



**CORRUPTION AND CRIME COMMISSION
OF WESTERN AUSTRALIA**

Eligibility for Government Housing

**A report on a corruption prevention review of the
Government Employees' Housing Authority**

23 February 2007

ISBN : 0 9775105 6 5

© 2007 Copyright in this work is held by the Corruption and Crime Commission of Western Australia. Division 3 of the *Copyright Act 1968* (Commonwealth) recognises that limited further use of this material can occur for the purposes of 'fair dealing', for example, study, research or criticism, etc. Should you wish to make use of this material other than as permitted by the *Copyright Act 1968* (Commonwealth), please write to the postal address below.

This report and further information about the Corruption and Crime Commission of Western Australia can be found on the Commission's website at www.ccc.wa.gov.au.

Corruption and Crime Commission of Western Australia

Postal Address	PO Box 7667 Cloisters Square PERTH WA 6850
Telephone	(08) 9215 4888 1800 809 000 (toll free for callers outside Perth)
Facsimile	(08) 9215 4884
Email	info@ccc.wa.gov.au
Office Hours	8.30 am to 5.00 pm, Monday to Friday

Hon Nicholas Griffiths MLC
President
Legislative Council
Parliament House
PERTH WA 6000

Hon Fred Riebeling MLA
Speaker
Legislative Assembly
Parliament House
PERTH WA 6000

Dear Mr President
Dear Mr Speaker

In accordance with section 84 of the *Corruption and Crime Commission Act 2003*, I am pleased to present the Corruption and Crime Commission's report into Eligibility for Government Housing: A report on a corruption prevention review of the Government Employees' Housing Authority.

The opinions contained in this report are those of this Commission.

I recommend that the report be laid before each House of Parliament forthwith pursuant to section 93 of the *Corruption and Crime Commission Act 2003*.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Kevin Hammond', with a long horizontal stroke extending to the right.

Kevin Hammond
COMMISSIONER

23 February 2007

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
Background	1
The investigation	1
Corruption Prevention Review	2
Improvements implemented by GEHA.....	2
Recommendations	2
CHAPTER 1 - INTRODUCTION	5
1.1 Background to the Corruption Prevention Review.....	5
1.2 Corruption Prevention Review	5
1.3 Purpose of this Report.....	5
1.4 Scope of the Review	6
1.5 Report Structure	6
1.6 Machinery of Government Act Changes	6
1.7 Terms and Definitions	7
1.8 Acknowledgement	8
CHAPTER 2 - GOVERNMENT EMPLOYEES' HOUSING AUTHORITY	9
2.1 Role of GEHA.....	9
2.2 Provision of Accommodation to Government Employees	9
2.3 Pressure on Government Subsidised Housing	9
2.4 Financial Considerations	10
2.5 Equity Considerations	10
2.6 Section 28 of the GEH Act	11
2.7 Policies and Processes relating to Section 28 of the GEH Act	11
2.7.1 Eligibility Policy.....	11
2.7.2 GEHA Private Lease Agreement.....	12
2.7.3 Random Title Searches to Assist with Determining Eligibility.....	12
2.7.4 Policy and Process in Relation to the 50km Provision	13
2.7.5 Appeals against the Eligibility Policy	13
2.8 Future developments- Review of the Government Employees' Housing Act 1964	13
CHAPTER 3 - THE INVESTIGATION.....	15
3.1 The Case Studies.....	15
3.1.1 Case Study One	15
3.1.2 Case Study Two	15
3.1.3 Case Study Three	15
3.1.4 Case Study Four	16
3.2 Issues arising from the Investigation	16
3.2.1 Section 28 of the <i>GEH Act</i> – Eligibility issues	16
3.2.2 Inadequacies in Administrative and Communication Systems.....	17
3.2.3 Practical problems in assessing eligibility	17
3.2.4 The understanding of occupants as to their eligibility and notification responsibilities.....	17
3.3 The risk of misconduct	18
3.4 Opinion	18
CHAPTER 4 - THE CORRUPTION PREVENTION REVIEW	19
4.1 Background to Review Phases	19
4.2 Phase One: Media and Publicity	19
4.3 Phase Two: Addressing the alleged misconduct identified by the investigation.....	20
4.4 Phase 3: Information on the Investigation and Review	20

4.5	Phase 4: Administrative and Communication Improvements	20
CHAPTER 5 - ASSESSMENT AND RECOMMENDATIONS		27
5.1	Assessment and Outcomes of the Review	27
5.2	Recommendations for Further Action by GEHA	28
5.3	Further Action by the Commission	28
APPENDIX ONE		29
Commission Role and Functions		29
The Misconduct Function		29
The Prevention and Education Function		29
APPENDIX TWO.....		31
Definition of Misconduct under the Corruption and Crime Commission Act 2003		31
APPENDIX THREE.....		33
Government Employees' Housing Act 1964 - Section 28 - Determination of Tenancy.....		33
APPENDIX FOUR.....		35
GROH's Eligibility Policy- Applicants with an Interest in Residential Property.....		35
Applicants with an Interest in Residential Property		35
Policy		35
Practices/Procedures		35
APPENDIX FIVE.....		37
GROH's Eligibility Policy- Appeals Process		37
Appeals Process		37
Policy		37
Practices/Procedures		37
APPENDIX SIX		39
GEH Act and the Residential Tenancies Act 1987		39

EXECUTIVE SUMMARY

Background

GEHA was established in 1965 to provide housing for State Government employees working in regional areas of Western Australia.¹ It currently provides 4,200 properties that it either owns or leases from the private market in 250 locations across the state. GEHA charges some 60 Government agencies or sub-agencies either a market rent or a cost recovery rent. The agencies in turn charge their employees a subsidised rental based upon a Tenant Rent Setting Framework that has been endorsed by Cabinet.

GEHA housing is only provided if the tenant or their spouse or de facto partner do not own a property in which they might reasonably reside, within 50km of the occupant's place of employment.

The investigation

In early 2004, the Corruption and Crime Commission received a notification from the then Government Employees Housing Authority (GEHA) that a tenant of one of its properties may have been occupying the property and receiving subsidised rent to which they were not entitled. The employee had their employment terminated and was charged with fraud. The person was found subsequently found guilty and received a suspended imprisonment order.

Further allegations were made, and in view of their seriousness, the Commission commenced an investigation into the prevalence of this type of misconduct.

This investigation adopted a case study approach, examining 500 tenancies in five locations. It identified three cases where public officers were residing in GEHA accommodation whilst potentially ineligible to do so. A fourth case was identified by GEHA and added to the investigation. In each of the cases, it appeared that these officers or their spouse owned or had a financial interest in property in which they "might reasonably reside". Three of the cases led to the public officers moving out of the GEHA accommodation, and one was subsequently ruled to be eligible.

No charges were laid as a result of the investigation, however the Commission formed the view that there was a need to undertake a corruption prevention review to improve some of GEHA's administrative processes in order to reduce the risk of misconduct.

It was the Commission's first corruption prevention review following an investigation and was done with the complete cooperation of GEHA for which the Commission is appreciative.

The investigation raised the following issues:

- the difficulty of interpreting and applying section 28 of the *GEH Act* which deals with eligibility for GEHA housing;
- the inadequacy of GEHA's administrative and communication systems for assessing and monitoring eligibility for subsidised housing, and communicating information regarding eligibility to relevant stakeholders;

¹ On 1 July 2006 GEHA was renamed the Government Regional Officers Housing (GROH), and became a business unit of the Department of Housing and Works

- the practical problems of assessing and monitoring eligibility for GEHA accommodation; and
- the understanding of occupants of GEHA accommodation as to their eligibility.

In the Commission's opinion, these factors reduced both GEHA's ability to ensure that those residing in GEHA accommodation are eligible to do so, as well as the likelihood of potential misconduct being identified. These inadequacies also reduced the reasonable likelihood of securing a conviction where fraudulent activity had taken place. Although GEHA had already undertaken some improvements to relevant systems and procedures, in view of the alleged misconduct, it was considered prudent to address this issue in a more comprehensive manner.

Corruption Prevention Review

The review involved the following phases:

- Issuing a media statement regarding the Commission's investigation and corruption prevention review;
- Action to address the cases of alleged misconduct identified in the investigation;
- The provision of general information to all client agencies regarding the investigation and outcomes; and
- Short and long term activities to improve administrative systems and processes and enhance awareness of, and compliance with, eligibility requirements.

Improvements implemented by GEHA

GEHA had commenced the implementation of administrative improvements prior to the review, which also served as a catalyst for further change in areas such as resolving the status of tenants who are not eligible for GEHA housing, improving the awareness of eligibility by client agencies and tenants, and improving the records relating to the occupancy of GEHA properties.

Recommendations

The Commission has made six recommendations in this report. Specifically, it is recommended that:

1. As part of the current review of the *GEHA Act*, GEHA examine eligibility issues, including any process for the review of decisions concerning eligibility, and how they are dealt with in the current legislation, and obtain independent legal advice about eligibility criteria and the operation of section 28;
2. Following the review of section 28 as part of the review of the *GEH Act*, GEHA consider revising the eligibility policy to give greater clarity to occupants about eligibility;
3. Subsequent to this, GEHA examine the application forms to ensure that they adequately cater for the policy intentions of the *GEHA Act*. Once revised, ensure that the form is placed on the GEHA website;
4. GEHA conduct regular (preferably annual) awareness raising of eligibility

requirements, particularly with client agencies with a high turnover of occupants in GEHA accommodation;

5. GEHA continue to monitor the effectiveness of the means of information dissemination, such as occupants' handbooks and the website, to client agencies and occupants to ensure that GEHA policies and processes, especially those relating to eligibility and section 28, are understood and complied with; and
6. GEHA consider conducting random case study audits to monitor and identify any future cases of GEHA occupants who own accommodation in which they might reasonably reside.

The Commission commends GEHA on the prompt and comprehensive action it has taken within the confines of its current legislative environment to respond to the alleged misconduct. It is hoped that the measures taken and the publicity given to this issue will reduce the risk of misconduct by public officers in relation to eligibility for subsidised government housing.

CHAPTER 1 - INTRODUCTION

1.1 Background to the Corruption Prevention Review

In February 2004, the Government Employees Housing Authority (GEHA) notified the Corruption and Crime Commission (the Commission) that one of its regional officers had identified that the spouse of a GEHA occupant had purchased a GEHA property and had then leased it back to GEHA. The GEHA occupant (and spouse) remained in that property paying only subsidised rent to the department. This was despite provision made by section 28 of the *Government Employees Housing Act (GEH Act)*, for GEHA to terminate the tenancy of an occupant if they or their spouse own, or have an interest in, a property in which they could reasonably reside.

The former public sector employee had their employment terminated and was charged with fraud. The person was subsequently found guilty and received a suspended imprisonment order.

Subsequently the Commission received a number of further allegations that other officers may also be residing in GEHA accommodation when they were in fact ineligible to do so. In view of the seriousness of the allegations, the Commission decided to commence an investigation into the prevalence of this type of alleged misconduct.

No charges were laid as a result of the investigation, however the Commission formed the view that there was a need to review and improve some of GEHA's administrative processes in order to reduce the risk of potential misconduct. Further information on the investigation is found later in this report.

1.2 Corruption Prevention Review

Following the investigation and in cooperation with GEHA, the Commission commenced in early 2006 a review of some of GEHA's administrative systems and policies. This was the first time that the Commission, which was established in January 2004, had undertaken a corruption prevention review as a direct result of issues identified in a formal investigation.

The aims of the review were to address and resolve the alleged misconduct in the cases identified in the investigation and undertake improvements to systems to reduce the likelihood of misconduct.

1.3 Purpose of this Report

This report provides a public record of the Commission's investigation into suspected misconduct committed by public officers arising from their ineligibility to occupy GEHA accommodation and of a subsequent corruption prevention review of some of GEHA's administrative systems and processes. It also details how GEHA has responded to the allegations of suspected misconduct by examining and improving its systems and processes to reduce the risk and likelihood of misconduct in this area.

As a corruption prevention measure the report is intended to provide a stimulus for other public authorities to consider how their administrative systems and processes may contribute to or reduce the risk of misconduct.

1.4 Scope of the Review

The report's primary focus is the corruption prevention review of GEHA. This review focussed only on systems and processes relevant to the application of section 28 of the *GEH Act*. Thus the review did not explore in depth issues that did not bear on this aspect of GEHA's operations.

It is acknowledged that GEHA performs a range of functions and activities unrelated to determining eligibility. These functions and activities include property management and refurbishment, construction, leasing and sale of surplus property and are not the subject of this review.

In undertaking this cooperative review the Commission has relied on information provided by GEHA, as well as information obtained during the course of the investigation. The investigation involved a detailed analysis of GEHA and client agency documents and this analysis has been relied upon in writing this report.

1.5 Report Structure

Chapter 2 of the report provides introductory and background information. It details GEHA's role, as well as legislation and policies relating to section 28 of the *GEH Act*.

Chapter 3 provides details of the Commission's investigation into the prevalence of misconduct by public officers occupying GEHA accommodation when they were ineligible to do so.

Chapter 4 of the report contains details of the corruption prevention review jointly undertaken by the Commission and GEHA.

Finally, in Chapter 5, the Commission makes an assessment of the activities undertaken during the review to improve systems and policies and makes six recommendations to reduce the risk of misconduct in relation to the issue of eligibility for GEHA housing.

1.6 Machinery of Government Act Changes

On 1 July 2006, with the proclamation of the *Machinery of Government (Miscellaneous Amendments) Act 2006* (the Machinery of Government Act), GEHA merged with the State Housing Commission and was renamed the 'Housing Authority'.² GEHA now operates as the 'Government Regional Officers Housing' (GROH), a business unit of the Department of Housing and Works (DHW).

Up to the time of the merger, GEHA was governed by a Board of Management (the Board). The Housing Authority is governed by the Director General of DHW.

The *GEH Act*, as amended on 27 June 2006, remains in force. The Commission acknowledges that a review of legislation and practices pertaining to GROH is being conducted by DHW and wishes to provide assistance and input concerning that review.

In this report, references to GEHA will be maintained given that the administrative changes are relatively recent and because the events that give rise to the report took place prior to the proclamation of the *Machinery of Government Act*.

² Section 6 of the *Housing Act 1980*

1.7 Terms and Definitions

In this report the following terms and definitions are used:

CCC	<i>Corruption and Crime Commission</i>
CCC Act	<i>Corruption and Crime Commission Act 2003</i>
Client agency	<i>An agency that has been proclaimed a client agency under section 7 of the Government Employees' Housing Act 1964</i>
Criminal Code	<i>The Criminal Code</i>
DHW	<i>Department of Housing and Works</i>
DET	<i>Department of Education and Training</i>
GEH Act	<i>Government Employees Housing Act 1964</i>
GEHA/GROH	<i>Government Employees Housing Authority of WA (GEHA). With the proclamation on 1 July 2006 of the Machinery of Government (Miscellaneous Amendments) Act 2006, GEHA merged with the State Housing Commission and is renamed the 'Housing Authority'. GEHA now operates as the 'Government Regional Officers Housing' (GROH), a business unit of the Department of Housing and Works (DHW). As this report covers action prior to these legislative changes, when GEHA was still in existence, for the purposes of this report, GROH will generally be referred to as GEHA throughout.</i>
MOG	<p><i>Machinery of Government. The changes that occurred when the Machinery of Government (Miscellaneous Amendments) Act 2006 was proclaimed on 1 July 2006 mean that GEHA is no longer a statutory authority and is part of the Department of Housing and Works legislatively as well as administratively, although the organisation continues to use its current organisational structure.</i></p> <p><i>The changes to the GEH Act affected all references to the now abolished GEHA Board, which was previously the Authority, and these sections of the Act were repealed. The Authority is now vested in the Director General of the Department of Housing and Works. All other sections that make provision for GROH to provide accommodation for Government employees remain.</i></p>
Occupant	<i>Occupants are employees of government agencies who occupy government owned or leased accommodation at subsidised rates. Occupants are public officers, and therefore come within the jurisdiction of the CCC Act 2003.</i>

Public Officer	<i>The term public officer is defined in the Criminal Code. GEHA occupants, by virtue of their employment, are public officers and therefore fall within the jurisdiction of the CCC Act. In determining who is a public officer, each case must be considered on its own merits in view of the legislation applicable to that person.</i>
RT Act	<i>Residential Tenancies Act 1987</i>
Tenant	<i>Tenants may be both government agencies which are allocated housing to allocate to their employees; and GEHA where it leases accommodation from a private individual in order to make it available for government employees, i.e. it is the “head tenant”. Thus GEHA can be both a tenant and a lessor. Agencies whose employees occupy GEHA housing can be both tenants and sub-lessors.</i>
The Commission	<i>Corruption and Crime Commission Western Australia</i>

1.8 Acknowledgement

The Commission acknowledges the cooperation received from the Director and staff of GEHA in the course of this review and commends GEHA/GROH on the action taken to address the issues arising from the alleged misconduct identified by the Commission’s investigation.

CHAPTER 2 - GOVERNMENT EMPLOYEES' HOUSING AUTHORITY

2.1 Role of GEHA

GEHA was established by the *GEH Act*, which has been in force since 1965. The main objective of the *GEH Act* was to establish a government authority capable of providing adequate and suitable housing for government employees working in regional locations in Western Australia and to improve housing conditions for Government employees in rural and remote locations. GEHA currently provides housing to 60 Government agencies or sub-agencies in 250 locations from a stock of over 4,200 owned and leased properties.

Over time, GEHA's activities have changed, with greater emphasis in recent years on leasing accommodation from private owners, rather than owning all the properties it provides to occupants. The lease is between the investor and GEHA.

2.2 Provision of Accommodation to Government Employees

GEHA provides housing in response to the requirements identified by its client agencies. Properties are supplied through a mix of new construction, spot purchases and leases sought from the private market. The agencies in turn determine which of their employees are eligible for government housing and allocate their housing to those employees.

GEHA charges agencies either a market rent or a cost recovery rent. The agencies in turn charge their employees a subsidised rental based upon the Cabinet endorsed Tenant Rent Setting Framework³. The framework is audited by GEHA and administered by agencies.

Tenancy arrangements are managed by reference to the provisions of the *Residential Tenancies Act 1987* (see Appendix Six for further details).

2.3 Pressure on Government Subsidised Housing

It has been well documented in the press that there is considerable demand within the rental market in some regional areas of Western Australia, due in part to the resources boom in the State's northwest. The price of housing in some coastal areas is inflated compared with housing elsewhere in the state. In some areas new land is extremely difficult to obtain. In addition, in some areas mining companies are often not seeking to renew leases to GEHA as they wish to resume the properties for their own staff. This adds further pressure on limited housing stocks available to GEHA.

The following table provides information on market rents and maximum GEHA contributions in a number of regional locations. Contributions may be lower than those stated, or indeed, in the case of very hard to fill posts, are not required. Decisions about rental contributions by occupants are at the discretion of the client agency concerned.

³ http://www.housing.wa.gov.au/396_546.asp

Table 1: Examples of Department subsidies and maximum rental contributions in a range of WA regional locations in the 2005/06 Financial Year

GEHA PROPERTY TYPE	RENT CHARGED TO DEPARTMENT	MAX RENT CHARGED TO EMPLOYEE	SUBSIDY	SUBSIDY
	Per Week	Per Week	Per week	Per annum
BROOME 3 BEDROOM	\$360	\$112	\$248	\$12,896
BROOME 4 BEDROOM	\$480	\$145	\$335	\$17,420
BUSSELTON 3 BEDROOM	\$180	\$130	\$50	\$2,600
BUSSELTON 4 BEDROOM	\$250	\$168	\$82	\$4,264
KALGOORLIE 3 BEDROOM	\$370	\$110	\$260	\$13,520
KALGOORLIE 4 BEDROOM	\$495	\$141	\$354	\$18,408
KARRATHA 3 BEDROOM	\$550	\$112	\$438	\$22,776
KARRATHA 4 BEDROOM	\$750	\$145	\$605	\$31,460
KUNUNURRA 3 BEDROOM	\$400	\$80	\$320	\$16,640
KUNUNURRA 4 BEDROOM	\$480	\$103	\$377	\$19,604

The subsidy paid to cover market rent for a GEHA occupant can be substantial for each year of subsidy, as shown above. Over a period of years it may run into the tens or hundreds of thousands of dollars to each occupant.

2.4 Financial Considerations

There are significant unnecessary financial costs to agencies associated with occupants receiving subsidised housing to which they are not entitled. Occupants currently pay a nominal rent for GEHA accommodation, with their agency providing the balance of the total market rent. Where the balance of the market rent is a significant amount and the occupant is not entitled to the subsidised accommodation, the agency is clearly providing a major financial benefit to the occupant to which they are not entitled.

Apart from receiving significant subsidies to which they are not entitled, the public sector employee is also renting out their own property in which they could reasonably reside, generally for a considerably higher sum than the nominal rent they are paying for the subsidised accommodation.

2.5 Equity Considerations

In addition to the financial gains made by the GEHA occupant through occupying GEHA accommodation while ineligible to do so, there is considerable inequity where a person occupies subsidised housing to which they are not entitled and a potentially eligible applicant is denied subsidised housing. In most regional areas there is a greater demand for GEHA housing than there is supply and this effectively precludes

another eligible occupant from occupying that accommodation. This may have ramifications for agencies attracting and retaining quality staff if they decline a country position due to the fact that there is no GEHA accommodation available.

2.6 Section 28 of the GEH Act

Section 28 of the *GEH Act* provides a mechanism for GEHA to terminate the tenancy of any premises let where the tenant is an owner, or the spouse or de facto partner of an owner, of land where, in the opinion of the Authority, that tenant might reasonably reside. The relevant parts of section 28 of the *GEH Act* are set out in detail in Appendix Three.

There is no offence created by section 28 of the *GEH Act*. However, in cases where employees occupy GEHA accommodation while not eligible, this may amount to misconduct and/or contravention of the *Criminal Code*.

2.7 Policies and Processes relating to Section 28 of the GEH Act

In order to give practical effect to the legislation, GEHA has developed a number of policies and guidelines over time. The primary policy in relation to section 28 is the Eligibility Policy.

2.7.1 Eligibility Policy

While section 28 of the *GEH Act* enables the Authority to determine a tenancy, the Act does not provide any guidance as to what is meant by the term “might reasonably reside”.

To provide further guidance on this, in June 2000, the GEHA Board of Management (the Board) developed an Eligibility Policy following consultation with client agencies. The relevant parts of the current Eligibility Policy are set out in Appendix Four. The policy provides that the termination of tenancy can be considered if an occupant owns property that is *within 50km of the occupant's place of employment* (changed in June 2006 from *within 50km of the occupant's GEHA accommodation*), if the property is one in which they can reasonably reside.

Although “50km from the occupant's GEHA accommodation” was originally settled on as an appropriate understanding of “might reasonably reside”, the Commission understands that this policy decision has not always been popular with all of GEHA's stakeholders. However, for various reasons, it has not previously been the subject of challenge by agencies or occupants.

Until recent years, owing to the vast distances between towns in regional Western Australia, the practical distinction between the concepts ‘*within 50 km of the GEHA accommodation*’ and ‘*within 50 km of the occupant's place of employment*’ had rarely been an issue. For example, if a GEHA occupant owned a property within 50 km of his or her GEHA accommodation, it was usually in the same town in which the occupant worked. Thus whether or not the owned accommodation was within 50km of their place of work or within 50 km of their GEHA accommodation amounted to the same thing. However, there could conceivably arise a situation where a person could own accommodation within 50km of their GEHA accommodation, which was not within 50km of their place of employment. Upon closer scrutiny of this issue, due to cases arising from the Commission's investigation and review, the Board felt it more equitable to change the policy provision in June 2006 to refer to “*within 50km of*

the occupant's place of employment."

Whether a property is one in which an occupant 'might reasonably reside' may depend on the particular circumstances of the case, irrespective of the distance from the GEHA occupant's place of employment. For example, it would not be reasonable for an occupant to reside in their own one bedroom dwelling if there were several additional family members who permanently resided with the occupant of GEHA accommodation.

2.7.2 GEHA Private Lease Agreement

Private leasing agreements, which are increasingly undertaken by GEHA as an alternative to owning all GEHA accommodation, may also give rise to circumstances where section 28 may need to be applied. GEHA occupants may own accommodation and lease it back to GEHA. Section 28 comes into play where this owned accommodation is such that the GEHA occupant might reasonably reside in it. It does not, of course, apply where the owned accommodation is a vast distance from the occupant's place of employment, or unsuitable in terms of the nature of the accommodation.

As a result of information arising from the alleged misconduct mentioned above, from March 2005 GEHA amended the GEHA Lease Agreement, requiring the investors to declare they are not government employees who could reasonably reside in their owned premises in the town at the time the lease agreement is signed. It also requires them to make a declaration to GEHA if this changes during the term of the lease. The lease agreement states that if the owners are government employees who could reasonably reside in their owned accommodation, they will not be eligible for subsidised GEHA accommodation. This clause reflects the requirements implicit in section 28 and contained in GEHA eligibility policy. Lease agreements arranged prior to March 2005 do not include the new provision.

2.7.3 Random Title Searches to Assist with Determining Eligibility

Since 2002, in order to assist in the identification of occupants who are not eligible for GEHA accommodation due to owning property in which they might reasonably reside, GEHA has undertaken occasional surveys of key towns, comparing the title details of its leases with tenant details. In addition, GEHA undertakes a title search in relation to new private leases to ensure that the owner is not also a GEHA tenant. GEHA has recently commenced the process of routinely undertaking a title search on cases where it is believed an occupant or spouse may be residing in GEHA accommodation while owning property in which they might reasonably reside.

In order to be assured that there are no occupants in GEHA accommodation when they own accommodation in which they might reasonably reside, it would be necessary to conduct regular and comprehensive title searches of every GEHA occupant. This is clearly resource intensive. As searches are now done routinely on cases where it is believed a GEHA occupant owns accommodation in which they might reasonably reside, and due to the upgrading of administrative processes and the improvements in communication regarding eligibility, as described in this report, a judgement needs to be made as to the overall cost benefit of regular and comprehensive title searches.

2.7.4 Policy and Process in Relation to the 50km Provision

Although the Eligibility Policy articulated a 50km provision in relation to determining eligibility for accommodation, there was no further policy provision or guidelines for making decisions in relation to those cases that should be exempt from this provision. Cases where occupants owned accommodation within the 50km limit but still sought and/or were granted GEHA accommodation had, until that point, been considered by the GEHA Board on a case-by-case basis. Very few such cases had been brought to the Board.

In order to give some consistency to such cases, and in view of the rising numbers of cases brought forward for consideration outside the policy, in May 2006, during the period of review, GEHA developed a process and guidelines for deciding how to handle and make decisions on cases where a GEHA occupant owned property within 50km of their place of employment.

This process requires that where an occupant seeks to occupy GEHA accommodation and they own accommodation in which they might reside within 50km of their place of employment, they must put their case to the Board for consideration. Since May 2006 GEHA has provided forms for occupants to complete to provide further information on their case. During the first half of 2006, the GEHA Board considered several cases relating to eligibility in terms of the 50km policy provision. Exemptions were provided in some cases, primarily for operational reasons. An example of this is where the GEHA accommodation was within a national park and included housing accommodation as well as the visitor centre. In such a case, even though the officer owned accommodation in which they might reasonably reside within 50km of the place of employment, the park ranger was required to reside in the GEHA accommodation for park management purposes.

2.7.5 Appeals against the Eligibility Policy

An addendum was made to the policy in December 2004 to allow occupants to appeal an adverse decision made under section 28 of the *GEH Act*, in relation to the 50km limit. A very limited number of appeals against the policy have been heard, with most appeals arising following the recent attention given to the issue of eligibility. See Appendix Five for the current policy.

2.8 *Future developments- Review of the Government Employees' Housing Act 1964*

A review has commenced of the *GEH Act*. The terms of reference of the review are to examine existing legislation, policies and objectives and their consistency with current government policy and legislative directions.

CHAPTER 3 - THE INVESTIGATION

3.1 The Case Studies

As a result of allegations of misconduct concerning GEHA occupants who allegedly may not be eligible for GEHA accommodation, the Commission commenced an investigation in September 2005. This investigation adopted a case study approach, examining 500 tenancies in five locations, of GEHA's total 4200 occupants in 250 locations, to ascertain the prevalence of misconduct in relation to GEHA tenancies.

The investigation initially identified over 20 cases where GEHA occupants appeared not to be eligible to reside in GEHA accommodation. However, further examination revealed that GEHA's information on client details was not up to date, and this figure was reduced to three cases where public officers were residing in GEHA accommodation whilst potentially ineligible to do so. A fourth case was identified by GEHA and added to the investigation. In each of the cases, it appeared that these officers or their spouse owned or had a financial interest in property in which they "might reasonably reside".

The following is a brief synopsis of each case.

3.1.1 Case Study One

A public officer had resided in a GEHA property in a southwest town since the late 1990s. A few years prior to this, the officer had purchased a property in this town. In 2003 the officer and spouse purchased a further property in the same town. Both properties appeared to be ones in which they might reasonably reside. The officer continued to reside in GEHA accommodation, whilst potentially ineligible to do so. When contacted by their agency in relation to their eligibility, the officer vacated the GEHA property.

3.1.2 Case Study Two

A public officer in a northwest town was allocated GEHA accommodation in early 2002. Within 12 months the officer's spouse purchased a property in the same town with a GEHA lease intact. The officer remained in the GEHA residence while the spouse received rental income for the property leased to GEHA. As the officer's spouse owned a property in which it appeared they might reasonably reside, the officer was potentially ineligible for GEHA housing. When contacted by their agency in relation to their eligibility, the officer vacated the GEHA property.

3.1.3 Case Study Three

A public officer in a northwest town moved into GEHA accommodation in late 2001. Approximately two years later, in late 2003, the officer and spouse purchased a property together with four others, under a trust arrangement. Each couple has a third share in the property. It appeared that the property was similar to the one in which they resided and therefore one in which the family might reasonably reside. GEHA obtained a legal opinion in relation to this case. The legal opinion suggested that the person is not considered an "owner" in the context of section 28. Thus the person is considered to be eligible for GEHA accommodation and is entitled to remain in the house.

3.1.4 Case Study Four

A public officer had resided in GEHA accommodation since 2002. Approximately three years later, the officer purchased a property in a town about 30km away. The property appeared to be one in which the public officer might reasonably reside. When contacted by their agency in relation to their eligibility, the officer vacated the GEHA property.

Phase Two of the review, discussed later in this report, describes the action GEHA and client agencies took to address these four cases.

3.2 Issues arising from the Investigation

The Commission's investigation raised a number of issues, including:

- The difficulty of interpreting and applying section 28 of the *GEH Act*;
- The inadequacy of GEHA's administrative and communication systems for assessing and monitoring eligibility for subsidised housing and communicating information regarding eligibility to relevant stakeholders;
- The practical problems of assessing and monitoring eligibility for GEHA accommodation; and
- The understanding of occupants of GEHA accommodation as to their eligibility.

In considering what further action ought to be taken in relation to these cases, the Commission formed the view that due to a lack of awareness of eligibility policies by occupants and inadequacies in GEHA's internal administrative systems, it was difficult to establish an intent to defraud as required under the *Criminal Code*. As a result no charges were laid in relation to the alleged misconduct identified by the investigation.

3.2.1 Section 28 of the *GEH Act* – Eligibility issues

As the *GEH Act* is presently drawn, the determination of the question of whether an occupant remains or a prospective occupant is eligible for GEHA accommodation is problematic. The criterion for assessing eligibility is whether the Government employee concerned is the owner of property in which he or she 'might reasonably reside'. The *GEH Act* contains no guidance as to how this concept should be interpreted. There are no factors set out in the Act to assist GEHA in making determinations of eligibility.

Until the period of the review, few cases had come to the attention of GEHA where the application of section 28 might need to be considered, and there was no established process for considering these cases. Any cases that had come to light had been considered merely on a case-by-case basis. However, identification of four cases during the investigation required that this section be applied.

Although the 50km provision has been in place since 2000, when the GEHA Board first established the eligibility policy, the basis for the 50km policy provision is not clear and the Commission understands that it has at times been an area of contention. In addition, it was revealed during the Commission's investigation that knowledge of this 50km policy provision was possibly not clear to all GEHA occupants. This is despite such information being included in GEHA's *Occupants*

Handbook and in the departmental policy of some agencies. For example, DET's 2002 policy clearly states that employees who own, or whose spouse owns, accommodation in the locality of their appointment are not eligible for GEHA accommodation.

The Commission considers that the current eligibility policy should be reviewed to provide clearer information on how eligibility matters and determination of tenancy are handled.

3.2.2 Inadequacies in Administrative and Communication Systems

The investigation found some inadequacies in GEHA's administrative systems. These administrative inadequacies related to the systems and processes concerned with assessing eligibility for subsidised housing for public sector employees, and ensuring that current GEHA occupants are still eligible for GEHA accommodation.

The investigation also found an apparent lack of understanding of eligibility requirements by client agencies. This resulted, in part, from insufficient communication to ensure that GEHA occupants are aware that they have an obligation to report that they own, or have a financial interest in a property within 50kms of their rented GEHA property.

3.2.3 Practical problems in assessing eligibility

The triangular relationship between GEHA, client agencies and occupants provides a challenge to GEHA, which has responsibility under section 18 of the *GEH Act* for allocating housing to client agencies for occupation by their employees. GEHA does not, in most cases, have direct dealings with occupants in relation to eligibility.⁴ It is the client agency that determines which of their employees are eligible for subsidised GEHA accommodation and they hold a record of their employees' details. The final decision as to whether an employee remains eligible for subsidised housing is at the discretion of the employing agency, which pays the full cost for the provision of housing.

The ability of GEHA to monitor the eligibility of the occupants of agency-allocated accommodation depends, therefore, on the effective communication to GEHA of occupant details by the relevant agency. The occupancy of GEHA accommodation regularly changes and the difficulty of maintaining current occupant data and reviewing eligibility increases at peak periods, for example, prior to the start of each school year. In addition, GEHA does not have specific details of all occupants, for example in the case of shared accommodation. The lack of information available to GEHA under this arrangement partly contributed to the occurrence of the alleged misconduct.

3.2.4 The understanding of occupants as to their eligibility and notification responsibilities

The investigation identified a need to communicate to occupants of GEHA accommodation information about eligibility criteria at two levels. Firstly, there was a need to disseminate the information directly to the occupants themselves. Secondly, knowledge of the criteria was needed by officers of agencies allocated accommodation by GEHA.

⁴ GEHA does have direct dealings in relation to other issues, such as maintenance.

3.3 The risk of misconduct

As stated above, a failure to comply with section 28 of the *GEH Act* does not, of itself, give rise to an offence. However, a contravention of a public sector standard or code of ethics may give rise to a breach of discipline under the *Public Sector Management Act 1994* (the PSM Act).⁵ A serious breach of discipline may lead to dismissal⁶ and constitute 'misconduct' as defined in sub-section 4(d) of the *Corruption and Crime Commission Act 2003*.⁷ Further, there may also be criminal law consequences. For example, if an intent to defraud can be established an offence under section 409 of the *Criminal Code* may be able to be proved.

3.4 Opinion

In the Commission's opinion, the factors discussed above reduced GEHA's ability to ensure that those residing in GEHA accommodation are eligible to do so, and reduced the likelihood of potential misconduct being identified. These inadequacies also reduced the reasonable likelihood of securing a conviction where fraudulent activity had taken place. Although GEHA had already undertaken some improvements to relevant systems and procedures, in view of the alleged misconduct, it was considered prudent to address this issue in a more comprehensive manner.

⁵ Section 80 of the PSM Act

⁶ Section 86 of the PSM Act

⁷ See Appendix Two to this report

CHAPTER 4 - THE CORRUPTION PREVENTION REVIEW

The review was undertaken as a cooperative exercise between officers of the Corruption Prevention, Education and Research Directorate of the Commission and officers of GEHA. The Commission's aim was to consult with GEHA on its systems and processes relevant to the issues identified in the investigation and for GEHA to review and develop its policies, systems and processes as appropriate. The review was undertaken in a time of structural change for GEHA, with further change envisaged due to a planned legislative review.

During the review Commission officers and officers from GEHA jointly developed strategies to address the issues of concern raised in the investigation. A number of both short and long term activities were planned. These activities were designed to address the cases of alleged misconduct, to reduce the likelihood of future misconduct and to educate government employees about GEHA's legislation and policies relevant to their eligibility for GEHA accommodation.

The planned strategies and activities sought to strengthen and expand the measures which GEHA had implemented following the identification of cases where GEHA occupants were residing in GEHA accommodation while ineligible to do so. Thus a number of the measures described in this part were initiated prior to or during the period of investigation, prior to the commencement of the corruption prevention review.

4.1 Background to Review Phases

The review involved the following phases:

- Issuing a media statement regarding the Commission's investigation and corruption prevention review;
- Action to address the cases of alleged misconduct identified in the investigation;
- The provision of general information to all client agencies regarding the investigation and outcomes; and
- Short and long term activities to improve administrative systems and processes and enhance awareness of, and compliance with, eligibility requirements.

4.2 Phase One: Media and Publicity

A joint public statement by the Commission and GEHA *Review of Subsidised Rental Accommodation for Public Servants* was released on 14 December 2005.

An article *Awareness of Housing Rule* was published in the *InterSector* magazine on 15 February 2006 (page 5, Vol 12 No1), as part of the joint Commission and GEHA education and communication strategy.

These measures brought the issue of the alleged misconduct into the public domain and highlighted the cooperative nature of the work to be undertaken in the review.

4.3 Phase Two: Addressing the alleged misconduct identified by the investigation

Letters were sent by GEHA to the employing agencies for the four cases identified by the investigation, seeking clarification of their eligibility. The three agencies (two cases were from one agency) were asked to discuss the matter with their employees.

Issues about eligibility in relation to the four case studies have been resolved, with three occupants electing to vacate their GEHA properties. The fourth remains eligible for subsidised GEHA accommodation following a legal opinion obtained about the trust arrangement. No further action was necessary in relation to these occupants.

4.4 Phase 3: Information on the Investigation and Review

4.4.1 Information to Client Agencies

In January 2006, following formal notification to the three agencies whose employees were identified in the investigation, the Director of GEHA notified all chief executive officers of its client agencies of the outcome of the Commission's investigation and requested that they circulate the information to all of their employees living in GEHA accommodation. This information was sent to 36 agencies⁸ for distribution to their various units. GEHA asked client agencies to provide advice as to how this information was disseminated to their GEHA tenants, i.e. by letter, email, intranet, newsletters or personal contact.

Almost all agencies provided a response on how the information was distributed to their GEHA tenants and whether or not there were any additional cases of GEHA occupants who owned accommodation in which they might reasonably reside. Several enquiries were received from agencies and occupants regarding eligibility: these enquiries have been addressed. In addition, current and future occupants approached GEHA to clarify eligibility requirements, for example prior to purchasing or selling property within the 50km radius stipulated by GEHA policy, or prior to taking up positions in regional areas where they might have access to GEHA accommodation.

The high rate of responses from client agencies suggests that they have sought to ensure that all occupants are aware of eligibility requirements. Importantly, the large number of current and future occupants who have clarified their eligibility indicates an increased level of awareness of this issue.

4.4.2 Information to GEHA Officers

Information about the investigation and review was also sent electronically to all client agency Housing Liaison Officers, DHW and GEHA Regional Officers and DHW and GEHA officers in Perth.

4.5 Phase 4: Administrative and Communication Improvements

During the review, GEHA's administrative and communication measures were given increased focus, to improve understanding of and compliance with policies and

⁸ The 36 agencies cover all of the 60 agencies and sub-agencies that are separately invoiced by GEHA.

processes. These ongoing measures are intended to reduce the risk of misconduct, particularly in relation to eligibility for GEHA accommodation, and are detailed below.

4.5.1 Review of GEHA policies and processes

GEHA has commenced the process of reviewing relevant GEHA policies, processes and other written material such as the *Tenant Handbook* to ensure that requirements and processes outlined in legislation and policy are clearly communicated. Focus was placed on policies and processes concerning eligibility and monitoring of eligibility, the process for a tenant to make an appeal in relation to their eligibility, the process for managing cases where a GEHA occupant owned accommodation in which they potentially could reasonably reside, and strategies to raise awareness of eligibility. Following the MOG changes, GROH's policies have been updated to reflect organisational structural changes enacted through this legislation.

The review of the *GEH Act* was delayed until the Machinery of Government changes were enacted. This review has now commenced and is considering issues that may require legislative amendment. If legislative change is made, further review of policies may be required.

4.5.2 Register of Significant Breaches

In order to manage breaches of the RT Act (see Appendix Six), GEHA has developed a *Process to Manage Significant Breaches in GEHA Tenancies*, as well as a *Register of Significant Breaches*. To date, for administrative convenience, the few cases which have come to GEHA's attention where GEHA occupants own accommodation in which they potentially "might reasonably reside" have been included in the Register. This includes cases that have come to light both through GEHA knowledge or those advised to GEHA, as well as those cases where an exemption is sought from the 50km policy provision.

In addition, to ensure that there is a comprehensive view of this issue, cases which are at enquiry stage only, that is, the person is not yet a GEHA occupant or not yet an owner, have been included in the Register.

In the Commission's opinion, it would be prudent to create a separate register for cases involving eligibility issues. Such a record would assist the DHW to monitor the history and progress of cases, provide a reference point for GROH staff when giving advice on eligibility issues, assist staff to maintain a level of consistency of advice and provide an overview of relevant cases for consideration in policy making.

4.5.3 Strategies to Educate and Communicate

Given the rate of turnover of occupants in many locations served by GEHA, estimated to be at 40% to 50% every two years, the review focussed on the strategies used by GEHA to disseminate to occupants and client agencies information regarding eligibility criteria. Raising awareness also seeks to ensure that cases where GEHA occupants may not be eligible for GEHA accommodation are detected and addressed. These measures were given increased focus during the period of the review.

4.5.3.1 Information to client agencies and occupants

Prior to the review, in August 2004, as a result of the case identified in 2004 relating to a GEHA occupant allegedly occupying accommodation to which they were not

entitled, as well as another case identified in late 2003 relating to sub-letting of government accommodation for personal remuneration, GEHA sent a letter to the chief executive officers of all client agencies, requesting that a copy be sent to all of their GEHA tenants. The letter reminded agencies of GEHA policies in relation to eligibility and sub-letting.

As part of the current review, as noted above, information regarding eligibility was again communicated to client agencies in early 2006.

As a result of the review, in addition to the public statement issued at the commencement of the review and general information to client agencies about the Commission's investigation, GEHA plans regular awareness raising campaigns at times of peak changeover of tenants, such as the changeover of DET employees prior to the beginning of the school year, to ensure that future tenants are aware of their eligibility under the *GEH Act*. A further opportunity to highlight eligibility requirements occurs at the time of the annual inspection of property.

4.5.3.2 *GEHA Website*

GEHA publications, policies and information for agencies and occupants relating to tenancy matters are published on GEHA's website⁹. Revisions to the website have been undertaken since the alleged misconduct came to light, including publication of the amended *Application for GEHA Housing Form*.

4.5.3.3 *Occupant Handbooks*

In October 2003 the Occupants' Handbook was revised and expanded to include advice relating to eligibility and sub-letting and obligations under the RT Act.

This was the first time that information relating to eligibility under the GEHA legislation was included in the handbook. Eight thousand copies of the handbook were printed and these were distributed to client agencies, tenants (on request) and all of GEHA/DHW regional offices for distribution to new tenants when they occupied their GEHA homes. Information on the new handbook was conveyed to occupants, their agencies and regional field staff by way of information on GEHA's website, e-mail advice and the *GEHA News*.

The Occupant's Handbook was again revised and published in 2005, with 5,000 copies distributed to client agencies, occupants and regional offices for distribution to new and existing occupants. The section on eligibility for GEHA housing remained in the handbook, in a prominent position.

The handbook was again reissued in July 2006, and the issue of eligibility again given prominence at the beginning of the handbook. At the same time, a new initiative was introduced as a result of the review. The local GEHA office now sends new GEHA occupants a copy of the handbook when they commence their occupancy. The handbook is accompanied by a "Welcome" letter from the Director GEHA, encouraging occupants to familiarise themselves with their rights and responsibilities whilst living in GEHA accommodation.

It is vital that Occupant Handbooks are made available to occupants and that changes to GEHA policies and processes that impact on occupants are communicated to them. Although copies of the handbook were distributed to occupants when it was reissued, the Commission's investigation found that some

⁹ <http://www.housing.wa.gov.au/396.asp>

occupants nevertheless lacked knowledge of eligibility requirements. In some cases examined, although information was communicated to occupants, it could not be established that individual tenants had actually received the handbook. This made it difficult for it to be established that there was intent to defraud.

The new system of individually sending new occupants a copy of the handbook should ensure greater awareness of GEHA policies and procedures and also provides GEHA with information on precisely who has obtained this information. Other efforts to communicate eligibility policies are encouraged to ensure this important information is not overlooked.

4.5.3.4 *Outcome of education and awareness raising strategies*

Following the education and awareness raising activities that GEHA has undertaken during the review period, GEHA received a considerable number of enquiries from GEHA occupants or prospective GEHA occupants in relation to questions of eligibility. Matters were varied and included:

- A person who was considering purchasing a commercial property which had some limited accommodation attached;
- A GEHA occupant who owned undeveloped land;
- A person who was possibly to be transferred to a location where they owned property in which they might reasonably reside; and
- Information was requested as to whether ownership through a superannuation fund is considered ownership within the meaning of section 28 of the *GEH Act*.

These requests for information represent an increase in enquiries of that nature and are testament to the effectiveness of the awareness-raising which GEHA has undertaken. Previously, the level of inquiry to GEHA on eligibility had been minimal.

However, a note of caution needs to be sounded. Due to the high rate of turnover of occupants, initiatives to promote awareness of eligibility such as these need to be undertaken regularly to maintain a satisfactory level of awareness of GEHA policies and procedures.

4.5.4 *Application Forms*

4.5.4.1 *GEHA Form*

The *Application for GEHA Housing* form was developed to assist client agencies and GEHA to better manage the allocation of housing, to enable GEHA to provide housing relative to the number of occupants in the household and also to assist in planning for the change in demographics of each location.

Since being alerted to alleged misconduct in this area, GEHA has revised the *Application for GEHA Housing Form* for use by client agencies. This form makes reference to the issue of owned accommodation and contains a signed declaration. It has been circulated electronically to all client agency housing officers, DHW/GEHA regional officers and has been published on GEHA's website.

4.5.4.2 *DET and WAPOL application form*

In 2004-05 DET, GEHA's major client agency, added several questions pertinent to section 28 of the *GEH Act* to their *Application for GEHA Housing* form. This form

was reviewed again by DET and GEHA in October 2005 and the number of questions relating to eligibility and owned accommodation was expanded. The form includes a signed declaration by the employee when requesting GEHA accommodation through their agency. DET's form is published on the DET website¹⁰ and will also be published on GEHA's website.

WAPOL is developing an online version of the amended form for their use.

In view of the current examination of the *GEH Act*, the Commission recommends that the form (and any forms prepared for use by other client agencies) be further scrutinised to ensure that they adequately reflect the policy provisions intended by the *GEH Act*. The Commission also suggests that careful consideration be given to the advisability of using different forms, as this may create inconsistency in use.

4.5.5 Staff Training - Regional Seminars

Following the Commission's investigation, GEHA advised all GEHA and DHW staff with GEHA functions about the issue. This served to raise awareness of all staff involved in providing GEHA accommodation.

GEHA holds one regional seminar each year when most of GEHA's regional field staff meet in Perth to undertake training sessions and receive updates on key initiatives, including the actions required by field officers with respect to section 28. This is considered an invaluable forum for information exchange and networking. It is important that GEHA staff are well equipped to deal with enquiries relating to eligibility and section 28. Some of the cases identified claimed that they had received incorrect information from GEHA staff.

In April 2006, the Commission made a presentation to both regional and Head Office GEHA staff on misconduct, notification responsibilities and issues pertinent to working in the regional context.

4.5.6 Information and Records Management Systems and Processes

4.5.6.1 Client Management Files

Since 2003/04, for new occupants, GEHA has followed DHW policy of creating client management files, which track an occupant's entire occupancy history with GEHA. Details of occupants who commenced occupation before this date and are still at that same address are still registered under the old system, where information may be dispersed across a number of property related files. Using individual files for each occupant means that the total record of information on a particular occupant will be held on the one file and that it will be considerably easier to track information linked to a particular occupant.

This change represents an improvement in relation to GEHA's ability to track occupants and ensure those in GEHA accommodation are eligible and will assist in the identification of potentially ineligible cases.

4.5.6.2 Data Exchange with client agencies (system integration)

Obtaining and maintaining accurate information of occupants is important for GEHA to ensure that those occupying GEHA accommodation are eligible to do so. This has in the past sometimes proven to be a challenge. One reason for this is that only some of the occupant information has been provided to GEHA by client agencies. In

¹⁰ <http://www.det.wa.edu.au/education/>

addition, data management systems have not kept pace with occupant turnover.

Accommodation is allocated by GEHA to a client agency, which then allocates it to occupants. The client agency may allocate the accommodation to an individual occupant or, as shared housing, to more than one occupant, including occupant(s) from another agency. In the case of shared housing the client agency is the tenant and thus responsible for the accommodation.

In the past there has been exchange of occupant details between agencies and GEHA by phone or fax, although at times this has not been rigorously undertaken. In the case of shared housing, as the client agency is effectively the tenant and takes responsibility for the accommodation, GEHA is not provided with the details of each of the individual occupants. A further challenge to GEHA's ability to track occupant details is the high rate of turnover of occupants.

To improve the accuracy of GEHA's and DET's data on occupants, recent improvements have been made to data exchange between the two agencies. In December 2005 an electronic data exchange system was established between GEHA and DET, allowing a daily transfer of information about properties and tenants between GEHA's and DET's databases. GEHA can now track more readily an individual occupant, with a unique employee identifier, in relation to individual properties, which also have unique property identifiers. As officers from DET currently occupy nearly 50% of GEHA's total accommodation stocks and high turnover is very common, this is a significant step towards improving the capacity of GEHA and DET to monitor tenancies and for GEHA to ensure that those who occupy GEHA accommodation are eligible to do so.

Further improvements to systems which enhance GEHA's capacity to assess and monitor eligibility are encouraged.

CHAPTER 5 - ASSESSMENT AND RECOMMENDATIONS

5.1 *Assessment and Outcomes of the Review*

While it is acknowledged that GEHA had commenced the process of administrative improvements prior to the formal commencement of the review period, the review served as a catalyst for further change and had a number of important outcomes:

- Action has been taken by relevant agencies to resolve the status of those GEHA tenants who are not eligible for GEHA accommodation;
- The survey of all agencies which utilise GEHA accommodation suggested that there is a limited number of further cases where GEHA occupants are not eligible for GEHA housing, beyond the cases identified;
- Further cases identified by agencies during the review period have been addressed;
- The action taken by GEHA during the period of the review has also made a significant improvement to the level of awareness of client agencies and occupants with regard to eligibility requirements, with client agencies in most cases advising occupants individually of eligibility requirements;
- GEHA is now receiving regular enquiries from GEHA occupants and applicants for GEHA housing in relation to property they own or intend to buy or develop, in order to clarify their eligibility for accommodation;
- Training of GEHA and relevant DHW staff has included a focus on issues relating to eligibility and staff are therefore more likely to detect cases where occupants are not eligible for GEHA accommodation;
- Systems enhancements have assisted to improve the integrity of data;
- Measures planned by GEHA on an ongoing basis at strategic times during the year should assist to maintain a high level of awareness, with new tenants being informed of their eligibility; and
- Some legislative and policy questions largely arising from growing complexity of GEHA's operating environment have been identified. These issues are being addressed, and/or will be addressed in the current review of the *GEH Act*. These issues include the application of section 28 and interpretation of the term "owner" under section 28 of the *GEH Act*.

GEHA is commended on the prompt and comprehensive action it has taken within the confines of its current legislative environment to respond to the alleged misconduct. It is hoped that the measures taken and the publicity given to this issue will reduce the risk of misconduct by public officers in relation to eligibility for subsidised government housing.

5.2 Recommendations for Further Action by GEHA

As a result of the review, the Commission makes the following recommendations:

Recommendation 1

As part of the current review of the GEHA Act, GEHA examine eligibility issues, including any process for the review of decisions concerning eligibility, and how they are dealt with in the current legislation, and obtain independent legal advice about eligibility criteria and the operation of section 28.

Recommendation 2

Following the review of section 28 as part of the review of the *GEH Act*, GEHA consider revising the eligibility policy to give greater clarity to occupants about eligibility.

Recommendation 3

Subsequent to this, GEHA examine the application forms to ensure that they adequately cater for the policy intentions of the GEHA Act. Once revised, ensure that the form is placed on the GEHA website

Recommendation 4

GEHA conduct regular (preferably annual) awareness raising of eligibility requirements, particularly with client agencies with a high turnover of occupants in GEHA accommodation.

Recommendation 5

GEHA continue to monitor the effectiveness of the means of information dissemination, such as occupants' handbooks and the website, to client agencies and occupants to ensure that GEHA policies and processes, especially those relating to eligibility and section 28, are understood and complied with.

Recommendation 6

GEHA consider conducting random case study investigations to monitor and identify any future cases of GEHA occupants who own accommodation in which they might reasonably reside.

5.3 Further Action by the Commission

The Commission has welcomed the opportunity to work cooperatively with GEHA to address the issues arising from the alleged misconduct discussed in this report. The Commission proposes to monitor the progress of the recommendations contained in this report.

APPENDIX ONE

Commission Role and Functions

The Commission has a number of functions, relating to the prevention of misconduct and dealing with it when it occurs.

The Misconduct Function

Section 18 of the *Corruption and Crime Commission Act 2003* (the CCC Act) defines the 'misconduct function' and requires that 'an allegation about, or information or matter involving, misconduct is dealt with in an appropriate way'. Under section 18 the Commission, amongst other things, may receive and initiate allegations of misconduct.

'Misconduct' is defined in section 4 of the CCC Act (see Appendix 1). It occurs if a public officer corruptly acts or corruptly fails to act in the performance of the functions of office or employment. Misconduct also occurs when a public officer corruptly takes advantage of their office or employment to obtain a benefit for themselves or others, or, whilst acting in an official capacity commits an offence punishable by two or more years of imprisonment. A public officer misusing official information or material, or breaching the trust placed in an officer, is acting corruptly.

The Prevention and Education Function

The prevention and education function is provided for under section 17 of the CCC Act. The Commission undertakes this through activities such as analysing systems used within public authorities to prevent misconduct, providing information to, consulting with and making recommendations to public authorities and generally increasing the capacity of public authorities to prevent misconduct. The Commission's Corruption Prevention, Education and Research (CPER) Directorate works with the public sector and local government agencies and with other oversight bodies.

Further information on the Commission is found on the Commission's website at www.ccc.wa.gov.au

APPENDIX TWO

Definition of Misconduct under the Corruption and Crime Commission Act 2003

One of the two main purposes of the *Corruption and Crime Commission Act 2003* (the Act) is to ‘improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector.’¹¹

Misconduct is defined in s. 4 of the Act as follows:

Misconduct occurs if –

- (a) a public officer corruptly acts or corruptly fails to act in the performance of the functions of the public officer’s office or employment;*
- (b) a public officer corruptly takes advantage of the public officer’s office or employment as a public officer to obtain a benefit for himself or herself or for another person or to cause a detriment to any person;*
- (c) a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years’ imprisonment; or*
- (d) a public officer engages in conduct that –*
 - (i) adversely affects, or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of a public authority or public officer whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct;*
 - (ii) constitutes or involves the performance of his or her functions in a manner that is not honest or impartial;*
 - (iii) constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer; or*
 - (iv) involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of another person,*

and constitutes or could constitute –

- (v) an offence against the Statutory Corporations (Liability of Directors) Act 1996 or any other written law; or*
- (vi) a disciplinary offence providing reasonable grounds for the termination of a person’s office or employment as a public service officer under the Public Sector Management Act*

¹¹ Section 7A of the Act.

1994 (whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct).

APPENDIX THREE

Government Employees' Housing Act 1964 - Section 28 - Determination of Tenancy

Under section 28(1)(d) the Authority may determine the tenancy of any premises let:

28. Determination of tenancy

(1) The Authority may determine the tenancy of any premises let pursuant to the provisions of this Act in any case where the tenant-

(a) ...

(b) ...

(c) ...

(d) is an owner, or the spouse or de facto partner of an owner, of land where, in the opinion of the Authority, that tenant might reasonably reside.

The GEH Act defines "owner" in section 28(4):

For the purpose of subsection (1)(d) "owner", in relation to any land, means-

(a) a person authorised by the Crown to occupy land vested in the Crown pursuant to any lease, licence, concession or any other arrangement;

(b) a person entitled to the use, occupation and enjoyment of land of which a corporation is the registered proprietor in fee simple, or a specific part of that land, by virtue of a shareholding in that corporation held by that person expressly conferring that entitlement;

(c) a person entitled to-

(i) receive the rent of the land;

(ii) receive the rent of the land if the land were let at a rent; or

(iii) possession of the land for the time being as a beneficiary under a deceased estate or as a life tenant;

or

(d) a person who has agreed to purchase the land under a contract of sale, notwithstanding that title to that land has not passed to that person from the vendor.

APPENDIX FOUR

GROH's Eligibility Policy- Applicants with an Interest in Residential Property

The following is an extract from the Government Regional Officers' Housing Eligibility Policy, August 2006.

Applicants with an Interest in Residential Property

Policy

The power to determine a tenancy under section 28(1)(d) operates upon GROH's opinion as to when a tenant "might reasonably reside" in alternative accommodation.

Practices/Procedures

Section 28 of the *Government Employees' Housing Act 1964* is intended to deal with the situation where a tenant owns property that is within proximity (50 km) of the tenant's place of employment and in which the tenant could reasonably reside.

APPENDIX FIVE

GROH's Eligibility Policy- Appeals Process

The following is an extract from the Government Regional Officers' Housing Eligibility Policy, August 2006.

Appeals Process

Policy

An employee of a client agency has the right of appeal to the Director, GROH in the event that GROH accommodation has been refused under s.28 of the *Government Employees' Housing Act 1964* because:

- The employee or employees' spouse/partner owns a residential property within 50km of the place of employment; or
- The employee has been transferred to a town in which they or their spouse/partner own a residential property.

The employee who has been refused accommodation must be advised, in writing, of the adverse decision.

Practices/Procedures

The employee has the right of appeal to the Director, GROH.

The Director, GROH will consider appeals and make a decision on a case-by-case basis.

The "Appellant Information" form sets out the information required by GROH for consideration in the decision process and should accompany the appellant's letter of appeal.

APPENDIX SIX

GEH Act and the Residential Tenancies Act 1987

In order to understand the legislative environment within which GEHA operated (and GROH now operates) it is important to look at both the *GEH Act* and the Residential Tenancies Act 1987 (RT Act) and the relationships which exist or do not exist between the parties relevant to government subsidised housing.

The *GEH Act* empowered GEHA to set aside or allocate housing in the name of an agency and then let that housing directly to employees. GEHA provided housing for employees of agencies that were proclaimed as a client agency under section 7 of the *GEH Act*. The *GEH Act* also allowed for GEHA to lease housing to an agency to enable the department to sub-lease the housing to employees.

In response to demand from its client agencies, GEHA allocated a mix of owned and privately leased properties to client agencies for use by their employees. GEHA did not lease housing direct to employees; rather the provision of subsidised government accommodation to an employee was determined by the employee's agency, not GEHA. There was no formal tenancy agreement between GEHA and the tenant (the employee), nor was there a formal agreement between GEHA and its client agencies. GEHA was the grantor of a right of occupancy under the RT Act and was an "owner" as defined in that Act, regardless of whether the accommodation was owned by GEHA or leased from a private individual. The employee was the grantee of that right of occupancy and was therefore the "tenant" as defined in the RT Act. An employee's eligibility to occupy the housing arose by virtue of their employment with the department. The department was simply allocated the housing by GEHA. This arrangement enabled both GEHA and agencies to have some certainty in the management and forecasting of availability of housing stocks.

In simple terms agencies provided the accommodation to their employees and GEHA managed all tenancy arrangements. Although GEHA did not have a written tenancy agreement with the occupants of its houses, there was an implied agreement under the RT Act.

Action taken in relation to significant breaches of the RT Act was taken under the authority of the RT Act and using the processes outlined in that Act.

As part of the *Process to Manage Significant Breaches in GEHA Tenancies*, a *Register of Significant Breaches* was commenced in 2005. The Register of Significant Breaches recorded all significant breaches in GEHA tenancies. If an occupant was dissatisfied with GEHA's proposed action in relation to a significant breach, they had the opportunity to submit an appeal to the GEHA Board.