

Residential Tenancies Legislation Amendment (Family Violence) Bill 2018

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Western Australia

LEGISLATIVE ASSEMBLY

**Residential Tenancies Legislation Amendment
(Family Violence) Bill 2018**

A Bill for

An Act to amend the *Residential Tenancies Act 1987* and the *Residential Parks (Long-stay Tenants) Act 2006* to provide for termination of tenants' interests on the grounds of family violence, and for related matters.

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Residential Tenancies Legislation Amendment (Family Violence) Act 2018*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

1 **Part 2 — Residential Tenancies Act 1987 amended**

2 **3. Act amended**

3 This Part amends the *Residential Tenancies Act 1987*.

4 **4. Section 3 amended**

5 (1) In section 3 insert in alphabetical order:

6

7 *family violence* has the meaning given in the
8 *Restraining Orders Act 1997* section 5A(1);

9 *prescribed* means prescribed in the regulations;

10 *tenancy period*, in relation to a residential tenancy
11 agreement, means the whole period during which the
12 agreement is in force, whether the agreement is for a
13 fixed term or creates a periodic tenancy;

14

15 (2) In section 3 in the definition of *rent* delete “a period of the
16 tenancy;” and insert:

17

18 the tenancy period or part of the tenancy period;

19

20 **5. Section 17B inserted**

21 After section 17A insert:

22

23 **17B. Determination of rights and liabilities after**
24 **termination of tenant’s interest on grounds of**
25 **family violence**

26 (1) A tenant, or former tenant, under a residential tenancy
27 agreement may apply to a competent court for a
28 determination of the rights and liabilities of the parties
29 to the agreement once the former tenant’s interest in

s. 5

- 1 the agreement has been terminated under
2 section 60(1)(ba) or (bb).
- 3 (2) When hearing an application under subsection (1) or
4 section 71AE(3), the court —
- 5 (a) must determine the rights and liabilities of the
6 parties to the agreement, as affected by the
7 termination; and
- 8 (b) may order a party to pay compensation to
9 another party for loss or injury, other than
10 personal injury, relating to the termination.
- 11 (3) Without limiting subsection (2), a determination or
12 order under that provision may apportion the disposal
13 of a security bond to the lessor and each tenant or
14 former tenant as appropriate having regard to
15 subsection (4).
- 16 (4) Despite any law to the contrary, each tenant under a
17 residential tenancy agreement has an equal interest in
18 the security bond in respect of the agreement unless the
19 court in a particular case determines otherwise under
20 this section.
- 21 (5) In making a determination or order under
22 subsection (2), the court must have regard to all of the
23 following principles —
- 24 (a) that family violence is a fundamental violation
25 of human rights and is unacceptable in any
26 form;
- 27 (b) the need to prevent further victimisation of a
28 person who has experienced family violence
29 through the unjust application of the principle
30 of joint and several liability or the principle of
31 vicarious liability;
- 32 (c) the need to maximise the safety of persons who
33 have experienced family violence by reducing

- 1 any financial burden arising from the family
2 violence;
- 3 (d) the need to prevent, or reduce to the greatest
4 extent possible, the consequences of family
5 violence;
- 6 (e) the need to protect the wellbeing of children by
7 preventing them from being subjected or
8 exposed to further family violence;
- 9 (f) the need to encourage perpetrators of family
10 violence to accept responsibility for their
11 behaviour and the effect it has on others.
- 12 (6) Nothing in subsection (2) is to be read as enabling the
13 court to order compensation for early termination of a
14 residential tenancy agreement.
15

16 **6. Section 27C amended**

- 17 (1) In section 27C(4) delete “tenancy —” and insert:
18

19 tenancy or tenant’s interest in a residential tenancy
20 agreement —
21

- 22 (2) After section 27C(4) insert:
23

- 24 (4A) A person is taken to comply with subsection (4) if,
25 before the termination of a tenant’s interest, the
26 person —
- 27 (a) enters residential premises under
28 section 46(6B); and
- 29 (b) in relation to that entry —
- 30 (i) conducts an inspection of the premises;
31 and

s. 7

- 1 (ii) prepares a report describing the
2 condition of the premises; and
3 (iii) provides a copy of the report to the
4 tenant.
5

6 (3) In section 27C(5) delete “subsection (4)(a).” and insert:
7

8 subsection (4)(a) or (4A)(a).
9

10 **7. Section 29 amended**

11 After section 29(8) insert:
12

- 13 (9) Nothing in subsection (1)(a) prevents the lessor from
14 requiring further payment from a remaining tenant
15 towards the security bond in order to cover the disposal
16 of a former tenant’s portion of the security bond under
17 section 17B(3).
18

19 **8. Section 41 amended**

20 In section 41 delete “period of the tenancy.” and insert:
21

22 tenancy period.
23

24 **9. Section 43 amended**

25 (1) In section 43(1) in the definition of *prescribed period*:

- 26 (a) in paragraph (a) delete “in the regulations”;

1 (b) in paragraph (b) delete “longer period prescribed in the
2 regulations;” and insert:

3

4 prescribed longer period;

5

6 (2) In section 43(1) in the definition of *urgent repairs* paragraph (a)
7 delete “in the regulations”.

8 **10. Section 45 amended**

9 (1) In section 45:

10 (a) delete “It” and insert:

11

12 (1) It

13

14 (b) in paragraph (a) delete “prescribed in the regulations;
15 and” and insert:

16

17 prescribed; and

18

19 (c) in paragraph (c) delete “that” and insert:

20

21 that, except as provided in subsection (2),

22

23 (2) At the end of section 45 insert:

24

25 (2) It is a term of every residential tenancy agreement —

26 (a) that a tenant may alter or add any lock or other
27 means of securing the residential premises —

28 (i) after the termination of a person’s
29 interest in a residential tenancy
30 agreement under section 60(1)(bc); or

s. 10

- 1 (ii) in any event, if it is necessary to prevent
2 the commission of family violence that
3 the tenant suspects, on reasonable
4 grounds, is likely to be committed
5 against the tenant or a dependant of the
6 tenant;
- 7 and
- 8 (b) that the tenant must give to the lessor a copy of
9 the key to any lock or other means of securing
10 the residential premises altered or added under
11 paragraph (a) as soon as practicable, and in any
12 event within 7 days, after the lock or other
13 means of securing the residential premises has
14 been altered or added; and
- 15 (c) that the lessor must not give a copy of a key
16 referred to in paragraph (b) —
- 17 (i) to a person whose interest in the
18 residential tenancy agreement has been
19 terminated under section 60(1)(bc); or
- 20 (ii) in any event, to a person who the tenant
21 has instructed the lessor not to give the
22 copy of the key.
- 23 (3) A tenant who breaches a term referred to in
24 subsection (2)(b) without reasonable excuse, in
25 addition to any civil liability that the tenant might
26 incur, commits an offence.
- 27 Penalty for this subsection: \$5 000.
- 28 (4) Subsection (2)(b) does not apply if the lessor is a
29 person reasonably suspected of being likely to commit
30 the family violence referred to in subsection (2)(a)(ii).
31

1 **11. Section 46 amended**

2 (1) After section 46(2)(g) insert:

3

4 (ga) for the purpose of inspecting the premises and
5 assessing any damage after the termination of a
6 tenant's interest under —

7 (i) section 60(1)(ba) or (bb); or

8 (ii) section 60(1)(bc);

9

10 (2) After section 46(6) insert:

11

12 (6A) It is a term of every residential tenancy agreement that
13 the lessor may enter the premises under
14 subsection (2)(ga)(i) —

15 (a) not more than 7 days after receiving notice
16 under section 71AB(1) or 71AD(4); and

17 (b) not less than 3 days after giving notice to each
18 tenant of the lessor's intention to enter the
19 premises.

20 (6B) It is a term of every residential tenancy agreement that
21 the lessor may enter the premises under
22 subsection (2)(ga)(ii) —

23 (a) not more than 10 days before the hearing of the
24 application under section 71AE; and

25 (b) not less than 3 days after giving notice to each
26 tenant of the lessor's intention to enter the
27 premises.

28

s. 12

1 **12. Section 47 amended**

2 (1) In section 47(1) delete “A” and insert:

3

4 Except as provided in subsection (4), a

5

6 (2) After section 47(3) insert:

7

8 (4) It is a term of every residential tenancy agreement that
9 a tenant may affix any prescribed fixture, or make any
10 prescribed renovation, alteration or addition to the
11 premises (the *prescribed alterations*), necessary to
12 prevent entry onto the premises of a person —

13 (a) after the termination of the person’s interest in
14 a residential tenancy agreement under
15 section 60(1)(bc); or

16 (b) in any event, if it is necessary to prevent the
17 commission of family violence that the tenant
18 suspects, on reasonable grounds, is likely to be
19 committed by the person against the tenant or a
20 dependant of the tenant.

21 (5) For the purposes of subsection (4) —

22 (a) the cost of making the prescribed alterations
23 must be borne by the tenant; and

24 (b) work on the prescribed alterations must be
25 undertaken by a qualified tradesperson; and

26 (c) the prescribed alterations must be effected
27 having regard to the age and character of the
28 property and any applicable strata company
29 by-laws; and

30 (d) the tenant must restore the premises to their
31 original condition at the end of the residential

1 tenancy agreement if the lessor requires the
2 tenant to do so.

- 3 (6) Subsection (4) does not apply to —
4 (a) premises entered into the Register as defined in
5 the *Heritage of Western Australia Act 1990*
6 section 3(1);
7 (b) any other prescribed premises.

8
9 **13. Section 56A inserted**

10 After section 56 insert:

11
12 **56A. Discrimination against tenants subjected or exposed**
13 **to family violence**

14 A person must not refuse, or cause any person to
15 refuse, to grant a tenancy to any person on the ground
16 that the person —

- 17 (a) has been or might be subjected or exposed to
18 family violence; or
19 (b) has been convicted of a charge relating to
20 family violence.

21 Penalty: a fine of \$5 000.

22
23 **14. Section 59E amended**

24 After section 59E(2) insert:

- 25
26 (3) When a charge of an offence under subsection (1)
27 relates to a failure by the lessor to give the tenant a
28 copy of a key to the premises, it is a defence to the
29 charge to prove that —
30 (a) the copy of the key had been given to the lessor
31 under section 45(2)(b); and

s. 15

- 1 (b) the tenant was a person to whom the lessor was
2 instructed not to give the copy of the key under
3 section 45(2)(c)(ii).
4

5 **15. Section 59F amended**

- 6 (1) In section 59F(1) delete “section 45(b)” and insert:
7

8 section 45(1)(b)
9

- 10 (2) After section 59F(2) insert:
11

12 (2A) A lessor who breaches the term referred to in
13 section 45(2)(c) without reasonable excuse commits an
14 offence.

15 Penalty for this subsection: a fine of \$20 000.
16

17 **16. Section 60 amended**

- 18 (1) In section 60:

19 (a) delete “Despite” and insert:
20

21 (1) Despite
22

23 (b) after paragraph (b) insert:
24

25 (ba) in the case of a particular tenant’s interest in the
26 agreement, where the tenant —

27 (i) gives notice under section 71AB(1) of
28 termination of the tenant’s interest
29 together with at least 1 of the documents
30 required under section 71AB(2); and

- 1 (ii) vacates the premises on or after the
2 expiration of the period of notice
3 required under section 71AB(5);
- 4 (bb) in the case of a particular tenant's interest in the
5 agreement, where the tenant —
- 6 (i) gives notice under section 71AD(4) of
7 termination of the tenant's interest; and
- 8 (ii) vacates the premises on or after the
9 expiration of the period of notice
10 required under section 71AD(5);
- 11 (bc) in the case of a particular tenant's interest in the
12 agreement, where a competent court terminates
13 the tenant's interest under section 71AE;
14

15 (2) At the end of section 60 insert:
16

- 17 (2) The termination of a tenant's interest in a residential
18 tenancy agreement does not terminate the agreement in
19 respect of any other tenant under the agreement.
20

21 Note: The heading to amended section 60 is to read:

22 **How residential tenancy agreements and tenant's interests in**
23 **agreements are terminated**

24 **17. Section 67 amended**

25 (1) In section 67 delete "Notice of termination of a residential
26 tenancy agreement by the tenant shall —" and insert:

- 27
- 28 (1) Except as provided in subsection (2), a notice of
29 termination of a residential tenancy agreement, or of
30 the tenant's interest in the agreement, must —
31

s. 18

1 (2) At the end of section 67 insert:

2

3 (2) A notice given under section 71AB(1) must be in a
4 prescribed form.

5

6 **18. Part V Division 2A inserted**

7 After section 70 insert:

8

9 **Division 2A — Special provisions about terminating**
10 **tenant's interest on grounds of family violence**

11 **71AA. Terms used**

12 In this Division —

13 *DVO* has the meaning given under the *Domestic*
14 *Violence Orders (National Recognition) Act 2017*
15 section 4(1);

16 *Family Court injunction* means an injunction under
17 the *Family Court Act 1997* section 235 or 235A or the
18 *Family Law Act 1975* (Commonwealth) section 68B
19 or 114;

20 *premises*, in relation to a residential tenancy
21 agreement, means the residential premises to which the
22 agreement relates.

23 **71AB. Notice of termination of tenant's interest on ground**
24 **that tenant subject to family violence**

25 (1) Despite any other provision of this Act or another
26 written law or a requirement under a contract, a tenant
27 may give to the lessor notice of termination of the
28 tenant's interest in the residential tenancy agreement on
29 the ground that the tenant or a dependant of the tenant
30 is, during the tenancy period, likely to be subjected or
31 exposed to family violence.

- 1 (2) A notice under this section must be accompanied by a
2 document, applicable during the tenancy period,
3 comprising 1 of the following —
- 4 (a) a DVO;
- 5 (b) a Family Court injunction or an application for
6 a Family Court injunction;
- 7 (c) a copy of a prosecution notice or indictment
8 containing a charge relating to violence against
9 the tenant or a court record of a conviction of
10 the charge;
- 11 (d) a report of family violence, in a form approved
12 by the Commissioner, completed by a person
13 who has worked with the tenant and is 1 of the
14 following —
- 15 (i) a person registered under the *Health*
16 *Practitioner Regulation National Law*
17 *(Western Australia)* in the medical
18 profession;
- 19 (ii) a person registered under the *Health*
20 *Practitioner Regulation National Law*
21 *(Western Australia)* in the psychology
22 profession;
- 23 (iii) a social worker as defined in the *Mental*
24 *Health Act 2014* section 4;
- 25 (iv) a police officer;
- 26 (v) a person in charge of a women’s refuge;
- 27 (vi) a prescribed person or class of persons.
- 28 (3) The lessor must not disclose information in a document
29 provided to the lessor under subsection (2) to another
30 person except in accordance with this Act or another
31 written law.
32 Penalty for this subsection: a fine of \$5 000.

s. 18

- 1 (4) The lessor must ensure that information provided to the
2 lessor under subsection (2) is kept in a secure manner
3 so far as it is reasonably practicable to do so.
4 Penalty for this subsection: a fine of \$5 000.
- 5 (5) If a tenant gives notice under this section, the period of
6 notice must be not less than 7 days before the
7 termination day.

8 **71AC. Review of notice of termination under s. 71AB**

- 9 (1) In this section —
10 *terminating tenant* means a tenant who has given, or
11 purportedly given, notice of termination under
12 section 71AB.
- 13 (2) A lessor may, within 7 days after receiving a notice
14 under section 71AB, apply to a competent court to
15 review whether notice was validly given under that
16 section.
- 17 (3) In its review, the court —
18 (a) must examine whether the terminating tenant
19 has complied with section 71AB in giving the
20 notice; and
21 (b) cannot examine whether the terminating tenant,
22 or a dependant of the tenant, has been or might
23 be subject to family violence.
- 24 (4) If the court finds that notice was not validly given
25 under section 71AB, the court must make an order
26 declaring that the terminating tenant's interest in the
27 residential tenancy agreement has not been terminated,
28 otherwise the court must dismiss the application.

1 **71AD. Rights of co-tenants after notice under s. 71AB**

- 2 (1) In this section —
- 3 *co-tenant*, in relation to a notice under
- 4 section 71AB(1), does not include the tenant who gave
- 5 the notice.
- 6 (2) A lessor must give a copy of a notice received by the
- 7 lessor under section 71AB(1) to each co-tenant under
- 8 the residential tenancy agreement within 7 days after
- 9 receiving the notice.
- 10 (3) Nothing in subsection (2) requires or permits the lessor
- 11 to give a copy of a document provided under
- 12 section 71AB(2) to a co-tenant.
- 13 (4) The co-tenant may, not less than 7 days after receiving
- 14 the copy of the notice, give notice of termination of the
- 15 co-tenant's interest in the residential tenancy
- 16 agreement to the lessor.
- 17 (5) If a co-tenant gives notice of termination under
- 18 subsection (4), the period of notice must be not less
- 19 than 21 days before the termination day.

20 **71AE. Termination of tenant's interest by court on**

21 **grounds of family violence**

- 22 (1) In this section —
- 23 *excluded tenant* means a tenant against whom an order
- 24 is sought or made under subsection (2);
- 25 *family violence order* means a DVO, Family Court
- 26 injunction or other court order denying a tenant's right
- 27 of occupancy in premises under a residential tenancy
- 28 agreement;
- 29 *protected tenant* means a tenant for whose benefit an
- 30 order is sought or made under subsection (2).

s. 18

- 1 (2) Despite any other provision of this Act or another
2 written law, or a requirement under a contract, a court
3 may make an order terminating a tenant's interest in a
4 residential tenancy agreement if it is satisfied —
- 5 (a) that a family violence order is in force against
6 the excluded tenant; or
- 7 (b) that the excluded tenant has, during the tenancy
8 period, committed family violence against the
9 protected tenant or a dependant of the protected
10 tenant.
- 11 (3) The court may make the order on an application by any
12 of the following —
- 13 (a) the excluded tenant;
- 14 (b) a protected tenant;
- 15 (c) a prescribed person acting on behalf of the
16 protected tenant.
- 17 (4) Before making the order the court must consider the
18 following matters —
- 19 (a) the best interests of any child ordinarily
20 resident at the premises;
- 21 (b) the best interests of the protected tenant,
22 including, if the premises under the residential
23 tenancy agreement are social housing premises,
24 the ability of the tenant to meet any eligibility
25 criteria for those premises;
- 26 (c) the effect the order might have on the lessor
27 and any tenants other than the protected tenant;
- 28 (d) the effect the order might have on any pets kept
29 on the premises;
- 30 (e) the fact that perpetrators of family violence
31 might seek to misuse the protections offered to
32 tenants and lessors under this Act to further

1 their violence and the need to prevent that
2 misuse.

3 (5) The court is to have regard to the matter set out in
4 subsection (4)(a) as being of primary importance.

5 (6) The order takes effect on a day specified in the order,
6 being a day that is not less than 7 days and not more
7 than 30 days after the order is made.

8 (7) The court may make the order in proceedings under
9 this Act or the Act under which the family violence
10 order is made.
11

12 **19. Section 81A amended**

13 In section 81A(2) delete “section 60(e),” and insert:

14
15 section 60(1)(e),
16

17 **20. Section 82J amended**

18 Delete section 82J(2) (2nd occurrence) and insert:

19
20 (2A) Without limiting subsection (2)(b), the inclusion of the
21 applicant’s name or other personal information about
22 the applicant is unjust if the circumstances relating to
23 the listing result from the applicant being subjected or
24 exposed to family violence.

25 (2B) The court may order personal information about a
26 person in a residential tenancy database to be wholly or
27 partly removed, amended in a stated way or not listed
28 in a residential tenancy database.
29

s. 21

1 **21. Section 85 amended**

2 In section 85(1)(c) delete “circumstances specified in the
3 regulations, be given or served by electronic means in
4 accordance with the regulations.” and insert:

5

6 prescribed circumstances, be given or served by prescribed
7 electronic means.

8

9 **22. Section 88B inserted**

10 After section 88A insert:

11

12 **88B. Cross-examination of persons in proceedings**
13 **involving family violence**

14 The *Restraining Orders Act 1997* section 44C applies
15 to proceedings under this Act that involve family
16 violence as if references to the respondent were
17 references to the person allegedly committing the
18 family violence.

19

20 **23. Section 94 amended**

21 In section 94(3) delete “a market rate indicator specified in the
22 regulations.” and insert:

23

24 a prescribed market rate indicator.

25

24. Various penalties amended

In the provisions listed in the Table delete “Penalty:” and insert:

Penalty for this subsection:

Table

s. 11A(1)	s. 16(1)
s. 19(2)	s. 22(5)
s. 27C(1) and (4)	s. 27(1)
s. 28(1) and (2)	s. 29(1), (4), (6) and (8)
s. 32(7)	s. 33(1)
s. 34(1) and (2)	s. 51(1), (2), (3) and (4)
s. 53(1), (2) and (3)	s. 54(1)
s. 56(1) and (2)	s. 57(2A)
s. 59E(1)	s. 59F(1) and (2)
s. 63(3)	s. 80A(3), (4) and (6)
s. 82C(2)	s. 82D(2)
s. 82E(1)	s. 82F(1)
s. 82G(2) and (3)	s. 82H(2)
s. 82I(1) and (2)	s. 82K(2)
s. 82(2)	s. 93(1)
s. 95(3) and (4)	s. 96(2)

1 **Part 3 — Residential Parks (Long-stay Tenants)**
2 **Act 2006 amended**

3 **25. Act amended**

4 This Part amends the *Residential Parks (Long-stay Tenants)*
5 *Act 2006*.

6 **26. Section 21 amended**

7 After section 21(3) insert:

- 8
- 9 (4) Nothing in subsection (1) prevents the park operator
10 from requiring further payment from a remaining
11 long-stay tenant towards the security bond in order to
12 cover the disposal of a former long-stay tenant's
13 portion of the security bond under section 74C(3).
14

15 **27. Section 33 amended**

16 After section 33(2) insert:

- 17
- 18 (2A) A long-stay tenant's interest in a long-stay agreement
19 is terminated if the tenant has —
- 20 (a) given notice of termination under
21 section 45A(1) together with at least 1 of the
22 documents required under section 45A(2); and
- 23 (b) vacated the agreed premises on or after the
24 expiration of the period of notice required
25 under section 45A(5).
- 26 (2B) A long-stay tenant's interest in a long-stay agreement
27 is terminated if the tenant has —
- 28 (a) given notice of termination under
29 section 45B(4); and

1 (b) vacated the agreed premises on or after the
2 expiration of the period of notice required
3 under section 45B(5).

4 (2C) The termination of a long-stay tenant's interest in a
5 long-stay agreement does not terminate the agreement
6 in respect of any other long-stay tenant under the
7 agreement.
8

9 Note: The heading to amended section 33 is to read:
10 **How long-stay agreements and tenant's interests in agreements**
11 **are terminated**

12 **28. Section 38 amended**

13 (1) In section 38 delete "A notice of termination must —" and
14 insert:
15

16 (1) Except as provided in subsection (2), a notice of
17 termination must —
18

19 (2) At the end of section 38 insert:
20

21 (2) A notice given under section 45A(1) must be in a
22 prescribed form.
23

1 **29. Part 3 Division 4A inserted**

2 After section 45 insert:

3

4 **Division 4A — Special provisions about termination of**
5 **tenant's interest on grounds of family violence**

6 **45A. Notice of termination of tenant's interest on ground**
7 **that tenant subject to family violence**

- 8 (1) Despite any other provision of this Act or another
9 written law or a requirement under a contract, a
10 long-stay tenant may give to the park operator notice of
11 termination of the tenant's interest in an on-site home
12 agreement on the ground that the tenant or a dependant
13 of the tenant is, during the tenancy period, likely to be
14 subjected or exposed to family violence.
- 15 (2) A notice under this section must be accompanied by a
16 document, applicable during the tenancy under the
17 agreement, comprising 1 of the following —
- 18 (a) a DVO;
 - 19 (b) a Family Court injunction or an application for
20 a Family Court injunction;
 - 21 (c) a copy of a prosecution notice or indictment
22 containing a charge relating to violence against
23 the long-stay tenant or a court record of a
24 conviction of the charge;
 - 25 (d) a report of family violence, in a form approved
26 by the Commissioner, completed by a person
27 who has worked with the long-stay tenant and
28 is 1 of the following —
 - 29 (i) a person registered under the *Health*
30 *Practitioner Regulation National Law*
31 *(Western Australia)* in the medical
32 profession;

- 1 (ii) a person registered under the *Health*
2 *Practitioner Regulation National Law*
3 *(Western Australia)* in the psychology
4 profession;
- 5 (iii) a social worker as defined in the *Mental*
6 *Health Act 2014* section 4;
- 7 (iv) a police officer;
- 8 (v) a person in charge of a women's refuge;
- 9 (vi) a prescribed person or class of persons.
- 10 (3) The park operator must not disclose information in a
11 document provided to the park operator under
12 subsection (2) to another person except in accordance
13 with this Act or another written law.
14 Penalty for this subsection: a fine of \$5 000.
- 15 (4) The park operator must ensure that information
16 provided to the park operator under subsection (2) is
17 kept in a secure manner so far as it is reasonably
18 practicable to do so.
19 Penalty for this subsection: a fine of \$5 000.
- 20 (5) If a long-stay tenant gives notice under this section, the
21 period of notice must be not less than 7 days before the
22 termination day.

23 **45B. Rights of co-tenants after notice under s. 45A**

- 24 (1) In this section —
25 *co-tenant*, in relation to a notice under section 45A(1),
26 does not include the tenant who gave the notice.
- 27 (2) A park operator must give a copy of a notice received
28 by the park operator under section 45A(1) to each
29 co-tenant under the long-stay agreement within 7 days
30 of receiving the notice.

s. 30

- 1 (3) Nothing in subsection (2) requires or permits the park
2 operator to give a copy of a document provided under
3 section 45A(2) to a co-tenant.
- 4 (4) The co-tenant may, not less than 7 days after receiving
5 the copy of the notice, give notice of termination of the
6 co-tenant's interest in the long-stay agreement to the
7 park operator.
- 8 (5) If a co-tenant gives notice of termination under
9 subsection (4), the period of notice must be not less
10 than 21 days before the termination day.
11

12 **30. Section 58A inserted**

13 At the end of Part 4 Division 1 insert:
14

15 **58A. Discrimination against tenants subjected or exposed**
16 **to family violence**

17 A park operator must not refuse to enter into a
18 long-stay agreement with any person on the ground
19 that the person —

- 20 (a) has been or might be subjected or exposed to
21 family violence; or
- 22 (b) has been convicted of a charge relating to
23 family violence.

24 Penalty: a fine of \$5 000.
25

1 **31. Part 5 Division 3A inserted**

2 After section 74 insert:

3

4 **Division 3A — Orders relating to termination of**
5 **tenant’s interest on grounds of family violence**

6 **74A. Review of notice of termination under s. 45A**

7 (1) In this section —

8 *terminating tenant* means a long-stay tenant who has
9 given, or purportedly given, notice of termination
10 under section 45A.

11 (2) A park operator may, within 7 days after receiving a
12 notice of termination under section 45A, apply to the
13 State Administrative Tribunal to review whether notice
14 was validly given under that section.

15 (3) In its review, the State Administrative Tribunal —

16 (a) must examine whether the terminating tenant
17 has complied with section 45A in giving the
18 notice; and

19 (b) cannot examine whether the terminating tenant,
20 or a dependant of the tenant, has been or might
21 be subject to family violence.

22 (4) If the State Administrative Tribunal finds that notice
23 was not validly given under section 45A, the Tribunal
24 must make an order declaring that the terminating
25 tenant’s interest in the on-site home agreement has not
26 been terminated, otherwise the Tribunal must dismiss
27 the application.

s. 31

- 1 **74B. Termination of tenant’s interest by SAT on grounds**
2 **of family violence**
- 3 (1) In this section —
- 4 *excluded tenant* means a tenant against whom an order
5 is sought or made under subsection (2);
- 6 *family violence order* means a DVO, Family Court
7 injunction or other court order denying a long-stay
8 tenant’s right of occupancy in the agreed premises;
- 9 *protected tenant* means a tenant for whose benefit an
10 order is sought or made under subsection (2).
- 11 (2) Despite any other provision of this Act or another
12 written law or a requirement under a contract, the State
13 Administrative Tribunal may make an order
14 terminating a tenant’s interest in an on-site home
15 agreement if it is satisfied —
- 16 (a) that a family violence order is in force against
17 the excluded tenant; or
- 18 (b) that the excluded tenant has, during the tenancy
19 period, committed family violence against the
20 protected tenant or a dependant of the protected
21 tenant.
- 22 (3) The State Administrative Tribunal may make the order
23 on an application by any of the following —
- 24 (a) the excluded tenant;
- 25 (b) a protected tenant;
- 26 (c) a prescribed person acting on behalf of the
27 protected tenant.
- 28 (4) Before making the order the State Administrative
29 Tribunal must consider the following matters —
- 30 (a) the best interests of any child ordinarily
31 resident at the premises;
- 32 (b) the best interests of the protected tenant;

- 1 (c) the effect the order might have on the lessor
2 and any remaining tenants;
- 3 (d) the effect the order might have on any pets kept
4 on the agreed premises;
- 5 (e) the fact that perpetrators of family violence
6 might seek to misuse the protections offered to
7 long-stay tenants and park operators under this
8 Act to further their violence, and the need to
9 prevent that misuse.
- 10 (5) The State Administrative Tribunal is to have regard to
11 the matter set out in subsection (4)(a) as being of
12 primary importance.
- 13 (6) The State Administrative Tribunal must specify in an
14 order the day on which the order takes effect.
- 15 (7) The day specified under subsection (6) must be not less
16 than 7 days and not more than 30 days after the order is
17 made.

18 **74C. Determination of rights and liabilities after**
19 **termination of tenant's interest on grounds of**
20 **family violence**

- 21 (1) A long-stay tenant, or former long-stay tenant, may
22 apply to the State Administrative Tribunal for a
23 determination of the rights and liabilities of the parties
24 to the long-stay agreement once the former long-stay
25 tenant's interest in the agreement has been terminated
26 under section 33(2A) or (2B).
- 27 (2) When hearing an application under subsection (1) or
28 section 74B(3), State Administrative Tribunal —
- 29 (a) must determine the rights and liabilities of the
30 parties to the agreement, as affected by the
31 termination; and

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- 1 (b) may order a party to pay compensation to
2 another party for loss or injury (except personal
3 injury) relating to the termination.
- 4 (3) Without limiting subsection (2), a determination or
5 order under that provision may apportion the disposal
6 of the security bond to the park operator and each
7 long-stay tenant or former long-stay tenant as
8 appropriate having regard to subsection (4).
- 9 (4) Despite any law to the contrary, each long-stay tenant
10 under a long-stay agreement has an equal interest in the
11 security bond in respect of the agreement unless the
12 State Administrative Tribunal in a particular case
13 determines otherwise under this section.
- 14 (5) In making a determination or order under
15 subsection (2), the State Administrative Tribunal must
16 have regard to all of the following principles —
- 17 (a) that family violence is a fundamental violation
18 of human rights and is unacceptable in any
19 form;
- 20 (b) the need to prevent further victimisation of a
21 person who has experienced family violence
22 through the unjust application of the principle
23 of joint and several liability or the principle of
24 vicarious liability;
- 25 (c) the need to maximise the safety of persons who
26 have experienced family violence by reducing
27 any financial burden arising from the family
28 violence;
- 29 (d) the need to prevent, or reduce to the greatest
30 extent possible, the consequences of family
31 violence;
- 32 (e) the need to protect the wellbeing of children by
33 preventing them from being subjected or
34 exposed to further family violence;

1 (f) the need to encourage perpetrators of family
2 violence to accept responsibility for their
3 behaviour and the effect it has on others.

4 (6) Nothing in subsection (2) is to be read as enabling the
5 State Administrative Tribunal to order compensation
6 for early termination of a long-stay agreement.
7

8 **32. Section 94A inserted**

9 After section 94 insert:
10

11 **94A. Cross-examination of persons in proceedings**
12 **involving family violence**

13 The *Restraining Orders Act 1997* section 44C applies
14 to proceedings under this Act dealing with the issue of
15 family violence as if references to the respondent were
16 references to the person allegedly committing the
17 family violence.
18

19 **33. Schedule 1 clause 12 amended**

20 (1) In Schedule 1 clause 12(2) delete “It” and insert:
21

22 Except as provided in subclause (8), it
23

24 (2) After Schedule 1 clause 12(7) insert:
25

26 (8) It is a term of every on-site home agreement —

27 (a) that a long-stay tenant may alter or add any lock or
28 similar device to the agreed premises —

29 (i) after the termination of an excluded tenant’s
30 interest in a long-stay agreement under
31 section 74B; or

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- 1 (ii) in any event, if it is necessary to prevent the
2 commission of family violence that the
3 tenant suspects, on reasonable grounds, is
4 likely to be committed against the tenant or
5 a dependant of the tenant;
- 6 and
- 7 (b) that the tenant must give to the park operator a copy
8 of the key to any lock or similar device altered or
9 added under paragraph (a) as soon as practicable,
10 and in any event within 7 days, after the lock or
11 similar device has been altered or added; and
- 12 (c) that the park operator must not give a copy of a key
13 referred to in paragraph (b) —
- 14 (i) to an excluded tenant whose interest in the
15 long-stay agreement has been terminated
16 under section 74B; or
- 17 (ii) in any event, to a person who the tenant has
18 instructed the park operator not to give the
19 copy of the key.
- 20 (9) A long-stay tenant who breaches a term referred to in
21 subclause (8)(b) without reasonable excuse, in addition to
22 any civil liability that the tenant might incur, commits an
23 offence.
- 24 Penalty for this subclause: \$5 000.
- 25 (10) Subclause (8)(b) does not apply if the park operator is a
26 person reasonably suspected of being likely to commit the
27 family violence referred to in subclause (8)(a)(ii).
- 28 (11) A park operator who breaches a term referred to in
29 subclause (8)(c) without reasonable excuse, in addition to
30 any civil liability that the park operator might incur,
31 commits an offence.
- 32 Penalty for this subclause: a fine of \$20 000.
- 33

1 **34. Schedule 1 clause 13 amended**

2 (1) In Schedule 1 clause 13(2):

3 (a) in paragraph (g) delete “purchasers.” and insert:

4

5 purchasers; or

6

7 (b) after paragraph (g) insert:

8

9 (ga) for the purpose of inspecting the agreed premises
10 and assessing any damage after the termination of a
11 tenant’s interest under —

12 (i) section 33(2A) or (2B); or

13 (ii) section 74B.

14

15 (2) After Schedule 1 clause 13(2) insert:

16

17 (3) It is a term of every long-stay agreement that the park
18 operator may enter the agreed premises under
19 subclause (2)(ga)(i) —

20 (a) not more than 7 days after receiving notice of
21 termination under section 45A(1) or 45B(4); and

22 (b) not less than 3 days after giving notice to the
23 long-stay tenant of the park operator’s intention to
24 enter the agreed premises.

25 (4) It is a term of every long-stay agreement that the park
26 operator may enter the agreed premises under
27 subclause (2)(ga)(ii) —

28 (a) not more than 10 days before the hearing of the
29 application under section 74B; and

30 (b) not less than 3 days after giving notice to each
31 long-stay tenant of the park operator’s intention to
32 enter the agreed premises.

33

s. 35

1 **35. Schedule 1 clause 14 amended**

2 (1) In Schedule 1 clause 14(1) and (2) delete “A” and insert:

3

4 Except as provided in subclause (4), a

5

6 (2) After Schedule 1 clause 14(3) insert:

7

8 (4) It is a term of every long-stay agreement that a long-stay
9 tenant may affix any prescribed fixture, or make any
10 prescribed renovation, alteration or addition to the agreed
11 premises (the *prescribed alterations*), necessary to prevent
12 entry onto the agreed premises of a person —

13 (a) if the person is an excluded tenant whose interest in
14 a long-stay agreement has been terminated under
15 section 74B; or

16 (b) in any event, if it is necessary to prevent the
17 commission of family violence that the tenant
18 suspects, on reasonable grounds, is likely to be
19 committed by the person against the tenant or a
20 dependant of the tenant.

21 (5) For the purposes of subclause (4) —

22 (a) the cost of making the prescribed alterations must
23 be borne by the long-stay tenant; and

24 (b) work on the prescribed alterations must be
25 undertaken by a qualified tradesperson; and

26 (c) the prescribed alterations must be effected having
27 regard to the age and character of the property and
28 any applicable strata company by-laws; and

29 (d) the long-stay tenant must restore the agreed
30 premises to their original condition at the end of the
31 long-stay agreement if the park operator requires
32 the tenant to do so.
33

1 **36. Glossary amended**

2 (1) In the Glossary clause 1 insert in alphabetical order:

3

4 *DVO* has the meaning given under the *Domestic Violence*
5 *Orders (National Recognition) Act 2017* section 4(1);

6 *Family Court injunction* means an injunction under the
7 *Family Court Act 1997* section 235 or 235A or the *Family*
8 *Law Act 1975* (Commonwealth) section 68B or 114;

9

10 (2) In the Glossary clause 1 in the definition of *notice of termination*
11 delete “agreement” and insert:

12

13 agreement, or an interest in the agreement,

14

15 **37. Various penalties amended**

16 In the provisions listed in the Table:

17 (a) delete “Penalty:” and insert:

18

19 Penalty for this subsection:

20

21 (b) delete “Penalty:” and insert:

22

23 Penalty for this subclause:

24

25

Table

s. 7(2)	s. 9(2)
s. 11(2)	s. 12(1), (3) and (4)
s. 13(1)	s. 15(1), (2) and (3)

s. 37

s. 16(1), (2) and (3)	s. 17(1)
s. 20(2)	s. 21(1), (2) and (3)
s. 22(1)	s. 23(1), (2) and (3)
s. 25(1) and (2)	s. 26(2)
s. 28(1) and (2)	s. 41(5)
s. 59(1)	s. 87(1)
s. 93(3) and (4)	Sch. 1 cl. 12(5), (6) and (7)

1

