

# A GLIMPSE OF THE INVISIBLE

## Sex discrimination in housing

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In 1992, the National Housing Strategy Report *Housing Choice: Reducing the Barriers*, offered a pragmatic assessment of discrimination in the housing area. Discrimination existed, it was unlikely to be eliminated and it would only be successfully addressed by the provision of more public housing.

The Report highlighted the differential impact of discrimination in housing: '(w)hile people of all income groups may experience discrimination, low to moderate income earners are particularly vulnerable to discrimination as their choice is restricted in other ways'. It went on to recommend a range of detailed policy responses but ultimately recognised that:

much depends on the supply-side response of an expanded social housing sector ... [Anti-discrimination] Legislation is unlikely to be enforced completely. Providers of both housing and housing finance will maintain prudential standards which constrain access to private tenures. Public or community provision of housing then, is a necessary complement if people are to secure appropriate and affordable housing.<sup>1</sup>

However, in a good example of the past being a different country, the Australian housing landscape has changed dramatically since *Housing Choice: Reducing the Barriers* was published. The changes have not been along the lines recommended by the Report. 'Supply-side responses' have gone out of fashion. The stock of public and community housing has not 'expanded'. Quite the opposite: it has decreased and is now targeted to 'those most in need'. Federal policy has reduced the grants to states and territories to provide 'bricks and mortar' housing.

Instead, demand-side assistance into private rental — Commonwealth Rent Assistance — has ballooned.<sup>2</sup> Non-purchasing households are now expected to rent in the private rental market. Only a small minority of 'special needs' households may still hope to find accommodation in the public sector, which is increasingly 'welfare housing'. The recent housing boom has resulted in more rental properties, as more Australians have rushed to buy investment real estate. However, there has been a net loss of low-cost rental stock, resulting in a very competitive market and a widespread shortage of affordable private rental.<sup>3</sup>

So, in the light of all those changes, what has happened to discrimination? A recent anniversary prompted us to look at sex discrimination in rental housing.

### Something to celebrate?

In 1984, amid fervid public debate, Federal Parliament passed the *Sex Discrimination Act*. The Act is largely based on the *International Convention on the Elimination of Discrimination Against Women*. Its Long Title 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.

The Act is administered by the Human Rights and Equal Opportunity Commission (HREOC).

During 2003, the Sex Discrimination Commissioner's area on the HREOC website encouraged groups and individuals to celebrate the 20th anniversary of the federal *Sex Discrimination Act 1984*.

For those of us with an interest in housing ('accommodation') this was an intriguing invitation. 'Accommodation' in the Act is simply described as including 'residential and business accommodation'. The statistics in HREOC'S Annual Reports for each of 2002–2003 and 2003–2004 show just one single complaint about 'accommodation' in each of the years July 2002 to June 2003 and July 2003 to June 2004.<sup>4</sup> Nearly all the case studies illustrating the sex discrimination caseload concern employment issues. 'Accommodation' does not feature. Is accommodation now 'sex discrimination free'? Well, that *would* deserve a celebration!

But how would we know if we had something to celebrate? The statistics raised an interesting question: could we assume 'no cases = no problem'?

### Invisible but present?

It was a tempting suggestion. But somewhat disingenuous, given the recognised problem of under-reporting of discrimination cases<sup>5</sup> and the constant stream of anecdotal evidence we encountered indicating that women certainly experienced sex discrimination when trying to find or maintain a rental home.

### REFERENCES

1. National Housing Strategy, *Housing Choice: Reducing the Barriers* (1992) 27.
2. Blair Badcock and Andrew Beer, *Home Truths, Property Ownership and Housing Wealth in Australia* (2000) 96.
3. Judy Yates, Maryann Wulff and Margaret Reynolds, *Changes in the Supply of and Need for Low Rent Dwellings in the Private Rental Market: Final Report* (Australian Housing and Urban Research Institute, Melbourne, 2004) 8.
4. Human Rights and Equal Opportunity Commission (HREOC), *Annual Report 2002-2003* (2003), ch 2, table 20; HREOC, *Annual Report 2003-2004* (2004), ch 4, table 19.



We were also aware of a partial explanation for the invisibility of sex discrimination in this area: a misalignment between the problem and the process. The anti-discrimination Acts (federal and state/territory) require actions for redress to begin with the lodging of a complaint. The system is immensely impractical for home-seeking renters. It is a distraction when someone is desperately trying to avoid the threat of looming homelessness or urgent repairs: the dynamics do not 'fit'.

The realities of bringing and proving any complaint are daunting. The woman must:

- recognise the incident as discrimination
- be sufficiently aware of the law to realise there is an opportunity for redress
- have the time and conviction to be able to put her complaint in writing
- be confident enough to follow it through.

Anxiety about retaliation may inhibit some women from complaining at all, especially if they are likely to have repeat dealings with the agent or housing provider in question.

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. She may also be disheartened if she fears an unbridgeable gap between stating her perception and successfully proving discrimination. In the end, redress may not seem to justify the various costs of pursuing it. As Ronalds and Pepper comment:

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.<sup>6</sup>

Of course, if complaints are not lodged there is nothing to track: no profile of discrimination in the area of 'accommodation'.<sup>7</sup> It is invisible, closing doors in women's faces but leaving few other signs of its presence. It is more comprehensively invisible here than in areas where complaints are lodged only to be lost to sight through the process of confidential conciliation. In the 'accommodation' area there are not even the footprints of lodgement and settlement

in annual data — thus Commission statistics cannot constitute an index of discriminatory behaviour. Alternative inquiries must be made. We decided to ask women themselves about their experiences.

## A snapshot study

We undertook a short 'snapshot study' in the early months of 2004. Invitations to participate in the project were extended to agencies right across South Australia's housing sector. For most agencies the decision whether to participate was dependent on resource implications: could their staff add yet another task to their duties? Agencies that did take part offered women clients presenting during the data collection period of 1 February to 30 April 2004 the opportunity to complete an anonymous questionnaire. The fundamental question asked and explored was: 'Have you been treated unfairly in respect of housing?' In the event, five agencies participated.

In addition, the Tenancies Branch of the Office of Consumer and Business Affairs and South Australia's Equal Opportunity Commission logged inquiries about discrimination and accommodation over the same period. Finally, short interviews were carried out with key personnel in the Equal Opportunity Commission of South Australia, the Tenancies Branch of the Office of Consumer and Business Affairs, the Landlords' Association of South Australia Inc and the National Council of Single Mothers and Their Children.

This 'raincheck' methodology brought to light the experiences of 68 women in South Australia's rental market in the early months of 2004. They were of diverse ages, household types and ethnic and cultural origins. The only characteristics they shared were that they were all on low incomes and looking for, or living in, rental accommodation. (This was not by design). The findings of the study are indicative only. However, while they merely record a fragment of experience captured at a point in time, they outline a telling, and not very celebratory, picture.<sup>8</sup>

The women who gave us their stories all believed they had been treated unfairly. Instances of discrimination were described across the rental sector: in the private market (from agents and landlords) and in public housing. They included several grounds of discrimination. Most women described sex discrimination, here including detrimental treatment because of their sex, because of their marital status and/or because they were accompanied by children.<sup>9</sup>

5. National Housing Strategy, above n 1, 27.

6. Chris Ronalds and Rachel Pepper, *Discrimination Law and Practice* (2nd ed, 2004) 117-8.

7. The South Australian Equal Opportunity Commission seems to be alone in documenting mere 'enquiry' data classified by area. Its Annual Report for 2002-2003 shows seven enquiries addressed to the Commission during that year on gender discrimination in relation to 'Accommodation, Land, Housing' out of a total of 3910 enquiries received: *South Australian Equal Opportunity Commission Annual Report 2002-2003* (2003) 20, fig 1.

8. A complete description of the project, including methodology, findings and recommendations is included in the report *Sexcluded? Women, Homes and Sex Discrimination 2004: A Snapshot Study* funded and published by Shelter SA, Adelaide <[www.sheltersa.asn.au/sexcluded.pdf](http://www.sheltersa.asn.au/sexcluded.pdf)> at 18 January 2005.

9. This last ground is unlawful in South Australia under s 52 of the *Residential Tenancies Act 1995* and could therefore have been a potential source of 'complaint' under that Act.

## Nearly all the case studies illustrating the sex discrimination caseload concern employment issues. 'Accommodation' does not feature.

Most suffered a tangible detriment such as being refused a lease, being required to pay higher rent, being evicted early or being relegated to the 'back of the queue' for repairs or maintenance work. Almost half ended up homeless. One hundred children were involved in these women's households and were subjected to homelessness, insecurity or inadequate housing with their mothers.

None of the women involved knew of, or approached, the anti-discrimination agencies. Most made no complaint at all. Those who did complain treated their experience as a 'housing' issue and complained to 'housing' contacts (housing workers, real estate agents, the South Australian Housing Trust), or to family and friends, as they continued their search for a home or their battle to get repairs done.

From their stories, three principal themes stand out.

### 'It's a housing issue'

In treating the experience of discrimination as part of their housing experience, the respondents highlight several significant points.

#### Top priority: shelter

First, they emphasise their priority: finding a home or getting the repairs done. This endorses the analysis outlined by Ronalds and Pepper: an extrinsic process for 'discrimination' complaints sits poorly with the dynamics of accessing or securing housing.

#### Complaints behaviour

Second, in treating it as a 'housing' problem, the respondents define the boundaries of 'natural' or 'organic' complaints behaviour. Complaints will be made primarily to someone who can assist promptly and directly with the housing problem. Family and friends may help to 'let off steam' about it. As Genn comments in *Paths to Justice*: people can become 'so emotionally drained by the worry about the problem that even if they would normally feel competent and confident, at that particular time and in those particular circumstances they were not able to manage dealing with the problem. They did not want to be empowered, they wanted to be saved' (original emphasis).<sup>10</sup>

#### Non-complainers

Third, the study also highlights the high proportion of women who made no complaint at all: approximately two-thirds of the group. Almost half these women said they did not know where to go, and a quarter said there was 'no point' or 'too much hassle'. Genn's work

indicates that people select a conscious strategy of not complaining. Her study (across all classes and all types of 'justiciable issue') showed that non-complainers were more likely to have no educational qualifications and were much less likely to be educated to degree level than those who took action. They were also more likely to be looking after a home or family and to be living in rented accommodation. Their reasons conveyed:

a rather negative and powerless quality ... Failure to take action was generally not 'accidental' but the result of deliberate choice or a sense of helplessness, powerlessness, fear of acrimony or concern about cost.<sup>11</sup>

This supports the view that discrimination in the rental market will always be subject to considerable under-reporting, a factor that should be borne in mind when plans for affordable housing, community education or professional training are being developed.

#### Off the agenda

Fourth, the fact that none of the respondents or their contacts identified discrimination or the anti-discrimination agencies as relevant, highlights the need for community education, continuously re-presenting anti-discrimination laws. The rental market poses particular challenges in such work.

Tenants are a predominantly younger group, under 35.<sup>12</sup> When the federal anti-discrimination Act was passed in 1984 they would have been aged 15 or less: not necessarily an age to absorb and remember the finer details of socially transformative legislation.

Landlords generally own only one investment property. The proportion of Australian taxpayers with an investment property has almost doubled over the last decade,<sup>13</sup> 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.<sup>14</sup> However, 'hands-on' landlords, especially those not members of a Landlords' Association or Property Owners' Association, are hard to target with information. They may include a significant number specialising in low-cost rental, where tenants are especially vulnerable. The churning of landlords through the market therefore also underlines the importance of regular information initiatives.

Unfortunately it seems impossible now to rely merely on 'common knowledge'. Since the 1990s, sex discrimination has all but disappeared from public debate<sup>15</sup> so general public awareness of the law and its potential cannot be assumed, except perhaps in relation

10 Hazel Genn, *Paths to Justice What People Do and Think about Going to Law* (1999) 99-100.

11. Ibid 69.

12. Australian Bureau of Statistics, *Australian Social Trends 2002 Housing — Housing Arrangements — Renters* <[www.abs.gov.au/Ausstats/abs@.nsf/94713ad445ff1425ca25682000192af2/9b2fd09abceb81b0ca256bcd00827312!OpenDocument](http://www.abs.gov.au/Ausstats/abs@.nsf/94713ad445ff1425ca25682000192af2/9b2fd09abceb81b0ca256bcd00827312!OpenDocument)> at 24 January 2005. The statistics are based on the Australian Bureau of Statistics *Australian Housing Survey* (1999).

13. Productivity Commission, *Report on the First Home Owners Grant* (2004) xviii.

14. Michele Slatter and Andrew Beer, *Housing Evictions in South Australia: A Study of Bailiff-Assisted Evictions*, (Australian Centre for Community Services Research, Adelaide, 2003) <[www.flinders.edu.au/accsr/monograph.pdf](http://www.flinders.edu.au/accsr/monograph.pdf)> at 18 January 2005, 9.

15. Anne Summers, *The End of Equality: Work, Babies and Women's Choices in 21st Century Australia* (2003) is a passionate and detailed account of these changes; see particularly ch 6.

to employment where 'equal opportunity' has become more clearly entrenched.

## Monitoring

The respondents' experience suggests a significant role for housing advice agencies in monitoring discrimination in the rental market and making it more visible. A systematic overview of discrimination in the local rental sector allows a more strategic response than atomistic case-by-case challenges. The minority of women who pursue formal complaints may be supported by the agency. In addition, it may come across many 'informal' complaints of discrimination in the course of its general work. Such occasions can be monitored and their implications discussed with anti-discrimination agencies or with industry players. Such a role 'fits' with the dynamics of housing needs, unlike the Commission process. It also provides an opportunity for tenants' experiences to contribute to the strategic development of the sector.

## 'It made us homeless'

The second major theme running through the women's experiences is the serious impact discrimination had on them and their children.

Most believed that they had missed out on the offer of a lease because of discrimination. This resulted in two-thirds of them becoming homeless: living on the streets or in a car, moving into shelters or couch surfing around friends and relations with no space of their own. These women were accompanied into homelessness by 38 children.

Other respondents were required to pay a higher bond or rent (making them vulnerable to arrears and eviction) or were evicted early or were relegated to the bottom of repair/maintenance lists.

All 100 children in the respondents' households would have experienced the stress of living in uncertain and insecure conditions as their mothers tried to find a home or get repairs and maintenance done. 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. 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.<sup>16</sup> These children are our future. Discrimination and the lack of housing options for low-income women are compromising their life chances.

## 'And they assumed I wouldn't pay'

The third major theme of the women's stories describes the larger context of poverty and structural discrimination that shapes their lives, and those of their children.

All the women who contributed to this study were on low incomes or government benefits. They were clear that several factors influenced their housing outcomes. In many cases, those factors included their low income as well as sex discrimination. Access to public housing and to the low-cost part of the private rental market in South Australia, as elsewhere in Australia, is extremely competitive: demand exceeds supply. Any further distortion of the market, for example from discrimination, may currently be fatal to a person's ability to secure a home.

Anecdotal evidence has long suggested that Centrelink payments are inadequate and only cover some basics, without being sufficient to meet all the costs of essentials, including housing costs. 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.<sup>17</sup>

It is not currently unlawful to discriminate because someone is on a low income, a benefit, has a grant for their security bond or is poor. Issues of poverty are ultimately addressed by strategic change:

- strong economic growth
- real job opportunities (to enable workers to earn a living wage)
- improvement of training options with strong school retention rates (preparing people for the labour market and for independence)
- provision of an adequate supply of affordable housing for purchase or rent (so that shelter costs are manageable and sustainable).

Women continue to experience the major structural discrimination that still results in: lower wages; unequal childcare responsibilities; constituting over 80% of lone parent households (a group particularly vulnerable to insecure housing); and higher rates of casual and part-time employment.<sup>18</sup> While the redress provisions relating to 'accommodation' in the legislation may be a real irrelevance to most women in the rental market, the larger ambition of those Acts, attitudinal change to make their rhetoric the reality, remains highly relevant.

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16. P Young, *Housing For Children: A Case for Non-Shelter Policy Drivers in Housing Assistance* (2001) 5; J Hobcraft, *Continuity and Change in Pathways to Young Adult Disadvantage: Results from a British Birth Cohort* (Centre for Analysis of Social Exclusion, 2003) 1.

17. Terry Burke and Kath Hulse, *Sole Parents, Social Wellbeing and Housing Assistance*, (Final Report, Australian Housing and Urban Research Institute, Melbourne, 2002) 41; see also Social Inclusion Board, *Everyone's Responsibility: Reducing Homelessness in South Australia* (Department of Premier and Cabinet, Adelaide, 2003) 11.

18. Statistics digested from Premier's Council for Women, *Statistical Profile of Women in South Australia* (Department of Human Services, Adelaide, 2004).