

RESIDENTIAL TENANCIES LEGISLATION AMENDMENT (FAMILY VIOLENCE) BILL 2018

Introduction and First Reading

Bill introduced, on motion by **Ms S. McGurk (Minister for Prevention of Family and Domestic Violence)** on behalf Mr W.J. Johnston (Minister for Commerce and Industrial Relations), and read a first time.

Explanatory memorandum presented by the minister.

Second Reading

MS S.F. MCGURK (Fremantle — Minister for Prevention of Family and Domestic Violence) [4.14 pm]:
I move —

That the bill be now read a second time.

Sadly, family violence continues to be a reality within our community. It takes many forms. It is not just physical violence. It includes financial abuse, sexual abuse, emotional abuse, stalking and cyber abuse. Family violence is not just something that occurs between a husband and wife. Family violence includes violence between extended family members, it includes elder abuse and it includes child abuse by family members. It also affects members of our lesbian, gay, bisexual, transgender, intersex community.

Although family violence knows no ethnic, gender, age or socioeconomic boundaries, we know that some people within our community are more vulnerable than others. Women represent by far the greatest proportion of victims of family violence and Aboriginal women are substantially more at risk than non-Aboriginal women. The elderly within our community are also vulnerable as they become increasingly dependent on family members and others for assistance with day-to-day tasks. Regardless of who is a victim, it is undeniable that everyone has the right to live free of this violence. Data from the Western Australia Police Force and the Australian Bureau of Statistics tells us that the rate of family violence in Western Australia grew in 2015 and 2016. For example, in 2015–16, reports to the WA police of family violence exceeded 34 000. In that year and the following year, 2016–17, the former Department for Child Protection and Family Support stated that over 50 000 incidents of family and domestic violence were reported to the agency—an increase of 25 per cent since 2014–15.

The McGowan Labor government is committed to taking decisive action on family violence. The Residential Tenancies Legislation Amendment (Family Violence) Bill 2018 is a fundamental step in producing better outcomes for victims of family violence regarding their residential tenancy arrangements by giving them more choice and greater certainty about the outcomes. This bill is unashamedly victim focused. We do not shy away from that fact. In passing the amendments contained in this bill, Western Australia will be at the forefront of laws that provide better outcomes for victims of family violence regarding their tenancy arrangements.

One of the first questions that many people ask when confronted with a story about a victim of family violence is: “Why don’t they just leave?” Until now, one of the key reasons that victims of family violence have not felt able to leave a violent relationship has had to do with housing uncertainty. If a victim of family violence is locked into a fixed-term residential tenancy agreement and needs to leave their home at short notice, they will continue to be liable for the rent at those premises until either a new tenant is found or the tenancy period expires. This is at a time when they are trying to locate affordable alternative accommodation and find the funds needed to relocate. Far too many victims of family violence and their children have become homeless because they cannot afford rent for new premises while they continue to pay rent for their former premises. In Western Australia, the top reason for clients seeking homelessness assistance is because of family and domestic violence—42 per cent compared with 37 per cent nationally.

This bill amends the Residential Tenancies Act 1987 and the Residential Parks (Long-stay Tenants) Act 2006 to allow a victim of family violence who is a tenant to choose to leave their premises without penalty by issuing the lessor or park operator with a notice of termination, or if the victim wants to remain in the premises, they can apply to the court to have the perpetrator’s name removed from the tenancy agreement. This would mean the perpetrator would no longer have a legal entitlement to enter the premises. Another barrier that exists for victims of family violence is the liability they jointly incur with the perpetrator for any damage that occurs to the premises as a consequence of family violence. By holding to the principle of joint and several liability that attaches to many residential tenancy agreements, we are saying that the victim of family violence is somehow responsible for what has happened to them and to the rental premises as a consequence of family violence. This bill seeks to amend that principle and to hold perpetrators accountable for the consequences of their actions by empowering the court to assign liability to the perpetrator for tenancy-related debt, such as damage and unpaid rent.

Because a major cornerstone of this bill is to give victims of family violence the choice to remain in the premises, it is important that we also empower them to make the premises as safe as possible. Currently, under the residential tenancies and residential parks acts, a tenant can change the locks to the premises only if the lessor has given them

permission to do so. If the lessor lives up north, interstate or overseas, the simple task of obtaining the lessor's permission can take days or even weeks. That can be too long in cases of family violence. The bill will empower a person who has been or is at risk of being exposed to family violence to change the locks without having to obtain the permission of the lessor. The lessor will be entitled to a copy of any new key after the locks have been changed.

The bill also seeks to empower a tenant who has been a victim of family violence to affix certain security fixtures to the premises to prevent further family violence from occurring. It is expected that the types of changes that will be permissible include installing security screens on windows and doors, the installation of closed-circuit television cameras or the installation of locking devices on perimeter gates. The cost of making these alterations must be borne by the tenant and the premises must be restored to their original condition at the end of the tenancy agreement if the lessor requires the tenant to do so. The bill also seeks to prohibit the listing of a victim of family violence on a residential tenancy database. This is to ensure that they cannot be excluded from the tenancy market into the future. Child victims of family violence are also protected. The bill has been drafted to ensure that all of the protections available—leaving the premises, staying at the premises, changing the locks, and adding security features—will be available in circumstances in which a dependant of the tenant is the person at risk of family violence.

Some may ask what protections there are against using the provisions of this bill for vexatious purposes. I repeat: our priority in these reforms is victim safety. Having said that, full procedural fairness is preserved for all parties—victim and perpetrator, and tenants and landlords. A tenant cannot simply claim on their word to have been a victim of family violence in order to end a tenancy agreement. They will need to provide some form of independent evidence of family violence. This could be in the form of a restraining order, a family court order or a form signed by a prescribed professional who has been working with the victim tenant, such as a doctor, a psychologist or a child protection worker. In any proceedings before the court, all parties will have a right to be heard. Unfortunately, there is always a risk with any laws that people will try to use them in a way that was not intended. Although we have endeavoured to guard against the laws being used inappropriately in the ways I have just mentioned, if we made the laws so tight to prevent any possibility of them being misused, we run the very big risk of them becoming ineffective for the very people we are trying to assist.

In closing, this bill seeks to remove some of the burdens that have long been experienced by victims of family violence to empower them to make choices that may ultimately save their life. I commend the bill to the house.

Debate adjourned, on motion by **Ms L. Mettam**.