

Residential Tenancies Legislation Amendment (Family Violence) Bill 2018

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended in Committee)

**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

21

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

23

- 24 (4A) A lessor is taken to comply with subsection (4) if,
25 before the termination of a tenant’s interest, the
26 lessor —

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

31

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 in writing not
22 to give the 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: a fine of \$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) the tenant must give written notice to the lessor
25 of the tenant’s intention to make the prescribed
26 alterations; and

27 (c) work on the prescribed alterations must be
28 undertaken by a qualified tradesperson, a copy
29 of whose invoice the tenant must provide to the
30 lessor within 14 days of the alterations being
31 completed; and

- 1 (d) the prescribed alterations must be effected
2 having regard to the age and character of the
3 property and any applicable strata company
4 by-laws; and
- 5 (e) the tenant must restore the premises to their
6 original condition at the end of the residential
7 tenancy agreement if the lessor requires the
8 tenant to do so and, where restoration work has
9 been undertaken by a tradesperson, must
10 provide to the lessor a copy of that
11 tradesperson's invoice within 14 days of that
12 work having been performed.
- 13 (6) Subsection (4) does not apply to premises entered into
14 the Register as defined in the *Heritage of Western*
15 *Australia Act 1990* section 3(1) or in the register as
16 defined in the *Heritage Act 2018* section 4.
17

18 **13. Section 56A inserted**

19 After section 56 insert:
20

21 **56A. Discrimination against tenants subjected or exposed**
22 **to family violence**

23 A person must not refuse, or cause any person to
24 refuse, to grant a tenancy to any person on the ground
25 that the person —

- 26 (a) has been or might be subjected or exposed to
27 family violence; or
- 28 (b) has been convicted of a charge relating to
29 family violence.

30 Penalty: a fine of \$5 000.
31

s. 14

1 **14. Section 59E amended**

2 After section 59E(2) insert:

3

4 (3) When a charge of an offence under subsection (1)
5 relates to a failure by the lessor to give the tenant a
6 copy of a key to the premises, it is a defence to the
7 charge to prove that —

8 (a) the copy of the key had been given to the lessor
9 under section 45(2)(b); and

10 (b) the tenant was a person to whom the lessor was
11 instructed not to give the copy of the key under
12 section 45(2)(c)(ii).

13

14 **15. Section 59F amended**

15 (1) In section 59F(1) delete “section 45(b)” and insert:

16

17 section 45(1)(b)

18

19 (2) After section 59F(2) insert:

20

21 (2A) A lessor who breaches the term referred to in
22 section 45(2)(c) without reasonable excuse commits an
23 offence.

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

25

1 **16. Section 60 amended**

2 (1) In section 60:

3 (a) delete “Despite” and insert:

4

5 (1) Despite

6

7 (b) after paragraph (b) insert:

8

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

11 (i) gives notice under section 71AB(1) of
12 termination of the tenant’s interest
13 together with at least 1 of the documents
14 required under section 71AB(2); and

15 (ii) vacates the premises on or after the
16 expiration of the period of notice
17 required under section 71AB(5);

18 (bb) in the case of a particular tenant’s interest in the
19 agreement, where the tenant —

20 (i) gives notice under section 71AD(4) of
21 termination of the tenant’s interest; and

22 (ii) vacates the premises on or after the
23 expiration of the period of notice
24 required under section 71AD(5);

25 (bc) in the case of a particular tenant’s interest in the
26 agreement, where a competent court terminates
27 the tenant’s interest under section 71AE;

28

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1 (2) At the end of section 60 insert:

2

3 (2) The termination of a tenant's interest in a residential
4 tenancy agreement does not terminate the agreement in
5 respect of any other tenant under the agreement.

6

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

8 **How residential tenancy agreements and tenant's interests in**
9 **agreements are terminated**

10 **17. Section 67 amended**

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

13

14 (1) Except as provided in subsection (2), a notice of
15 termination of a residential tenancy agreement, or of
16 the tenant's interest in the agreement, must —

17

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

19

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

22

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

2 After section 70 insert:

3

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

6 **71AA. Terms used**

7 In this Division —

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

11 *Family Court injunction* means an injunction under
12 the *Family Court Act 1997* section 235 or 235A or the
13 *Family Law Act 1975* (Commonwealth) section 68B
14 or 114;

15 *premises*, in relation to a residential tenancy
16 agreement, means the residential premises to which the
17 agreement relates.

18 **71AB. Notice of termination of tenant's interest on ground**
19 **that tenant subject to family violence**

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

27 (2) A notice under this section must be accompanied by a
28 document, applicable during the tenancy period,
29 comprising 1 of the following —

30 (a) a DVO;

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

- 1 (5) If a tenant gives notice under this section, the period of
2 notice must be not less than 7 days before the
3 termination day.

4 **71AC. Review of notice of termination under s. 71AB**

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

25 **71AD. Rights of co-tenants after notice under s. 71AB**

- 26 (1) In this section —
27 *co-tenant*, in relation to a notice under
28 section 71AB(1), does not include the tenant who gave
29 the notice.
- 30 (2) A lessor must give a copy of a notice received by the
31 lessor under section 71AB(1) to each co-tenant under

s. 18

- 1 the residential tenancy agreement within 7 days after
2 receiving the notice.
- 3 (3) Nothing in subsection (2) requires or permits the lessor
4 to give a copy of a document provided under
5 section 71AB(2) to a co-tenant.
- 6 (4) The co-tenant may, within 7 days after receiving the
7 copy of the notice, give notice of termination of the
8 co-tenant's interest in the residential tenancy
9 agreement to the lessor.
- 10 (5) If a co-tenant gives notice of termination under
11 subsection (4), the period of notice must be not less
12 than 21 days before the termination day.

13 **71AE. Termination of tenant's interest by court on**
14 **grounds of family violence**

- 15 (1) In this section —
16 *excluded tenant* means a tenant against whom an order
17 is sought or made under subsection (2);
18 *family violence order* means a DVO, Family Court
19 injunction or other court order denying a tenant's right
20 of occupancy in premises under a residential tenancy
21 agreement;
22 *protected tenant* means a tenant for whose benefit an
23 order is sought or made under subsection (2).
- 24 (2) Despite any other provision of this Act or another
25 written law, or a requirement under a contract, a court
26 may make an order terminating a tenant's interest in a
27 residential tenancy agreement if it is satisfied —
28 (a) that a family violence order is in force against
29 the excluded tenant; or
30 (b) that the excluded tenant has, during the tenancy
31 period, committed family violence against the
32 protected tenant or a dependant of the protected
33 tenant.

- 1 (3) The court may make the order on an application by any
2 of the following —
- 3 (a) the excluded tenant;
- 4 (b) a protected tenant;
- 5 (c) a prescribed person acting on behalf of the
6 protected tenant.
- 7 (4) Before making the order the court must consider the
8 following matters —
- 9 (a) the best interests of any child ordinarily
10 resident at the premises;
- 11 (b) the best interests of the protected tenant,
12 including, if the premises under the residential
13 tenancy agreement are social housing premises,
14 the ability of the tenant to meet any eligibility
15 criteria for those premises;
- 16 (c) the effect the order might have on the lessor
17 and any tenants other than the protected tenant;
- 18 (d) the effect the order might have on any pets kept
19 on the premises;
- 20 (e) the fact that perpetrators of family violence
21 might seek to misuse the protections offered to
22 tenants and lessors under this Act to further
23 their violence and the need to prevent that
24 misuse.
- 25 (5) The court is to have regard to the matter set out in
26 subsection (4)(a) as being of primary importance.
- 27 (6) The order takes effect on a day specified in the order,
28 being a day that is not less than 7 days and not more
29 than 30 days after the order is made.
- 30 (7) The court may make the order in proceedings under
31 this Act or the Act under which the family violence
32 order is made.

s. 19

- 1 **71AF. Review of Division**
- 2 (1) The Minister must carry out a review of the operation
3 and effectiveness of this Division, and prepare a report
4 based on the review, as soon as practicable after the
5 3rd anniversary of the day on which this Division
6 comes into operation.
- 7 (2) Without limiting the scope of the review, the review
8 must address the following —
- 9 (a) the effect of this Division on lessors' rights to
10 recover debts owed by tenants;
- 11 (b) the effect of this Division on lessors' insurance
12 policies;
- 13 (c) the effect of this Division on contractual
14 certainty;
- 15 (d) the extent to which this Division affects
16 contractual obligations upon lessors and
17 co-tenants who are not perpetrators of family
18 violence and the impact of those obligations;
- 19 (e) such other matters as appear to the Minister to
20 be relevant.
- 21 (3) The Minister must cause the report to be laid before
22 each House of Parliament as soon as practicable after it
23 is prepared, but not later than 12 months after the
24 3rd anniversary.
- 25

26 **19. Section 81A amended**

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

28

29 section 60(1)(e),

30

1 **20. Section 82J amended**

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

3

4 (2A) Without limiting subsection (2)(b), the inclusion of the
5 applicant’s name or other personal information about
6 the applicant is unjust if the circumstances relating to
7 the listing result from the applicant being subjected or
8 exposed to family violence.

9 (2B) The court may order personal information about a
10 person in a residential tenancy database to be wholly or
11 partly removed, amended in a stated way or not listed
12 in a residential tenancy database.

13

14 **21. Section 85 amended**

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

18

19 prescribed circumstances, be given or served by prescribed
20 electronic means.

21

22 **22. Section 88B inserted**

23 After section 88A insert:

24

25 **88B. Cross-examination of persons in proceedings**
26 **involving family violence**

27 The *Restraining Orders Act 1997* section 44C applies
28 to proceedings under this Act that involve family
29 violence as if references to the respondent were
30 references to the person allegedly committing the
31 family violence.

32

s. 23

1 **23. Section 88 amended**

2 After section 88(2) insert:

3

4 (3) Regulations made under subsection (1) for the purposes
5 of section 47(4) or 71AB(2)(d)(vi) cannot come into
6 operation earlier than 6 months after they are published
7 in the *Gazette*.

8

9 **24. Section 94 amended**

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

12

13 a prescribed market rate indicator.

14

15 **25. Various penalties amended**

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

17

18 Penalty for this subsection:

19

20

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 **26. Act amended**

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

6 **27. 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 **28. 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 **29. 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 **30. 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, within 7 days after receiving the
5 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 **45C. Review of Division**

- 12 (1) The Minister must carry out a review of the operation
13 and effectiveness of this Division, and prepare a report
14 based on the review, as soon as practicable after the
15 3rd anniversary of the day on which this Division
16 comes into operation.
- 17 (2) Without limiting the scope of the review, the review
18 must address the following —
- 19 (a) the effect of this Division on lessors' rights to
20 recover debts owed by tenants;
- 21 (b) the effect of this Division on lessors' insurance
22 policies;
- 23 (c) the effect of this Division on contractual
24 certainty;
- 25 (d) the extent to which this Division affects
26 contractual obligations upon lessors and
27 co-tenants who are not perpetrators of family
28 violence and the impact of those obligations;
- 29 (e) such other matters as appear to the Minister to
30 be relevant.

- 1 (3) The Minister must cause the report to be laid before
2 each House of Parliament as soon as practicable after it
3 is prepared, but not later than 12 months after the
4 3rd anniversary.
5

6 **31. Section 58A inserted**

7 At the end of Part 4 Division 1 insert:
8

9 **58A. Discrimination against tenants subjected or exposed**
10 **to family violence**

11 A park operator must not refuse to enter into a
12 long-stay agreement with any person on the ground
13 that the person —

- 14 (a) has been or might be subjected or exposed to
15 family violence; or
16 (b) has been convicted of a charge relating to
17 family violence.

18 Penalty: a fine of \$5 000.
19

20 **32. Part 5 Division 3A inserted**

21 After section 74 insert:
22

23 **Division 3A — Orders relating to termination of**
24 **tenant's interest on grounds of family violence**

25 **74A. Review of notice of termination under s. 45A**

- 26 (1) In this section —
27 *terminating tenant* means a long-stay tenant who has
28 given, or purportedly given, notice of termination
29 under section 45A.

s. 32

- 1 (2) A park operator may, within 7 days after receiving a
2 notice of termination under section 45A, apply to the
3 State Administrative Tribunal to review whether notice
4 was validly given under that section.
- 5 (3) In its review, the State Administrative Tribunal —
6 (a) must examine whether the terminating tenant
7 has complied with section 45A in giving the
8 notice; and
9 (b) cannot examine whether the terminating tenant,
10 or a dependant of the tenant, has been or might
11 be subject to family violence.
- 12 (4) If the State Administrative Tribunal finds that notice
13 was not validly given under section 45A, the Tribunal
14 must make an order declaring that the terminating
15 tenant’s interest in the on-site home agreement has not
16 been terminated, otherwise the Tribunal must dismiss
17 the application.

18 **74B. Termination of tenant’s interest by SAT on grounds**
19 **of family violence**

- 20 (1) In this section —
21 *excluded tenant* means a tenant against whom an order
22 is sought or made under subsection (2);
23 *family violence order* means a DVO, Family Court
24 injunction or other court order denying a long-stay
25 tenant’s right of occupancy in the agreed premises;
26 *protected tenant* means a tenant for whose benefit an
27 order is sought or made under subsection (2).
- 28 (2) Despite any other provision of this Act or another
29 written law or a requirement under a contract, the State
30 Administrative Tribunal may make an order

- 1 terminating a tenant's interest in an on-site home
2 agreement if it is satisfied —
- 3 (a) that a family violence order is in force against
4 the excluded tenant; or
- 5 (b) that the excluded tenant has, during the tenancy
6 period, committed family violence against the
7 protected tenant or a dependant of the protected
8 tenant.
- 9 (3) The State Administrative Tribunal may make the order
10 on an application by any of the following —
- 11 (a) the excluded tenant;
12 (b) a protected tenant;
13 (c) a prescribed person acting on behalf of the
14 protected tenant.
- 15 (4) Before making the order the State Administrative
16 Tribunal must consider the following matters —
- 17 (a) the best interests of any child ordinarily
18 resident at the premises;
19 (b) the best interests of the protected tenant;
20 (c) the effect the order might have on the lessor
21 and any remaining tenants;
22 (d) the effect the order might have on any pets kept
23 on the agreed premises;
24 (e) the fact that perpetrators of family violence
25 might seek to misuse the protections offered to
26 long-stay tenants and park operators under this
27 Act to further their violence, and the need to
28 prevent that misuse.
- 29 (5) The State Administrative Tribunal is to have regard to
30 the matter set out in subsection (4)(a) as being of
31 primary importance.

s. 32

- 1 (6) The State Administrative Tribunal must specify in an
2 order the day on which the order takes effect.
- 3 (7) The day specified under subsection (6) must be not less
4 than 7 days and not more than 30 days after the order is
5 made.
- 6 **74C. Determination of rights and liabilities after**
7 **termination of tenant's interest on grounds of**
8 **family violence**
- 9 (1) A long-stay tenant, or former long-stay tenant, may
10 apply to the State Administrative Tribunal for a
11 determination of the rights and liabilities of the parties
12 to the long-stay agreement once the former long-stay
13 tenant's interest in the agreement has been terminated
14 under section 33(2A) or (2B).
- 15 (2) When hearing an application under subsection (1) or
16 section 74B(3), State Administrative Tribunal —
- 17 (a) must determine the rights and liabilities of the
18 parties to the agreement, as affected by the
19 termination; and
- 20 (b) may order a party to pay compensation to
21 another party for loss or injury (except personal
22 injury) relating to the termination.
- 23 (3) Without limiting subsection (2), a determination or
24 order under that provision may apportion the disposal
25 of the security bond to the park operator and each
26 long-stay tenant or former long-stay tenant as
27 appropriate having regard to subsection (4).
- 28 (4) Despite any law to the contrary, each long-stay tenant
29 under a long-stay agreement has an equal interest in the
30 security bond in respect of the agreement unless the
31 State Administrative Tribunal in a particular case
32 determines otherwise under this section.

- 1 (5) In making a determination or order under
2 subsection (2), the State Administrative Tribunal must
3 have regard to all of the following principles —
- 4 (a) that family violence is a fundamental violation
5 of human rights and is unacceptable in any
6 form;
- 7 (b) the need to prevent further victimisation of a
8 person who has experienced family violence
9 through the unjust application of the principle
10 of joint and several liability or the principle of
11 vicarious liability;
- 12 (c) the need to maximise the safety of persons who
13 have experienced family violence by reducing
14 any financial burden arising from the family
15 violence;
- 16 (d) the need to prevent, or reduce to the greatest
17 extent possible, the consequences of family
18 violence;
- 19 (e) the need to protect the wellbeing of children by
20 preventing them from being subjected or
21 exposed to further family violence;
- 22 (f) the need to encourage perpetrators of family
23 violence to accept responsibility for their
24 behaviour and the effect it has on others.
- 25 (6) Nothing in subsection (2) is to be read as enabling the
26 State Administrative Tribunal to order compensation
27 for early termination of a long-stay agreement.

28 **74D. Review of Division**

- 29 (1) The Minister must carry out a review of the operation
30 and effectiveness of this Division, and prepare a report
31 based on the review, as soon as practicable after the
32 3rd anniversary of the day on which this Division
33 comes into operation.

s. 33

- 1 (2) Without limiting the scope of the review, the review
2 must address the following —
- 3 (a) the effect of this Division on lessors' rights to
4 recover debts owed by tenants;
- 5 (b) the effect of this Division on lessors' insurance
6 policies;
- 7 (c) the effect of this Division on contractual
8 certainty;
- 9 (d) the extent to which this Division affects
10 contractual obligations upon lessors and
11 co-tenants who are not perpetrators of family
12 violence and the impact of those obligations;
- 13 (e) such other matters as appear to the Minister to
14 be relevant.
- 15 (3) The Minister must cause the report to be laid before
16 each House of Parliament as soon as practicable after it
17 is prepared, but not later than 12 months after the
18 3rd anniversary.
19

20 **33. Section 94A inserted**

21 After section 94 insert:
22

23 **94A. Cross-examination of persons in proceedings**
24 **involving family violence**

25 The *Restraining Orders Act 1997* section 44C applies
26 to proceedings under this Act dealing with the issue of
27 family violence as if references to the respondent were
28 references to the person allegedly committing the
29 family violence.
30

1 **34. Section 95 amended**

2 After section 95(3) insert:

3

- 4 (4) Regulations made under subsection (1) for the purposes
5 of section 45A(2)(d)(vi) or Schedule 1 clause 14(4)
6 cannot come into operation earlier than 6 months after
7 they are published in the *Gazette*.

8

9 **35. Schedule 1 clause 12 amended**

- 10 (1) In Schedule 1 clause 12(2) delete “It” and insert:

11

12 Except as provided in subclause (8), it

13

- 14 (2) After Schedule 1 clause 12(7) insert:

15

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

- 17 (a) that a long-stay tenant may alter or add any lock or
18 similar device to the agreed premises —
19 (i) after the termination of an excluded tenant’s
20 interest in a long-stay agreement under
21 section 74B; or
22 (ii) in any event, if it is necessary to prevent the
23 commission of family violence that the
24 tenant suspects, on reasonable grounds, is
25 likely to be committed against the tenant or
26 a dependant of the tenant;

27 and

- 28 (b) that the tenant must give to the park operator a copy
29 of the key to any lock or similar device altered or
30 added under paragraph (a) as soon as practicable,
31 and in any event within 7 days, after the lock or
32 similar device has been altered or added; and

s. 36

- 1 (c) that the park operator must not give a copy of a key
2 referred to in paragraph (b) —
3 (i) to an excluded tenant whose interest in the
4 long-stay agreement has been terminated
5 under section 74B; or
6 (ii) in any event, to a person who the tenant has
7 instructed the park operator in writing not to
8 give the copy of the key.
- 9 (9) A long-stay tenant who breaches a term referred to in
10 subclause (8)(b) without reasonable excuse, in addition to
11 any civil liability that the tenant might incur, commits an
12 offence.
13 Penalty for this subclause: a fine of \$5 000.
- 14 (10) Subclause (8)(b) does not apply if the park operator is a
15 person reasonably suspected of being likely to commit the
16 family violence referred to in subclause (8)(a)(ii).
- 17 (11) A park operator who breaches a term referred to in
18 subclause (8)(c) without reasonable excuse, in addition to
19 any civil liability that the park operator might incur,
20 commits an offence.
21 Penalty for this subclause: a fine of \$20 000.
22

23 **36. Schedule 1 clause 13 amended**

- 24 (1) In Schedule 1 clause 13(2):
25 (a) in paragraph (g) delete “purchasers.” and insert:
26
27 purchasers; or
28

- 1 (b) after paragraph (g) insert:
2
- 3 (ga) for the purpose of inspecting the agreed premises
4 and assessing any damage after the termination of a
5 tenant's interest under —
6 (i) section 33(2A) or (2B); or
7 (ii) section 74B.
8
- 9 (2) After Schedule 1 clause 13(2) insert:
10
- 11 (3) It is a term of every long-stay agreement that the park
12 operator may enter the agreed premises under
13 subclause (2)(ga)(i) —
14 (a) not more than 7 days after receiving notice of
15 termination under section 45A(1) or 45B(4); and
16 (b) not less than 3 days after giving notice to the
17 long-stay tenant of the park operator's intention to
18 enter the agreed premises.
- 19 (4) It is a term of every long-stay agreement that the park
20 operator may enter the agreed premises under
21 subclause (2)(ga)(ii) —
22 (a) not more than 10 days before the hearing of the
23 application under section 74B; and
24 (b) not less than 3 days after giving notice to each
25 long-stay tenant of the park operator's intention to
26 enter the agreed premises.
27

28 **37. Schedule 1 clause 14 amended**

- 29 (1) In Schedule 1 clause 14(1) and (2) delete “A” and insert:
30

31 Except as provided in subclause (4), a
32

s. 37

- 1 (2) After Schedule 1 clause 14(3) insert:
2
- 3 (4) It is a term of every long-stay agreement that a long-stay
4 tenant may affix any prescribed fixture, or make any
5 prescribed renovation, alteration or addition to the agreed
6 premises (the *prescribed alterations*), necessary to prevent
7 entry onto the agreed premises of a person —
- 8 (a) if the person is an excluded tenant whose interest in
9 a long-stay agreement has been terminated under
10 section 74B; or
- 11 (b) in any event, if it is necessary to prevent the
12 commission of family violence that the tenant
13 suspects, on reasonable grounds, is likely to be
14 committed by the person against the tenant or a
15 dependant of the tenant.
- 16 (5) For the purposes of subclause (4) —
- 17 (a) the cost of making the prescribed alterations must
18 be borne by the long-stay tenant; and
- 19 (b) the long-stay tenant must give written notice to the
20 park operator of the tenant's intention to make the
21 prescribed alterations; and
- 22 (c) work on the prescribed alterations must be
23 undertaken by a qualified tradesperson, a copy of
24 whose invoice the long-stay tenant must provide to
25 the park operator within 14 days of the alterations
26 being completed; and
- 27 (d) the prescribed alterations must be effected having
28 regard to the age and character of the property and
29 any applicable strata company by-laws; and
- 30 (e) the long-stay tenant must restore the agreed
31 premises to their original condition at the end of the
32 long-stay agreement if the park operator requires
33 the tenant to do so and, where restoration work has
34 been undertaken by a tradesperson, must provide to
35 the park operator a copy of that tradesperson's

1 invoice within 14 days of that work being
2 performed.
3

4 **38. Glossary amended**

5 (1) In the Glossary clause 1 insert in alphabetical order:
6

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

9 *Family Court injunction* means an injunction under the
10 *Family Court Act 1997* section 235 or 235A or the *Family*
11 *Law Act 1975* (Commonwealth) section 68B or 114;

12 *family violence* has the meaning given in the *Restraining*
13 *Orders Act 1997* section 5A(1);
14

15 (2) In the Glossary clause 1 in the definition of *notice of termination*
16 delete “agreement” and insert:
17

18 agreement, or an interest in the agreement,
19

20 **39. Various penalties amended**

21 In the provisions listed in the Table:

22 (a) delete “Penalty:” and insert:
23

24 Penalty for this subsection:
25

26 (b) delete “Penalty:” and insert:
27

28 Penalty for this subclause:
29

s. 39

1

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. 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) |

2

