acts discussed here.

The most forceful provision is in the *Equal Opportunity Act* 1984 (S.A.), where the Commissioner is under a duty: she or he *must*

‘foster and encourage amongst members of the public informed and unprejudiced attitudes with a view to eliminating discrimination on the ground of sex, sexuality, marital status, pregnancy, race, impairment or age’
(s. 11)



In addition, the Commissioner *may*

institute, promote or assist in research, the collection of data and the dissemination of information relating to discrimination on the ground of sex, sexuality, marital status, pregnancy, race, impairment or age.’

The Federal *Sex Discrimination Act* 1984 gives HREOC the pro-active role of community education. Section 48 includes powers to

‘promote an understanding and acceptance of, and compliance with, this Act’; ‘to undertake research and educational programs, and other programs, on behalf of the Commonwealth for the purpose of promoting the objects of this Act’ and ‘to prepare, and to publish in such manner as the Commission considers appropriate, guidelines for the avoidance of discrimination’.

Finally, there is a significant public education component in the *Residential Tenancies Act* 1995 (S.A.). The Commissioner for Consumer Affairs’ functions include:

‘publishing reports and information on subjects of interest to the parties to residential tenancy agreements and rooming house agreements’ and ‘giving advice (to an appropriate extent) on the provisions of this Act and other subjects of interest to the parties to residential tenancy agreements and rooming house agreements’

(s. 8.)

In addition, provision is made in s 101 for the income derived from the tenants’ bonds held on deposit in the Residential Tenancies Fund to be applied, among other things, ‘for the education of landlords and tenants about their statutory and contractual rights and obligations’. In other words, tenants’ monies can be used to ‘upskill’ landlords and tenants so that amongst other things, discrimination is avoided or contested.

Taken all together, that’s a lot of community educating! It looks as if information about the unlawfulness of sex discrimination in relation to housing, and related rights, redress, duties and best practice should be all around us.



4. FINDINGS

During the data collection period 1 February – 30 April, 68 women reported to participating agencies that they believed they had been treated unfairly in relation to ‘accommodation’. All but one were looking for, or living in, low cost rental properties. This section details their experiences and perceptions.

Discrimination is alive and well

All 68 women respondents believed they had suffered discrimination.

They identified several reasons (‘grounds of discrimination’). Over half said the reasons for the unfair treatment included the factors of being female and/or having no partner and/or having children in the household.

TABLE 1: GROUNDS OF DISCRIMINATION IDENTIFIED BY RESPONDENTS

Reason	Number	%
Being female	23	33.8
Children	32	47.1
Low income	34	50.0
Too young	8	11.8
Too old	1	1.5
S.A.H.T. Bond	7	10.3
No partner	22	32.4
Aboriginal	7	10.3
Non-English Speaking Background	3	4.4
Other*	23	33.8

* includes mental health issues; history of domestic violence; no housing history; attributed rental debt.

“We have had problems in the past with single women having lots of men friends over to stay.”



This report focuses on sex discrimination. Discrimination because the applicant was a woman, or because she had no partner or because she had children who would be living with her in the accommodation is relevant. The first two are grounds of discrimination clearly outlawed in respect of accommodation in the *Sex Discrimination Act 1984* (Cth.) and the *Equal Opportunity Act 1984* (S.A.), and the last is addressed by s.52 of the *Residential Tenancies Act 1995* (S.A.). Taking these three factors together, 'sex discrimination' was the most frequently quoted cause of unfair treatment that the women identified.

In addition, it's worth highlighting that discrimination on the grounds of age (here: mostly youth) in relation to accommodation is unlawful under s. 85L of the *Equal Opportunity Act 1984* (S.A.) and under s. 29 of the recently enacted *Age Discrimination Act 2004* (Cth) (effective from 22.06.2004). Discrimination on the grounds of race is unlawful in respect of accommodation under s. 62 of the *Equal Opportunity Act 1984* (S.A.) and s.12 of the *Racial Discrimination Act 1975* (Cth).

Discrimination on the grounds of poverty or low income or social status is not unlawful.

Most women reported that a combination of these factors was involved in the discriminatory treatment they experienced.

From the data we received, it seems that well over half the reported incidents of discrimination were potentially unlawful.

"I personally think that you are very presentable but the owner is not happy to rent to a single woman and her daughter."



It's (nearly) everywhere

The women whose experiences are reported here were searching across the housing market. The vast majority were searching for a home to rent or were renting already. Only one was looking to buy. Experiences of discrimination were reported in all sectors of the rental market, except community housing.

TABLE 2: INCIDENTS OF DISCRIMINATION ACROSS THE HOUSING MARKET

	Looking to Buy	Private Rental Market Landlord managed	Private Rental Market Agent managed	SA Housing Trust	Community Housing Organisations
Reports of unfairness: number	1	26	18	23	0
Reports of unfairness: %	1.5%	38.2%	26.5%	33.8%	0%
% total S.A. housing market*	75%	4.2%	11.2%	8.8%	0.8%
% total S.A. rental market*	N/A	16.9%	45.6%	35.2%	2.3%

* calculated from ABS 2001 Census data and bond information⁵

Private rental, community rental and the South Australian Housing Trust together provide 25% of the State's housing.

Unfair treatment was perceived in the private rental market and in dealings with the Housing Trust.

There were no reports of unfair treatment by any Community Housing Organisation. This may be attributable to good practice, and/or to the small number of respondents and/or to the small size of the community housing sector, which accounts for just under one per cent of the State's housing stock.

What is noticeable is the relatively large number of cases that occurred when women were dealing directly with private landlords. Statistics from the Office of Consumer and Business Affairs indicate that in recent years almost three-quarters of South Australian private tenancies have been professionally managed. Only a small minority (about 17% of the total rental market) are managed 'hands on' by private landlords themselves.⁶ However, almost 40% of the incidents reported in this snapshot involved private landlords, more than twice the rate that would be expected from a statistical sample (which, of course, this is not). Real estate agents, on the other hand, are under-represented.



The Housing Trust manages about one third of the State's rental market. Incidents with Housing Trust staff account for approximately one third of the incidents where respondents believed there was discrimination. This is disturbing, given the nature and purpose of public housing, whose major rationale is to provide a safety net for the casualties of the private market. They include groups who will predictably suffer discrimination. The Housing Trust above all should be a 'discrimination free zone' in practice as well as on paper, in principle and in policy.

It's beyond rude

Women reporting 'unfair treatment' were not just alleging rudeness or 'bad attitude'. They identified definite detrimental outcomes affecting their housing options.

TABLE 3: THE RESULTS OF DISCRIMINATION

Result	Number	%
Application rejected: didn't get property	37	54.4
Increased rent/bond	12	17.6
Evicted early	6	8.8
Other*	13	19.1

* includes: property maintenance ignored; application delayed.

"If you could add a male name to the lease it would be in your favour."

All the women reported that their experience was not 'merely' of being treated rudely, offensively or without respect. They pointed to some tangible consequence that resulted. Both the *Sex Discrimination Act* 1984 (Cth) and the *Equal Opportunity Act* 1984 (S.A.) require detriment if an action for redress for sex discrimination is to be pursued. The detriments identified in the Acts include refusal to grant a lease, imposing higher charges and eviction. Over 80% of women in this study were subject to those sorts of discriminatory acts. So, attempting to obtain redress through one of the statutory processes, via HREOC or South Australia's Equal Opportunity Commission, might have been an option in respect of the treatment they suffered. It was certainly an option they could have explored by an inquiry to the relevant Commission, even if they didn't go any further.



What Commission?

Just one of the women experiencing discrimination had approached South Australia's Equal Opportunity Commission to inquire about the complaints process. She had been referred to the Commission by the Real Estate Institute. Otherwise, none of the respondents, nor the people they talked to, mentioned HREOC or the Equal Opportunity Commission at all. No one who was refused a lease because there were children reported it to the Office of Consumer and Business Affairs. In other words, no one tried to use the *Sex Discrimination Act* 1984 (Cth), the *Equal Opportunity Act* 1984 (S.A.) or s.52 of the *Residential Tenancies Act* 1995 (S.A.).

Almost two-thirds of the women had not complained at all.

TABLE 4: NO COMPLAINT MADE

Reasons	Number	%
Didn't know where to go	20	48.8
No point	11	26.8
Other	3	7.3
No reason given	7	17.1

Of the women who had not complained, half said they didn't know who to complain to. This suggests that, however the issue was 'labelled', there was no obvious point of help visible to these respondents. The others said they saw no point in complaining: nothing could be done. The presence of children did not appear to affect whether women complained because only half of the women with children did complain.

It's a housing issue

Women who complained saw the problem as a 'housing' problem and were not distracted away from their top priority: finding somewhere to live. They mostly complained to 'housing' contacts, or to people they knew: friends, relatives, support workers. They didn't classify the problem as 'discrimination'.

**TABLE 5: COMPLAINTS MADE/OUTCOME**

Complained to:	Number	Changed outcome
Housing Worker	11	1
Land agent	3	1
S.A.H.T.	2	0
HASSA	1	1
Other*	8	1

* Includes: domestic violence workers; Aboriginal Legal Rights Movement, 'Everyone'

Note: Housing worker includes Tenancies Branch of the Office of Consumer and Business Affairs

25 women reported that they had complained about the unfair treatment they had experienced.

"You're Aboriginal, but at least you look clean."

Women mostly complained to 'housing' contacts: a housing worker, the land agent, the Housing Trust, or HASSA (Housing Advice and Support Service South Australia, an advice service for tenants in public and community housing). One woman complained to legal advisers at the Aboriginal Legal Rights Movement. Respondents clearly classified the situation as a 'housing' issue, not a 'discrimination' issue. They stayed focused on accommodation and were not distracted away from their immediate priority: the search for somewhere to live or the need to get repairs done or other lease provisions enforced. Complaints were also made to people or organisations that were part of that search, or associated with tenancy issues or were part of the women's daily round, such as friends, relatives or support workers.

And then: homeless

For more than half the women the effect of discrimination was to refuse them a lease. This left most of these women homeless.

**TABLE 6: DESTINATIONS OF WOMEN REFUSED A LEASE**

Destination	Number	%
Rough sleeping	4	9.1
Lived in car	2	4.5
Went to a Shelter	6	13.6
Stayed with family	9	20.5
Stayed with friends	8	18.2
Stayed in private rental	3	6.8
Other*	12	27.3

*Includes: kept looking; moved interstate

A total of 44 women were refused a lease. Most of these women then found themselves homeless: either without shelter (rough sleeping; living in a car) or moving frequently between various sites of temporary insecure lodging: friends, relatives, shelters. Others found themselves in the private rental market, from which they had been trying to move because of affordability problems. And it wasn't just the women: it was their children who had been made homeless too.

Don't forget the children!

The 68 women respondents had a total of 100 children in their households when they experienced the 'unfair treatment' reported here.

TABLE 7: NUMBER OF CHILDREN AFFECTED BY DISCRIMINATION

Children in household	1	2	3	4	5	6
No. reports of unfair treatment	11	11	10	4	3	1

Total number of children affected: 100

Almost one third of the women who had children believed the presence of children was one of the factors for the 'unfair treatment'. This discrimination led to negative consequences for many of these children.

**TABLE 8: IMPACT OF DISCRIMINATION ON CHILDREN'S HOUSING**

Result	Number of children affected	%
Application rejected: didn't get property	53	53
Increased rent/bond	21	21
Evicted early	6	6
Other*	20	20

* includes: property maintenance ignored; application delayed.

"I did not apply for the accommodation because the agent was very rude and asked about my marital status and where the baby's father was."

Almost 60% of the women whose housing application was rejected had 53 children. Fifty-eight percent of the women whose rent or bond was increased also had 21 children and all of these women were on pension or benefit. Half of the women who were evicted had children accompanying them.

TABLE 9: DESTINATION OF CHILDREN WHOSE MOTHERS WERE REFUSED A LEASE

Destination	Number	% of all children
Rough sleeping	6	6
Lived in car	5	5
Went to a Shelter	15	15
Stayed with family	9	9
Stayed with friends	3	3
Stayed in private rental	5	5

"We don't like to rent to single mothers."

Thirty-eight percent of the children were made homeless as a result of the discrimination, 11% were in primary homelessness and 27% in secondary homelessness. The five children who lived in a car belonged to one family.



TABLE10: CHILDREN AFFECTED BY DISCRIMINATION ACROSS THE HOUSING MARKET

	Looking to Buy	Private Rental Market Landlord managed	Private Rental Market Agent managed	SA Housing Trust	Community Housing Organisations
Children affected: number	3	34	27	36	0
Children affected: %	3	34	27	36	0

The income factor

It is not unlawful to discriminate against someone because of their poverty or the source of their income. When asked what had prompted the unfair treatment they experienced, the second most frequent factor that women mentioned was low income. This may have been directly identified. In some cases it was deduced or inferred: because they had a pension, were on a benefit or offered a bond guarantee from the Housing Trust (only usually available to households on low incomes).

Of the respondents, 51 had a pension or benefit as their principal income source; 8 were employed; 3 indicated 'other' and 6 did not reply to the question.

Landlords, agents and lenders generally maintain 'prudential' standards and their principal criterion is financial. Rather than 'discrimination' this is 'risk assessment' from their point of view. However, to infer a low income and then *assume* future problems of affordability because, for example, the applicant is a woman or has no partner is surely moving away from risk assessment and into stereotyping and discrimination.

"They (the Landlord) treated me like I was dumb, they harassed and intimidated me and sent a big man around to see how I was going."



5. REFLECTIONS

A non-event?

As Section 4 shows, for the women contributing to this study, the *Sex Discrimination Act* 1984 (Cth) was a non-event. They were unaware of it. They didn't know of its processes nor did anyone they complained to. The same seems largely true of the State's *Equal Opportunity Act* 1984: it had passed them by. The only exception was a single telephone inquiry received by the Equal Opportunity Commission from a woman referred to them by the Real Estate Institute. When women encountered unfair treatment as they looked for a home, or tried to get repairs done, their priority was to stay focused and find or preserve somewhere to live. It was a 'housing' problem, not a 'discrimination' problem, and if they did complain it was usually to family or friends or housing contacts.

A long time: major changes

Twenty years is a long time. In the 20 years since the *Sex Discrimination Act* 1984 (Cth) and the *Equal Opportunity Act* 1984 (S.A.) came into force Australian society has changed considerably. Among all the shifts and changes, two are crucial to a discussion of the women's experience reported in Section 4. Unfortunately for women tenants, they don't suggest an improving outlook.

Sex discrimination has moved off the national agenda. Paid maternity leave is notable as the exceptional case. Considerable changes and reductions in resourcing have been made to HREOC over the years.⁷ 'Sex discrimination' is no longer the familiar concept that it was. Without significant community education initiatives to re-present the issues, the rationale and scope of the Acts could fade in the general public mind. Indeed, the suggestion of recent media reports is that 'the New Sexism' is well established.⁸ Activity at State level is more encouraging. In South Australia, for example, the Premier's Council for Women provides a lively forum for keeping women's needs on the public and political agenda. However, there is no evidence of widespread public interest in sex discrimination issues.

On the other hand, discrimination in the 'accommodation' area seems likely to increase.



The precarious and very competitive tenure of private rental now has to be 'home' to more households for longer periods. More households now have to rely on private rental for longer than ever before. Renting has moved from a transient tenure of convenience to a long-term tenure.⁹ Public housing stock has been reduced and the low cost end of the private rental market is very tight. In other words, the context of the *Sex Discrimination Act 1984 (Cth)* and the *Equal Opportunity Act 1984 (S.A.)* has changed to give the 'accommodation' aspect an unprecedented relevance – if it can meet the challenge.

Three principal problems limit the Acts' practical effectiveness in accommodation cases:

- low public awareness of sex discrimination issues and the law around them;
- the 'poor relation' role of 'accommodation' in anti-discrimination law: most publicised activity of HREOC and the Equal Opportunity Commission is in other areas, particularly employment;
- a poor 'fit' between problem and process for prospective tenants who encounter sex discrimination and consider pursuing redress.

Discrimination is alive and well

The women respondents in this study were clear that if they hadn't been women, and/or if they had had a partner, and/or if they hadn't had children with them, they would have had better treatment. They felt that these factors contributed to them not getting a 'fair go'. They also described other examples of potentially unlawful discrimination.

When the sex discrimination legislation was introduced, both at State and Federal level, most attention was given to the opponents who feared ensuing radical change. Less attention was given to criticisms voiced about alleged 'tokenism'¹⁰ and 'promising more than it could ever deliver'.¹¹ However, there was some agreement that any attitudinal change would take a long time to come if, indeed, legislation could drive such a transformation.

Debate continues about the realistic capacity of legislation to bring about attitudinal change.¹² Without constant activity by the Commissions the likelihood declines. Both HREOC and the Equal Opportunity Commissioner have clear responsibilities for such activity. HREOC's functions include generating programs for 'the purpose of promoting the objects of this Act': s. 48 *Sex Discrimination Act 1984 (Cth)*. South Australia's Equal Opportunity Commissioner has a mandatory duty to 'foster and encourage amongst members of the public informed and unprejudiced attitudes with a view to eliminating discrimination on the ground of sex': s.11 *Equal Opportunity Act 1984*. However, many more areas of responsibility have accrued to both Commissions as new grounds of discrimination have been added over the years. Resources have not increased to match the increased duties. Political support has been uneven. A shift in the Commissions' work from public campaigns to targeted programs makes sense in such circumstances. For example, it may seem most effective to work with industry groups or training institutions to develop best practice rather than use resources for 'broad brush' public awareness campaigns. However, in respect of 'accommodation' this leaves at risk some of the most vulnerable groups and may fail to inform new cohorts of investors in rapidly changing rental markets.



Tenants, for example, are remarkably difficult to ‘target’ in South Australia: there is no general Tenants’ Union, or equivalent. Private landlords are also a changing group.¹³ These groups are primarily dependent on general *public* levels of information and awareness for their rights, responsibilities and possible liabilities under the Acts.

Under ss. 8 and 101 of the *Residential Tenancies Act 1995* (S.A.), the Commissioner for Consumer Affairs has the function of publishing information for landlords and tenants and has done so through the Tenancies Branch. Tenancy education would be well served if the Equal Opportunity Commission and the Tenancies Branch collaborated on the regular provision and distribution of material showing how the sex discrimination laws apply to residential tenancies, including boarding/rooming houses and caravan parks. Assuming s.52 *Residential Tenancies Act 1995* remains in force, this section should also be explained. Design for simplicity is vital. Distribution through targeted outlets including housing agencies, Centrelink, the Housing Trust, the Real Estate Institute, the Landlords’ Association and with bond deposit paperwork could achieve good coverage. This is unlikely to change attitudes but it will publicise the law and the limits of lawful conduct.

We recommend that the Commissioner for Consumer and Business Affairs and the Commissioner for Equal Opportunity collaborate to devise and deliver tenancy education initiatives to landlords and tenants detailing discrimination responsibilities and rights in relation to rental housing in South Australia.

It’s (nearly) everywhere

Nearly all the women contributing to this study were looking for rental accommodation or were living in rental accommodation and they reported incidents of discrimination right across that market: from private landlords, some real estate agents and also employees of the Housing Trust.

Private landlords were involved in almost 40% of the cases. Investment in residential property is a traditional and popular investment in Australia, where landlords typically own only one investment property. Investors can enter and exit the market at will: there is no requirement to acquire (or instil) professional knowledge, including knowledge of the law. The Productivity Commission states that the proportion of Australian taxpayers with an investment property has almost doubled over the last decade,¹⁴ bringing a significant new cohort into the industry. If past practice is a guide, landlords will hand the management of about 75% of residential tenancies to professional agents.¹⁵ However, ‘hands-on’ landlords, especially those not members of the Landlords’ Association of South Australia Inc, are hard to access. They may include a significant number specialising in low-cost rental, where tenants are especially vulnerable.

The churn of landlords highlights the importance of regular information initiatives.



Real estate agents didn't feature in many of the women's stories. Professional practice may have helped to develop clear and legally compliant selection procedures. Agents are relatively easy to target through the Real Estate Institute of South Australia and through training courses, which are increasingly required for rental managers. The Tenancies Branch of the Office of Consumer and Business Affairs has developed constructive liaison with this group and, on a national level, discussions back in the early 1990s between HREOC and the real estate profession helped to develop practice benchmarks. Although knowledge does not guarantee compliance with the law, it's an essential prerequisite. And it can go further than compliance: in the one 'accommodation' inquiry logged by the Equal Opportunity Commission for this study, the caller mentioned that she had been referred to the Commission by a real estate agent.

Employees of the Housing Trust figure in several accounts of 'unfair treatment'. The Trust's Charter and Code of Practice commit it to maintaining a high standard of customer service, free of unlawful discrimination. A variety of internal policies exist that consistently reaffirm an institutional commitment to non-discriminatory practice. Given the role of the Trust 'to provide housing assistance for those in greatest need', and given that it is a public body, funded by monies from State and Federal governments, sex discrimination should receive zero tolerance inside and outside the organisation. As the Trust has long-term relationships with many of its customers, it is not sufficient to rely on formal complaint mechanisms to reveal the problem. Customers may be inhibited from complaining because of anxiety about their future treatment. Trust management at all levels must be vigilant and consistent in ensuring that discrimination is not tolerated and any misunderstandings that arise for example, from poor communication, are promptly addressed and subsequently avoided.

Community housing organisations did not appear at all among the women's accounts for this study.

We recommend that tenancy education initiatives from the Commissioner for Consumer and Business Affairs and the Commissioner for Equal Opportunity are designed for the whole rental sector, including public and community housing organisations. Their role as providers of accommodation requires constant vigilance to avoid discriminatory practice.

We further recommend that the Commissioners work with housing providers (through The Landlords' Association, the Housing Trust, the Community Housing Council) and professional housing managers (through the Real Estate Institute of South Australia) to strengthen non-discriminatory institutional cultures.



What Commission?

Accommodation: the poor relation of the Acts?

None of the respondents identified her situation as one of discrimination. None of the women mentioned HREOC or the Equal Opportunities Commission. No one they spoke to had suggested complaining to either of the Commissions, except for one real estate agent.

‘Accommodation’ has been the poor relation in sex discrimination work, where attention has increasingly focused on employment issues: the web sites and the Annual Reports of HREOC and South Australia’s Equal Opportunity Commission exemplify this trend. Discrimination law may have only a background role to play for tenants, as discussed below. Nevertheless, changes in the role of rental housing make increasing discrimination highly likely. Low income households are having to rent long term: it’s not a transient, convenient tenure now, it’s ‘home’.¹⁶ The lower end of the market is extremely competitive and unstable and many landlords are new to residential investment. Interest from the Commissions would be timely.

It has been estimated that more than half all tenants are 35 or younger¹⁷: people who were 15 or less when the Acts were passed. The need for periodic community education is ongoing if the Acts are to approach their potential. For tenants, an awareness that the Commissions exist and have an interest in accommodation issues would be a start!

‘More education’ was identified by over one third of respondents in this study as the best means of preventing discrimination and/or equipping victims to challenge it. Resources for formal education through schools or tertiary courses are available from HREOC and the Equal Opportunity Commission. However, the bigger and more important challenge is to provide community education for the majority of South Australians who are beyond or outside the formal system. After twenty or more years, the Commissions and the scope of their work should be familiar to everyone.

An impractical process for redress

Even if prospective tenants were aware of the sex discrimination legislation and the possibility of complaining to HREOC or the Equal Opportunity Commission, the system is immensely impractical for them to use. It is a distraction when they are desperately trying to avoid the threat of looming homelessness or urgent repairs: the logistics don’t ‘fit’. As two of the leading commentators point out:

While seeking accommodation, a person has a particular focus and following up on an individual refusal to offer premises may not be a fruitful exercise. Given the usual delays in the complaint handling processes, a complaint may not do anything to assist the person in securing accommodation, their first priority. The dynamics of the relationship are different to those that arise in other relationships such as employment or with a financial institution, where there is long-term on-going contact.¹⁸



The realities of bringing and proving any complaint are daunting. Anxiety about retaliation may inhibit women from complaining, especially if they are likely to have repeat dealings with the agent's firm or housing provider in question. Under-reporting of discrimination in the housing context is a recognised phenomenon.¹⁹ Even with assistance, encouragement and support (if these are available) the process makes great demands on the complainant in terms of time, competence, confidence and commitment. There may be an unbridgeable gap between perception and proof of discrimination. The redress available may not seem to outweigh the various costs of pursuing it. No aspect encourages the use of the formal process by women in the rental market.

A. We recommend that the Commissioner for Equal Opportunity, using the power in s 11(2) of the *Equal Opportunity Act 1984* should 'institute, promote or assist in research, the collection of data and the dissemination of information relating to discrimination on the ground of sex, sexuality, marital status, pregnancy, race, impairment or age' in the rental sector in South Australia, with the aim of developing effective strategies for the protection of women's rights to be free from discrimination.

B. We recommend that consideration is given to ways in which general public awareness of the anti-discrimination laws can be increased in South Australia.

It's a housing issue

Respondents saw their experiences as 'housing' problems. Those who complained spoke to housing contacts or other people they knew. With the exception of one respondent who contacted Housing Advice and Support South Australia (HASSA), a service for public and community tenants, and one respondent who contacted the Aboriginal Legal Rights Movement, no one sought 'outside' help or advice. Two thirds of respondents didn't complain. In the absence of a single, clear source of advice, help and support for all tenants in this State it's not surprising that many women didn't know where to complain. The absence of such a service also means there is no appropriate and effective means for monitoring allegations of discrimination, including sex discrimination, in the State's rental market. Victims of discrimination in housing do not approach HREOC or the Equal Opportunity Commission, for reasons described above. It is irresponsible to allow the situation to continue unmonitored.



Quite apart from issues of under-reporting, described above, it would be unwise to assume that the people who didn't complain didn't care. As Genn points out, 'doing nothing' is usually a choice:

At each stage in the process that follows the recognition that something bad has happened or is about to happen, the decision about what to do will be determined by a vast range of factors: Do people have any inkling of what their rights and remedies may be? Do they have the knowledge or confidence to pursue those rights and remedies? Do they feel able to handle the matter alone? If not, do they know where to go for help? If they know where to go for help can they access that help, when accessibility depends on the willingness or ability to pay (or be paid for) or on the willingness or ability to join long queues at advice agencies during normal working hours.

All these matters have to be evaluated against the nature of the threat to be averted or the value to be gained.²⁰

For many of the respondents to this study, lack of knowledge restricted the options: not knowing their rights and/or not knowing where to go for assistance. Even when the problem was identified as a housing problem, sources of help were not obvious for private tenants. It has been suggested that a 'Tenancy' or Renting Problems' number should appear at the front of the telephone book with other emergency numbers.²¹ If so, it would have to be the Tenancies Branch number, as that is the only general source of information currently available.

Obviously the Branch cannot act as support, advocate and advisor through individual cases. The absence of a Tenants' Union equivalent in South Australia means that there is no easily recognised expert agency available to assist and support all tenants, including private tenants.

Establishing a Tenants' Advice and Advocacy Service, as exists in all other States, for tenants in South Australia would have several advantages:

- First, the flow of information to and from tenants and prospective tenants would be simplified.
- Secondly, there would be a visible and obvious source of help for tenants that should quickly become widely known. Help and support to sustain tenancies through difficult passages may mean the difference between being housed and being evicted.²²
- Thirdly, it would be a source of help if anyone did wish to pursue a complaint through the Equal Opportunity Commission. While this option seems highly improbable, it should not be entirely ignored.



- Finally, such a service makes possible a systematic monitoring and overview of activity in the sector, which may be a more useful approach to alleged discrimination than atomistic case-by-case challenges. Women complained about their unfair treatment to housing contacts. Where there is a single focus for tenancy help, that organisation is likely to field these ‘incidental’ reports of discrimination, which can then be logged and reviewed over time. It may also garner the complaints made originally to friends and family, who are likely to refer the complainant to the tenants’ service. Such a role ‘fits’ with the dynamics of housing needs, unlike the Commission process. The tenants’ organisation is then in a position to discuss issues arising with the Equal Opportunity Commission, and possibly with industry members. This would provide an opportunity for tenants’ experiences to contribute to the strategic development of the sector. It would also assist the Commissioner with her or his duty to ‘foster and encourage amongst members of the public informed and unprejudiced attitudes with a view to eliminating discrimination’: s.11 *Equal Opportunity Act* 1984 (S.A.). At present these opportunities are entirely absent.

A similar approach could be taken to reports of discrimination against households with children, allowing constructive information to be exchanged with Tenancies Branch, if s.52 *Residential Tenancies Act* 1995 (S.A.) remains on the statute book in its present form.

We recommend that a Tenants’ Advice and Advocacy Service be established as soon as possible in South Australia, as in all other States, to provide all tenants with information, advice, advocacy and support. The Service would have the unique capacity to monitor sex discrimination incidents – women’s practice is to mention these to housing contacts. This allows strategic responses that are presently not possible. The anticipated State Housing Plan presents a unique opportunity to incorporate a Tenants’ Service S.A. into the strategic development of South Australia’s housing future.

And then: homeless

A full 43% per cent of the women and 38% of the children whose experiences are described in this study became homeless when they failed to secure the accommodation they sought. Many of them attribute that at least in part to sex discrimination. The Rann Labor government has identified the reduction of homelessness in South Australia as one of the initial priorities for the Social Inclusion Initiative, directed by the Social Inclusion Board. It has been adopted as a Priority Action under Objective 6, Expanding Opportunity, of the *State Strategic Plan*. The specific target is to halve the number of rough sleepers by 2010. Some of the women (and children) in this study found themselves sleeping rough or living in a car.



They have very few options in the housing market. Low cost rental is very competitive: vacancy rates have been continuously low and costs high. Almost half of all private renters are low-income households and in South Australia in 2001 four out of five low income renters were in housing stress, paying more than 25% of their income on rent.²³

In 1992 the National Housing Strategy²⁴ was able to identify 'an expanded social housing sector' as a 'necessary complement' and the main 'safety net' for those affected by discrimination in the private rental market. However, public housing stock is now greatly reduced and is closely targeted to those most in need. It may be an option for some women affected by discrimination but is no panacea.

Other options that would repay investigation are the continued innovation of HomeStart products and the development of modern apartment-style boarding house accommodation for women.

HomeStart Finance has successfully launched a variety of products that enable people on modest incomes to purchase their homes. This allows them to move from the insecurity of rental to the secure tenure of ownership, even though they might not be eligible for housing finance from traditional lenders. Over 45% of new HomeStart clients in 2001-2002 were recipients of government allowances or benefits.²⁵ Women, and particularly women sole parents, are some of HomeStart's most reliable, determined and successful purchasers, despite operating very tight budgets.²⁶ Continuing development of new finance products enables HomeStart to extend the possibility of ownership to more clients. It will never be a universal remedy but it continues to expand the options for some.

Among other immediate actions to reduce homelessness, the Social Inclusion Board's Report *Everyone's Responsibility: Reducing Homelessness in South Australia* recommended the provision of budget priced serviced apartments. They would replace traditional boarding house accommodation and provide low cost basic independent living spaces. Traditional boarding houses have not always been safe options for women and women have not always been welcome there.²⁷ However, the proposed apartment model could provide another option for some women.

The greatest improvement in choice, and antidote to homelessness, however, would be a significant increase in affordable housing. The Social Inclusion Board emphasises the importance of this in *Everybody's Responsibility*. The Government has committed to increasing affordable housing in the *State Strategic Plan*. A target of Objective 6 is to 'encourage the provision of affordable housing in the community and so halve the number of South Australians experiencing housing stress (people paying more than 25% of their income on rent) within 10 years'. The imminent *State Housing Plan* is expected to prioritise the provision of affordable housing to meet emerging need.

Women's housing needs must be kept in focus as these developments are debated and progressed. Some means should be developed to ensure that they are monitored and communicated regularly and effectively to Government.



We recommend that Shelter S.A. explores with other interested parties the formation of a Women's Housing Group, to facilitate public discussion, monitoring and advocacy of women's housing issues and options in South Australia and to communicate these to Government in a regular and effective way.

Don't forget the children!

The 68 women who contributed their stories had 100 children when they encountered discrimination that they believe damaged their chances of finding a secure home. The Social Inclusion Board reported anecdotal evidence that family primary homelessness (sleeping out, living in cars or rough shelters) was increasing and was considered by some service providers to be the fastest growing sub-population of the primary homeless population.²⁸ A considerable body of research has highlighted the serious 'non-shelter' impacts on children of homelessness, frequent forced moves or other aspects of insecure housing.²⁹ Evidence suggests that physical and mental health, educational and social development and later life chances can all be seriously prejudiced by the experience of poor, inadequate or insecure housing.³⁰ These children are all our futures. Anything that damages them as seriously as this must be eliminated.

The good intentions behind s.52 of the *Residential Tenancies Act 1995* (S.A.), making it an offence to discriminate against tenants with children, have not been fulfilled. The section has lain dormant on the statute book. Its profile is so low that it has probably lost even the educative/deterrent value it may have had when new. It's time for other approaches to the problem to be researched. The criminalising of discriminatory behaviour had only a short history in Australia, with the exception of this section. A criminal law passed in South Australia against racial discrimination in 1966 was used in four prosecutions before being replaced by a more conventional civil statute. Section 52 had antecedents in North America as well as locally but it seems never to have been used. Sanctioning rather than compliance now seems inappropriate as well as unorthodox.³¹ Lack of use brings into question the value of the section. The current reviews of the *Residential Tenancies Act 1995* (S.A.) and the *Equal Opportunity Act 1984* (S.A.) offer a unique opportunity to consider how its purpose might best be achieved and which jurisdiction is most appropriate.

We recommend that s 52 of the Residential Tenancies Act 1995 (S.A.) is repealed and more effective approaches to the problem of housing discrimination against households with children are researched. A new legislative approach is required. The current reviews of both the Residential Tenancies Act 1995 (S.A.) and the Equal Opportunity Act 1984 (S.A.) present an excellent opportunity for reform.



The income factor

All the women who contributed to this study were on low incomes or government pensions or benefits. They were clear that several factors influenced their housing outcomes. In many cases, those factors included their low income. Access to public housing and to the low-cost part of the private rental market in South Australia is extremely competitive. Low incomes restrict the options available. Any disadvantaging distortion of the market, for example from discrimination, may be fatal to a person's ability to secure accommodation.

The Social Inclusion Board's report on homelessness, *Everybody's Responsibility*, reported widespread comment that Centrelink payments were inadequate and only covered the basics, without being sufficient to meet the costs of daily living, particularly housing costs.³² Research by Burke and Hulse categorically supports this, causing them to comment that 'income support levels are insufficient to meet essential needs' and pointing to the plight of sole parents as especially precarious.³³

It is not currently unlawful to discriminate against someone because of their low income, or because they are poor. Landlords and agents legitimately consider appropriate risk management: assessment of a factor going directly to an applicant's suitability for a tenancy. Issues of poverty are ultimately addressed by strategic change. Strong economic growth; real job opportunities (to enable workers to earn a living wage); the improvement of training options and school retention rates (preparing people for the labour market and for independence) and the provision of an adequate supply of affordable housing for purchasers and renters (so that shelter costs are manageable and sustainable): these address poverty. The *State Strategic Plan*, the imminent *State Housing Plan*, the work of the Social Inclusion Board: all indicate that the importance of these factors has been recognised and strategies identified to improve the situation. Time will tell what changes can be made.

However, where pure assumptions are made about capacity to pay, based, for example, on stereotypes of sole parents, beneficiaries or households offering a Housing Trust bond guarantee, this is not 'risk assessment', it is discrimination. If the rights of these members of society to be treated as 'equal before the law' are to be protected, discrimination on the grounds of social status and the origin of income and bond need to be included in the *Equal Opportunity Act* 1984 (S.A.) as grounds of unlawful discrimination. This is not to grant additional rights to such people, nor does it impinge on the proper commercial risk assessment exercises of business. It is a necessary move to rectify existing injustices and protect from discrimination.³⁴

It must be also emphasised that women's vulnerability in the market reflects the impact of sexism and sex discrimination writ large. Women continue to experience the major structural discrimination that still results in: lower wages; unequal childcare responsibilities; women constituting over 80 per cent of lone parent households (a group particularly vulnerable to insecure housing³⁵) and higher rates of casual and part-time employment.³⁶



In South Australia currently the Premier's Council for Women is undertaking useful, pro-active work to highlight issues such as these. The discrimination legislation and its institutions should, in principle, also have a central role to play. While the redress provisions relating to 'accommodation' in the *Sex Discrimination Act* 1984 (Cth) and the *Equal Opportunity Act* 1984 (S.A.) may be a real irrelevance to most women, the larger ambition of those Acts, attitudinal change to make the rhetoric the reality, remains highly relevant.

Recommendation to the Attorney General

We recommend that a new ground of discrimination is introduced into the State's Equal Opportunity Act 1984, namely that it should be unlawful in South Australia to discriminate against any person on the grounds of her or his social status (homeless, unemployed or in receipt of social security). In respect of accommodation, this addition should be drafted so as clearly to include discrimination against a person who proffers a Housing Trust bond guarantee.



6. CONCLUSIONS

THE QUESTIONS

The two principal research questions for this study were:

1. Do women perceive themselves to be the subject of discrimination when they look for accommodation? If so, on what grounds and with what result?
2. How do women respond to situations of perceived discrimination as they are looking for accommodation?

The answers

This preliminary study shows clear indications that women are being 'sexcluded' from accommodation: excluded by sex discrimination.

Do women believe they encounter sex discrimination when they're trying to find somewhere to live or trying to keep their rental homes?

Yes

They perceive sex discrimination right across the rental market: from landlords, agents, Housing Trust employees.

What impact does it have?

Homelessness; unsustainable housing costs; the risk of eviction; sub-standard accommodation conditions.

Is it just women who are affected?

No: 68 women in this study had 100 children. Unstable housing or homelessness risks these children's futures.

Do women make complaints to the Equal Opportunity Commission or to HREOC?

No.

Did these women know about the sex discrimination laws?

No.

Did they complain at all?

Some did – to housing or welfare agencies or friends and family.



Is any agency able to monitor sex discrimination in relation to housing in South Australia?

No

Is any agency able to provide information and education to the industry?

Yes.

The Commissioner for Equal Opportunity and the Tenancies Branch of the Office of Consumer and Business Affairs.

Is any agency able to provide information, support, advice and advocacy for women experiencing sex discrimination when they're looking for somewhere to live?

No

Is sex discrimination in housing a matter of public concern?

Yes

What responses are required?

- **More housing options for low-income women and for women with children.**
- **An agency that can monitor sex discrimination in the housing context: women see this as a 'housing' problem, not a separate 'discrimination' problem.**
- **Increased public awareness of the anti-discrimination laws.**
- **Training and information for the industry, to strengthen non-discriminatory practice.**



7. RECOMMENDATIONS

1. To the Minister for Housing

Tenants' Advice and Advocacy Service

We recommend that a Tenants' Advice and Advocacy Service be established as soon as possible in South Australia, as in all other States, to provide all tenants with information, advice, advocacy and support. The Service would have the unique capacity to monitor sex discrimination incidents – women's practice is to mention these to *housing* contacts. This allows strategic responses that are presently not possible. The anticipated State Housing Plan presents a unique opportunity to incorporate a Tenants' Service S.A. into the strategic development of South Australia's housing future.

2. To Ourselves and the Sector

South Australian Women's Housing Group

We recommend that Shelter S.A. explores with other interested parties the formation of a Women's Housing Group, to facilitate public discussion, monitoring and advocacy of women's housing issues and options in South Australia and to communicate these to Government in a regular and effective way.

3. To the Attorney General

Status discrimination should be unlawful

We recommend that a new ground of discrimination is introduced into the State's *Equal Opportunity Act* 1984, namely that it should be unlawful in South Australia to discriminate against any person on the grounds of her or his social status (homeless, unemployed or in receipt of social security). In respect of accommodation, this addition should be drafted so as to clearly include discrimination against a person who offers a Housing Trust bond guarantee.



4. To the Commissioner for Equal Opportunity

Research on effective strategies

A. *We recommend that* the Commissioner for Equal Opportunity, using the power in s 11(2) of the *Equal Opportunity Act 1984* should ‘institute, promote or assist in research, the collection of data and the dissemination of information relating to discrimination on the ground of sex, sexuality, marital status, pregnancy, race, impairment or age’ in the rental sector in South Australia, with the aim of developing effective strategies for the protection of women’s rights to be free from discrimination.

B. *We recommend that* consideration is given to ways in which general public awareness of the anti-discrimination laws can be increased in South Australia.

5. To the Commissioner for Consumer and Business Affairs and the Commissioner for Equal Opportunity

Better protection for households with children

We recommend that s 52 of the *Residential Tenancies Act 1995* is repealed and more effective approaches to the problem of housing discrimination against households with children are researched. A new legislative approach is required. The current reviews of both the *Residential Tenancies Act 1995* and the *Equal Opportunity Act 1984* present an excellent opportunity for reform.



6. To the Commissioner for Consumer and Business Affairs and the Commissioner for Equal Opportunity

Education strategies strengthening non-discriminatory practice and cultures

A. *We recommend that* that the Commissioner for Consumer and Business Affairs and the Commissioner for Equal Opportunity collaborate to devise and deliver tenancy education initiatives to landlords and tenants detailing discrimination responsibilities and rights in relation to rental housing in South Australia.

B. *We recommend that* tenancy education initiatives from the Commissioner for Consumer and Business Affairs and the Commissioner for Equal Opportunity are designed for the whole rental sector, including public and community housing organisations. Their role as providers of accommodation requires constant vigilance to avoid discriminatory practice.

C. *We further recommend that* the Commissioners work with housing providers (through The Landlords' Association, the Housing Trust, Aboriginal Housing Authority, the Community Housing Council) and professional housing managers (through the Real Estate Institute of South Australia) to strengthen non-discriminatory institutional cultures.

The *State Strategic Plan* commits to a target of 200 fewer 'rough sleepers' by 2010. It also commits to increasing the provision of affordable housing in the community and halving the number of South Australians experiencing housing stress (people paying more than 25% of their income on rent) within 10 years. These initiatives are crucial to improving women's housing options in this State. Eradicating discrimination is a very long-term project.³⁷ In the meantime, housing provision must ensure that casualties of the market, including women 'sexcluded' from accommodation, can access safe, secure and affordable housing for the sake of their wellbeing, their children's prospects and all of our futures.



ENDNOTES

- ¹ Human Rights and Equal Opportunity Commission, 2003, *Annual Report 2002-2003*, Ch. 2 Table 20.
- ² Equal Opportunity Commission (South Australia), 2003, *Annual Report 2002-03*, Fig.6, p.21.
- ³ Shelter SA. 1999, *The Tenants' Verdict: South Australian Tenants' Experiences of the Private Rental Market* reported that 46% of respondents had encountered discrimination on a variety of grounds when seeking accommodation.
- ⁴ Chris Ronalds and Rachel Pepper, 2004, *Discrimination Law and Practice* 2nd ed, Federation Press, Leichhardt, NSW, p17.
- ⁵ Michele Slatter and Andrew Beer, 2003, *Housing Evictions in South Australia*, Australian Centre for Social Services Research, Adelaide, p. 9.
- ⁶ Slatter and Beer, n.5 above, p.11.
- ⁷ Anne Summers, 2003, *The End of Equality: Work, Babies and Women's Choices in 21st Century Australia*, Random House Australia, Milson's Point, NSW, is a passionate and detailed account of these changes; see particularly Ch. 6.
- ⁸ Miranda Devine, 2004, 'The New Sexism', *The Sunday Age Magazine*, August 8 2004.
- ⁹ Maryann Wulff and Chris Maher, 1998, 'Long term Renters in the Australian Housing Market' *Housing Studies* vol. 13 1998 pp. 1-8.
- ¹⁰ For example, Mr. A. C. Holding when the Victorian *Equal Opportunity Bill* was introduced in 1977: Victoria, 331 *Parliamentary Debates*, Legislative Assembly, 6 April 1977, 734(b).
- ¹¹ W. B. Creighton, 1978, 'The Equal Opportunity Act –Tokenism or Prescription for Change' (1978) 11 *Melbourne University Law Review*, p. 503.
- ¹² For example, Margaret Thornton, 1990, *The Liberal Promise*, Oxford University Press, Melbourne, a classic text raising many facets of this issue.
- ¹³ Productivity Commission, 2004, *Report on the First Home Owners Grant*, AGPS Canberra, p.xviii.
- ¹⁴ Productivity Commission, 2004, n13 above.
- ¹⁵ Slatter and Beer, n.5 above, p.9.
- ¹⁶ Wulff and Maher, n 9 above.
- ¹⁷ Australian Bureau of Statistics, *Australian Social Trends 2002 Housing – Housing Arrangements – Renters* at [www/abs/gov/au/](http://www.abs.gov.au/) accessed on 9.09.02. The statistics are based on the Australian Bureau of Statistics *Australian Housing Survey*, ABS, Canberra, 1999.
- ¹⁸ Ronalds and Pepper, n.4 above, pp.117-8.
- ¹⁹ National Housing Strategy, 1992, *Housing choices: reducing the barriers*, AGPS, Canberra, p.27.
- ²⁰ Hazel Genn, 1999, *Paths to Justice What People Do and Think about Going to Law*, Hart Publishing, Oxford and Portland Oregon, pp.252-253.



- ²¹ Interview for Andrew Beer, Jo Baulderstone, Daphne Habibis, Margaret Reynolds, Michele Slatter (forthcoming) *Evictions and Housing Management* Final Report, Australian Housing and Urban Research Centre, Melbourne.
- ²² Chamberlain, C. and Johnson, G. 2000, *Early Intervention: a research paper prepared for the Victorian Homelessness Strategy*, Department of Human Services, Department of Human Services, Melbourne, p. 14; Social Inclusion Board, 2003 *Everyone's Responsibility: Reducing Homelessness in South Australia*, Department of Premier and Cabinet, Adelaide, p.12.
- ²³ Housing Management Council, 2003 *The South Australian State Housing Plan: Issues and Options Paper*, Adelaide, pp.99-101.
- ²⁴ National Housing Strategy, 1992, *Housing choice: reducing the barriers*, AGPS Canberra, pp.27-31.
- ²⁵ HomeStart Finance, 2002, *Annual Report 2001-2002*, HomeStart Finance, Adelaide.
- ²⁶ Gary Storkey, C.E.O. HomeStart Finance, personal communication to author.
- ²⁷ Anecdotal reminiscences of a boarding house owner to author, November 2003.
- ²⁸ Social Inclusion Board, 2003, n22 above, p11.
- ²⁹ Young, P., 2001, *Housing For Children: A Case for Non-Shelter Policy Drivers in Housing Assistance*, Conference Paper July 2001, 'Housing Imaginations', Cardiff, United Kingdom. p.5.
- ³⁰ J. Hobcraft, 2003, *Continuity and Change in Pathways to Young Adult Disadvantage: Results from a British Birth Cohort*, Centre for Analysis of Social Exclusion, CASE paper no.66, HMSO: London, p. 1.
- ³¹ Jill Morgan, 2002, 'Unlawful eviction and harassment' in Stuart Lowe and David Hughes (Eds), *The Private Rented Sector In a New Century*, Policy Press, Bristol, pp. 115-117.
- ³² Social Inclusion Board, 2003, n21 above, p.24.
- ³³ Terry Burke and Kath Hulse, 2002, *Sole Parents, Social Wellbeing and Housing Assistance*, Final Report, Australian Housing and Urban Research Institute, Melbourne, p. 41.
- ³⁴ For a fully-documented submission on this see: PILCH (Public Interest Law Clearing House) Homeless Person's Legal Clinic 203, *Promoting Equality: Homeless Persons and Discrimination* available at <http://www.pilch.org.au>
- ³⁵ Terry Burke and Liss Ralston, 2003, *Analysis of Expenditure Patterns and Levels of Indebtedness of Public and Private Rental Households 1975 to 1999*, Final Report, Australian Housing and Urban Research Institute, Melbourne, p. 27.
- ³⁶ Statistics digested from Premier's Council for Women, 2004, *Statistical Profile of Women in South Australia*, Department of Human Services Adelaide.
- ³⁷ See, for example the findings of the recent (2004) Australia Institute study *Work and Family Futures: how young Australians plan to work and care*, Australia Institute, Canberra.