



Government of **Western Australia**
Department of **Mines, Industry Regulation and Safety**

EXPLANATORY MEMORANDUM

Residential Tenancies Legislation Amendment (Family Violence) Bill 2018

Overview of Bill

The Residential Tenancies Legislation Amendment (Family Violence) Bill 2018 (the Bill) amends the *Residential Tenancies Act 1987* (RT Act) and the *Residential Parks (Long-stay Tenants) Act 2007* (RPLST Act). Its purpose is to implement a framework to provide better outcomes for victims of family violence in relation to their residential tenancy agreement or their on-site residential parks agreement. The better outcomes relate to:

- enabling a victim to end their interest in a tenancy agreement upon giving a lessor a notice of termination on the grounds of family violence along with required documentary evidence;
- enabling the court to terminate the perpetrator's interest in a tenancy agreement where the perpetrator is excluded from the premises by way of a court order, or where the court is satisfied that the perpetrator has committed family violence against the protected tenant during the tenancy period;
- enabling the court to assign liability for injuries other than personal injury, for example damage and unpaid rent, to the perpetrator if the damages and unpaid rent arise as a result of family violence during the tenancy agreement;
- enabling the court to apportion disposal of a security bond to the victim tenant if it is appropriate in the circumstances to do so;
- enabling the victim tenant to change the locks on the premises without first having to obtain the permission of the lessor;
- enabling the tenant to affix any prescribed fixture, or make any prescribed renovation, alteration or addition to the premises to prevent the perpetrator's entry onto the premises or to prevent the commission of family violence; and
- making clear that a court may order that a person's name and personal details be removed from a tenancy database if the circumstances giving rise to the listing result from family violence.

Family violence is a fundamental violation of human rights and is unacceptable in any form. The clear intent of this Bill is to empower the court and others, including the victim, to do what is in the best interests of a victim of family violence and of any children that are ordinarily resident at the premises. The provisions included in this Bill seek to prevent, or reduce to the greatest extent possible, the consequences of family violence while seeking to ensure perpetrators of family violence accept responsibility for their behaviour and the effect it has on others. The Bill recognises that perpetrators of family violence may sometimes seek to misuse the protections offered to tenants and lessors under this Act to further their violence. The Bill seeks to prevent that misuse.

A clause by clause commentary of the Bill is as follows:

Clause 1 PART 1 - PRELIMINARY

Short Title

This clause provides the short title of the *Residential Tenancies Legislation Amendment (Family Violence) Act 2018*.

Clause 2 Commencement

This clause provides that sections 1 and 2 of the Act will commence on Royal Assent and the remainder of the Act on a day fixed by proclamation. Different days can be fixed for different provisions.

Clause 3 PART 2 – RESIDENTIAL TENANCIES ACT 1987 AMENDED

Act amended

Clause 3 provides that this part amends the RT Act.

Clause 4 Terms used

Clause 4 amends section 3 of the RT Act to insert new definitions for:

- family violence;
- prescribed; and
- tenancy period.

The definition of **family violence** has the same meaning as the definition of family violence as established in section 5A(1) of the *Restraining Orders Act 1997* (Restraining Orders Act) and means a reference to —

(a) violence, or a threat of violence, by a person towards a family member of the person; or

(b) any other behaviour by the person that coerces or controls the family member or causes the member to be fearful.

This is to ensure consistency of understanding and response to family violence when it occurs.

The term **tenancy period** has been defined to mean

the whole period during which the agreement is in force, whether the agreement is for a fixed term or creates a periodic tenancy.

Where there are a series of consecutive fixed term agreements between the same parties, the term tenancy period relates to each individual fixed term agreement, not the totality of all of the fixed term agreements combined.

Clause 4 also amends the definition of “rent” to align the definition to that used in the RPLST Act. This aids in consistency of understanding and application.

Clause 5 Determination of rights and liabilities after termination of tenant's interest due to family violence

Clause 5 inserts new clause 17B into the RT Act. The purpose of this clause is to require a court to determine the rights and liabilities of the parties to a tenancy agreement where at least one of the tenant's interests in the tenancy agreement has been terminated. The clause also allows the court to apportion the disposal of a security bond to individual tenants and/or the lessor as appropriate.

Ordinarily, all co-tenants to a residential tenancy agreement are either jointly liable or jointly and severally liable for any damages and rent owing to the lessor. In circumstances of family and domestic violence, requiring a victim tenant to be liable for damages and unpaid rent that has arisen as a consequence of family violence may cause that tenant to be further victimised. Similarly, by maintaining joint or joint and several liabilities, a perpetrator who has caused damage to the premises or has withheld financial resources to impede payment of rent is not being held accountable for their actions and the impact these actions may have on others.

It is not intended that the lessor receive less than they are entitled to at law as compensation under the RT Act. The purpose of this clause is simply to determine which parties are liable to pay the compensation.

Subsection (1) enables a current tenant or former tenant to apply to the court for a determination of the rights and liabilities of the parties to the agreement once the former tenant's interest in the tenancy agreement has been terminated under section 60(1)(ba) or (bb).

A tenant or former tenant could make this application immediately upon termination of the former tenant's interest in the tenancy agreement, or at such time as the lessor may seek to recover damages and unpaid rent from them.

Subsection (2) requires the court to determine the rights and liabilities of parties to the agreement either when hearing an application made under subsection 1 or when hearing an application under section 71AE(3). Section 71AE(3) relates to an application to have a perpetrator's interest in the tenancy agreement terminated. The purpose of extending the court's obligation to determining the parties' rights and liabilities beyond an application made under section 17B(1) to an application pursuant to section 71AE(3) is to ensure the court deals with all issues pertaining to the tenancy at that point in time.

Subsection 2(b) provides that a court may order a party to the tenancy agreement to pay compensation to another party for loss or injury, other than personal injury, relating to the termination of the tenancy agreement. Importantly, subsection (6) confirms that the compensation does not include compensation for early termination of the tenancy agreement. This is because the termination of the

tenancy agreement is a lawful termination pursuant to the RT Act and not a break lease situation.

In circumstances where the perpetrator who is responsible for the damage to the premises is not named on the tenancy agreement and is therefore not a party to the agreement, the court could not, under this subsection, assign liability for those damages to the perpetrator. In that circumstance, subsection 2(b) allows the court to find that the victim tenant is not liable to pay for those damages. The lessor would be able to pursue the perpetrator for the damage through ordinary civil proceedings.

Subsection (3) clarifies that the court may make an order pursuant to subsection (2) to apportion the disposal of the security bond to the lessor and each tenant or former tenant as appropriate. This would allow the court to order disposal of the victim tenant's share in the security bond to the victim tenant if the court were to find, under subsection (2), that the victim tenant was not required to pay any compensation to the lessor. Subsection (4) sets out that each tenant and lessor has an equal share in the security bond unless the court determines otherwise.

Subsection (5) provides all of the principles that the court must have regard to when making a determination pursuant to subsection (2) namely:

- a. that family violence is a fundamental violation of human rights and is unacceptable in any form;
- b. the need to prevent further victimisation of a person who has experienced family violence through the unjust application of the principle of joint and several liability or the principle of vicarious liability;
- c. the need to maximise the safety of persons who have experienced family violence by reducing any financial burden arising from the family violence;
- d. the need to prevent, or reduce to the greatest extent possible, the consequences of family violence;
- e. the need to protect the wellbeing of children by preventing them from being subjected or exposed to further family violence;
- f. the need to encourage perpetrators of family violence to accept responsibility for their behaviour and the effect it has on others.

Subsection 6 clarifies that a lessor is not entitled under section 17B to receive compensation for early termination of the tenancy agreement.

If an order is not sought or made in accordance with section 17B, the contractual rights and responsibilities that have accrued up to the date of termination of the person's interest in the agreement remain in place.

Clause 6 Section 27C amended

Clause 6(1) amends section 27C(4) to clarify that this subsection will apply irrespective of whether it is a tenant's interest in the tenancy agreement that is ending or the tenancy agreement in its entirety that is ending.

Clause 6(2) inserts subsection (4A) to clarify that when a lessor enters the premises to conduct an inspection and prepare a property condition report, in relation to an application to the court to terminate a tenant's interest in the tenancy agreement on the grounds of family violence, this report satisfies the current requirement under section 27C(4) despite the fact that the entry and report is undertaken prior to the termination of the former tenant's interest in the tenancy agreement. A copy of the report is required to be provided to the tenant.

Clause 6(3) amends subsection 27C(5) to clarify that, as far as is possible, the tenants of the premises should be allowed to be present at the inspection.

Clause 7 Section 29 amended

Clause 7 inserts new subsection (9) into section 29. Subsection (9) provides that if a court orders the disposal of part of a security bond to a former tenant pursuant to section 17(3)(b), the lessor may require and receive from any remaining tenant or tenants, an additional amount of bond to restore the security bond to cover the disposed amount. This will enable a lessor to restore the security bond to its pre-disposal level.

Clause 8 Section 41 amended

Clause 8 amends section 41 to replace "period of the tenancy" with "tenancy period". This amendment has been made as a consequence of defining "tenancy period" in section 3.

Clause 9 Section 43 amended

Clause 9 amends section 43(1) to accommodate current drafting conventions and as a consequence of defining "prescribed" in section 3.

Clause 10 Section 45 amended

Clause 10 amends section 45 to insert subsection (1) to accommodate current drafting conventions and as a consequence of defining "prescribed" in section 3.

Clause 10 inserts also subsection (2) to make it a term of every residential tenancy agreement that a tenant may, without having obtained the permission of the lessor, alter a lock or other means of securing the premises if a former tenant's interest in the tenancy agreement has been terminated or if it is necessary to prevent the

commission of family violence that the tenant suspects, on reasonable grounds, is likely to be committed against them or their dependant(s).

The intention of this provision is to allow the premises to be made more secure in a timely manner. The tenant is not required to provide evidence to the lessor that they have reasonable grounds of suspecting that family violence would be committed against them before changing the locks.

Subsection (2)(b) requires a tenant who has altered a lock or other security device to provide the lessor with a copy of the key for the new lock or security device as soon as practicable, and in any event, within seven days of making the alteration. If a tenant fails to provide the new key to the lessor in accordance with this requirement without reasonable excuse, subsection (3) provides that the tenant has committed an offence and is liable to a penalty of up to \$5 000. However, subsection (4) provides that the obligation to provide a copy of the key to the lessor does not arise if the lessor is a person reasonably suspected of being likely to commit the family violence.

Subsection (2)(c) prohibits a lessor who has been provided with a new key to pass that key on to an excluded tenant or to a person who the tenant has instructed the lessor not to give the copy of the key.

Clause 11 Section 46 amended

Clause 11 amends section 46(2) to expand the circumstances under which a lessor may enter the premises to include where either a tenant has issued the lessor with a notice of termination on the grounds of family violence or where an application has been made pursuant to new section 71AE to have a tenant's interest in the tenancy agreement terminated on the grounds of family violence.

Subsections (6A) and (6B) are inserted to set out the timeframes for the lessor to make entry and the notice period required, depending upon whether the former tenant's interest is terminated by way of notice to the lessor (6A) or by way of application to the court (6B).

Where a tenant's interest is terminated by way of a notice of termination under section 71AB(1) or 71AD(4), the lessor may enter the premises:

- not more than seven days after receiving notice under section 71AB(1) or 71AD(4); and
- not less than three days after giving notice to each tenant of the lessor's intention to enter the premises.

Where a tenant's interest is terminated by way of an order of the court under section 71AE, the lessor may enter the premises:

- not more than 10 days before the hearing of the application under section 71AE; and
- not less than three days after giving notice to each tenant of the lessor's intention to enter the premises.

As with all circumstances of entry by a lessor pursuant to subsection 46(2), the requirements for the notice of proposed entry set out in subsections (4) and (5) will apply to these new grounds of entry.

Clause 12 Section 47 amended

Clause 12 amends section 47 to insert new subsection (4) which provides that it is a term of every residential tenancy agreement that a tenant is authorised to affix any prescribed fixture, or make any prescribed renovation, alteration or addition to the premises after termination of a former tenant's interest in the tenancy agreement or in any event that is necessary to prevent the commission of family violence which the tenant suspects on reasonable grounds is likely to be committed against the tenant or their dependant(s).

Subsection (5) sets out the conditions that apply to the tenant if exercising their rights pursuant to subsection (4), namely that:

- a. the cost of making the prescribed alterations must be borne by the tenant; and
- b. work on the prescribed alterations must be undertaken by a qualified tradesperson; and
- c. the prescribed alterations must be effected having regard to the age and character of the property and any applicable strata company by-laws; and
- d. the tenant must restore the premises to their original condition at the end of the residential tenancy agreement if the lessor requires the tenant to do so.

Subsection (6) provides that subsection (4) does not apply to heritage listed premises or other premises as prescribed.

The purpose of new subsection (4) is to allow a tenant who is remaining in a tenancy to make those premises as safe as possible without having to first obtain the permission of the lessor.

Clause 13 Section 56A – Discrimination against tenants subjected or exposed to family violence

Clause 13 inserts new section 56A into the RT Act to prohibit discrimination against a tenant or prospective tenant on the grounds that a person has or may have experienced or been exposed to family violence, or on the grounds that the tenant has been convicted of a charge relating to family violence. Clause 13 also creates a penalty of a fine of up to \$5 000 for a breach of this provision.

Section 56A is intended to operate analogous to section 56 of the Act which prohibits discrimination against tenants on the grounds that children are intended to live at the premises.

Clause 14 Section 59E amended

Section 59E of the RT Act creates an offence for a lessor to cause or allow an interference with the reasonable peace, comfort and privacy

of the tenant in the tenant's use of the premises and imposes a penalty of a fine of up to \$10 000 for a breach of this provision.

Clause 14 amends section 59E, by inserting new subsection (3). Subsection (3) operates in the event that a lessor, in fulfilling their obligation under section 45 not to provide a new key to a person on the ground that they are allegedly a former tenant or a person who the tenant has instructed the lessor not to give the copy of the key, is then accused of causing or allowing an interference with that person's quiet enjoyment of the premises. The lessor may rely upon the defence established by new subsection (3) that they were simply acting on instructions they had been given by the remaining tenant.

Clause 15 Section 59F amended

Clause 15(1) amends section 59F to accommodate the changes to the numbering of the subsections in section 45.

Clause 15(2) inserts new subsection 59F(2A) which creates an offence if a lessor, who receives a new key pursuant to section 45(2)(b), then breaches section 45(2)(c) by providing a copy of the new key to a tenant whose interest in the tenancy agreement has been terminated or to a person who the tenant has instructed the lessor not to give the copy of the key.

Clause 16 Section 60 amended

Clause 16 amends section 60 and its heading. Section 60 sets out how a residential tenancy agreement is terminated including the tenant's interest in an agreement.

Clause 16 creates a subsection (1) and inserts into subsection (1) the following circumstances to accommodate the circumstances where a tenant's interest in a tenancy agreement, rather than the agreement in its entirety, can be terminated:

- where a tenant terminates their own interest in a tenancy agreement by issuing the lessor a notice of termination on the grounds of family violence under section 71AB(1) along with at least one of the documents required under section 71AB(2) and has vacated the premises;
- where a co-tenant, who has been advised of the former tenant's termination of their interest on the grounds of family violence, then issues a notice of termination of their own interest in the tenancy agreement and has vacated the premises; and
- where a court terminates a tenant's interest in the tenancy agreement on the grounds of family violence.

Clause 16 inserts subsection (2) which confirms that the termination of a tenant's interest in a residential tenancy agreement does not terminate the agreement in respect of any other tenant under the agreement.

Clause 17 Section 67 amended

Section 67 provides the form of notice a tenant is required to give to the lessor to terminate their interest in the tenancy agreement. Clause 17 amends section 67 to allow for circumstances where a tenant is terminating only their own interest in the tenancy agreement rather than the entire agreement. Clause 17 also amends section 67 by inserting subsection (2) which requires that the notice of termination to the lessor on the grounds of family violence must be in a prescribed form.

Clause 18 Part V Division 2A inserted - Special provisions about terminating tenant's interest on grounds of family violence.

Clause 18 inserts sections 71AA, 71AB, 71AC, 71AD and 71AE into the RT Act. These sections apply irrespective of whether the tenancy agreement is periodic or fixed term.

Section 71AA inserts definitions of a domestic violence order, Family Court injunction and premises which are specific to these provisions that deal with terminating the tenancy agreement on the grounds of family violence.

Section 71AB establishes that a tenant may terminate their own interest in a tenancy agreement by giving the lessor a notice on the grounds that the tenant or their dependant(s) is likely to be subjected or exposed to family violence during the tenancy period. The requirement that the family violence has occurred during the tenancy period is intended to be a temporal link so that a tenant is not relying upon family violence that may have occurred solely prior to entering into the tenancy agreement and is therefore unrelated to the tenancy agreement in any way.

The temporal link does not require that the perpetrator of the violence be a co-tenant or even that they reside at the premises. There may be circumstances in which the perpetrator resides elsewhere however the tenant needs to terminate the tenancy agreement and relocate in order to be safe.

A notice of termination on the grounds of family violence must be accompanied by a document giving evidence of the occurrence of family violence. Subsection (2) outlines the types of documents that satisfy the requirement. Only one document from this list is required. The document also has a temporal link requirement in that it must be applicable during the tenancy period.

Subsection (3) prohibits a lessor from disclosing information in a document provided with the notice of termination to any other person except as required by the RT Act or another written law. Subsection (4) requires a lessor to store the document in a secure manner so far as it is reasonably practical to do so. A penalty of a fine of \$5 000 has been inserted for breach of each of these subsections.

Subsection (5) requires that the notice of termination issued by the tenant be not less than seven days.

New section 71AC sets out the process for a lessor to seek a review of a notice given pursuant to section 71AB. The purpose of this section is to allow a lessor to seek an order from the court that a notice pursuant to section 71AB has not been given properly, for example if the required document was not supplied. Section 71AC does not allow a lessor to seek a review of the notice on the grounds that they dispute whether the terminating tenant has been subject to family violence.

Subsection (2) requires that an application by the lessor must be made within seven days of receiving the termination notice.

Subsection (3) sets out that in determining an application made pursuant to subsection (2), the court must look at whether the notice has been given properly pursuant to section 71AB and cannot examine whether the terminating tenant, or a dependant of the tenant, has been or might be subject to family violence.

Subsection (4) sets out the orders the court may make upon determining an application made under subsection (2). Namely, the court can find that a notice has not been properly given and in such circumstances the court must not terminate the terminating tenant's interest in the tenancy agreement, or dismiss the lessor's application.

New section 71AD sets out the rights of any co-tenants, if they exist, of the tenant who has terminated their interest in the tenancy agreement under section 71AB.

Subsection (2) requires the lessor to give each co-tenant a copy of a notice the lessor receives under section 71AB(1). Subsection (3) provides that the lessor must not provide the accompanying document to any co-tenant, only the notice of termination itself. The notice must be given individually to each co-tenant which means the obligation cannot be satisfied simply by giving one co-tenant the notice and expecting them to notify any other co-tenants.

Subsection (4) requires that if any tenant wants to also terminate their interest in the tenancy agreement, they must notify the lessor within seven days. It does not require that all co-tenants must be in agreement about whether to remain in the tenancy or to terminate the tenancy agreement. Each co-tenant can notify the lessor independently of his or her decision.

Subsection (5) provides that if a co-tenant notifies the lessor of their intention to terminate their own interest in the tenancy agreement, the notice period must not be less than 21 days.

New section 71AE sets out the process if the perpetrator's interest in the tenancy agreement is to be terminated. A perpetrator's interest in a tenancy agreement, unless they are a co-tenant who is terminating his or her own interest in the tenancy agreement pursuant to section

71AD, can only be terminated by way of a court order made pursuant to section 71AE.

Subsection (1) defines excluded tenant, family violence order and protected tenant.

Subsection (2) provides that a court may terminate the perpetrator's (excluded tenant's) interest in the tenancy agreement if it is satisfied that a family violence order is in place against the perpetrator or if the perpetrator has committed family violence against the protected tenant or a dependant of the protected tenant during the tenancy period.

Subsection (3) outlines that an application pursuant to subsection (2) can be made to the court by the perpetrator (excluded) tenant, the protected tenant or a prescribed person on behalf of the protected tenant. The list of prescribed persons could include child protection workers and police officers.

Subsection (4) sets out the list of factors that a court must take into consideration when determining an application made pursuant to subsection (2). This list is not exhaustive but sets out the minimum considerations for the court. Under current section 21 of the RT Act, the court will continue to be able to inform itself on any matter in such manner as it sees fit.

Subsection (5) provides that the best interest of any child who is ordinarily resident at the premises is the primary consideration.

If the court makes an order terminating a perpetrator's interest in a tenancy agreement pursuant to subsection (2), subsection (6) provides that the order must take effect not less than seven days and not more than 30 days after the order is made.

Subsection (7) provides that the court may make this order in proceedings under the RT Act or in proceedings under the Restraining Orders Act, the Act under which family violence orders are made.

Clause 19 Section 81A amended

Clause 19 amends section 81A(2) to accommodate changes to the numbering of subsections in section 60.

Clause 20 Section 82J amended

Clause 20 corrects a numbering error in section 82J and amends section 82J by inserting subsection (2A) to confirm that if a listing results from the applicant being subjected or exposed to family violence, it is unjust.

Section 82J(2B) is inserted to allow a court to make an order requiring that a tenant's personal information be wholly or partially removed from a tenancy database, amended in a stated way or not listed in the first instance if it is unjust in the circumstances.

Clause 21 Section 85 amended

Clause 21 amends section 85 to accommodate current drafting conventions and as a consequence of defining “prescribed” in section 3.

Clause 22 Section 88B inserted - Cross-examination of persons in proceedings involving family violence

Clause 22 inserts new section 88B into the RT Act. Section 88B has the effect of applying section 44C of the Restraining Orders Act to proceedings under this Act. Section 44C of the Restraining Orders Act outlines how cross-examination of a victim of family violence is to be handled by the court where the perpetrator of the family violence is not represented in the proceedings.

Clause 23 Section 94 amended

Clause 23 amends section 94 to accommodate current drafting conventions and as a consequence of defining “prescribed” in section 3.

Clause 24 Various penalties amended

Clause 24 amends various penalty clauses throughout the Act to accommodate changes in drafting conventions. The amendments do not alter the subsection to which the penalty applies or the amount of the current penalty.

Clause 25 PART 3 – RESIDENTIAL PARKS (LONG-STAY TENANTS) ACT 2006 AMENDED

Act amended

Clause 25 provides that this part amends the RPLST Act.

Clause 26 Section 21 Amended

Clause 26 inserts new subsection (4) into the RPLST Act. Subsection (4) provides that if the State Administrative Tribunal (SAT) orders the disposal of part of a security bond to a former long-stay tenant pursuant to section 74C(3)(b), the park operator may require and receive from any remaining long-stay tenant(s) an additional amount of bond to restore the security bond to cover the disposed amount. This will enable a park operator to restore the security bond to its pre-disposal level.

Clause 27 Section 33 amended

Clause 27 amends section 33. Section 33 sets out the circumstances in which a long-stay agreement is terminated.

Clause 27 amends the heading of section 33 and adds the following circumstances to the section to accommodate where a long-stay

tenant's interest in a long-stay on-site agreement, rather than the agreement in its entirety, can be terminated:

- where a tenant terminates their own interest in a long-stay agreement by issuing the park operator a notice of termination on the grounds of family violence and has vacated the agreed premises; and
- where a co-tenant, who has been advised of the former tenant's termination of their interest on the grounds of family violence, then issues a notice of termination of their own interest in the long-stay agreement and vacates the agreed premises.

In accordance with section 45A and 74B of the RPLST Act, these provisions only apply to long-stay on-site agreements.

Clause 27 inserts subsection (2C) which confirms that the termination of a long-stay tenant's interest in a long-stay agreement does not terminate the agreement in respect of any other tenant under the agreement.

Clause 28 Section 38 amended

Clause 28 amends section 38 by creating a subsection (1) in which existing subsections (a) to (d) are retained, and by inserting subsection (2) which requires that the notice of termination to the park operator on the grounds of family violence must be in a prescribed form.

Clause 29 Part 3 Division 4A inserted

Clause 29 inserts sections 45A and 45B into the RPLST Act. These sections apply irrespective of whether the long-stay on-site agreement is periodic or fixed term.

Section 45A establishes that a long-stay tenant may terminate their own interest in a long-stay on-site agreement by giving the park operator a notice on the grounds that the tenant or their dependant(s) is, during the tenancy period, likely to be subject to or exposed to family violence. The requirement that the family violence has occurred during the tenancy period is intended to be a temporal link so that a long-stay tenant is not relying upon family violence that may have occurred solely prior to entering into the long-stay agreement and is therefore unrelated to the long-stay agreement in any way.

The temporal link does not require that the perpetrator of the violence be a co-tenant or even that they reside at the premises. There may be circumstances in which the perpetrator resides elsewhere however the long-stay tenant needs to terminate the long-stay on-site agreement and relocate in order to be safe.

A notice of termination on the grounds of family violence must be accompanied by a document giving evidence of the occurrence of family violence. Subsection (2) outlines the types of documents that satisfy the requirement. Only one document from this list is required.

The document also has a temporal link requirement in that it must be applicable during the tenancy period.

Subsection (3) prohibits a park operator from disclosing information in a document provided with the notice of termination to any other person except as required by this Act or another written law. Subsection (4) requires a park operator to store the document in a secure manner so far as it is reasonably practical to do so. A penalty of a fine of \$5 000 has been inserted for breach of each of these subsections.

Subsection (5) requires that the notice of termination issued by the long-stay tenant be not less than seven days.

New section 45B sets out the rights of any co-tenants, if they exist, of the tenant who has terminated their interest in the long-stay on-site agreement under section 45A.

Subsection (2) requires the park operator to give each co-tenant under the long-stay agreement a copy of a notice the park operator receives under section 45. Subsection (3) provides that the park operator must not provide the accompanying document to any co-tenant, only the notice of termination itself. The notice must be given individually to each co-tenant which means the obligation cannot be satisfied simply by giving one co-tenant the notice and expecting them to notify any other co-tenants.

Subsection (4) requires that if any co-tenant wants to also terminate their interest in the long-stay agreement, they must notify the park operator within seven days. It does not require that all co-tenants must be in agreement about whether to remain in the long-stay agreement or to terminate the agreement. Each co-tenant can notify the park operator independently of his or her decision.

Subsection (5) provides that if a co-tenant notifies the park operator of their intention to terminate their own interest in the long-stay agreement, the notice period must not be less than 21 days before the termination day.

Clause 30 Section 58A inserted

Clause 30 inserts new section 58A into the RPLST Act to prohibit discrimination against a long-stay tenant or prospective long-stay tenant on the grounds that a person has or may have experienced or been exposed to family violence, or on the grounds that the person has been convicted of a charge relating to family violence.

Clause 31 Part 5 Division 3A inserted

Clause 31 inserts new sections 74A, 74B and 74C into the RPLST Act.

New section 74A sets out the process for a park operator to seek a review of a notice given pursuant to section 45A. The purpose of this section is to allow a park operator to seek an order from the SAT that a notice pursuant to section 45A has not been given properly, for example if the required document was not supplied. Section 74A does

not allow a park operator to seek a review of the notice on the grounds that they dispute that family violence has occurred.

Subsection (2) requires that an application by the park operator must be made within seven days of receiving the termination notice.

Subsection (3) sets out that in determining an application made pursuant to subsection (2), the SAT must look at whether the notice has been given properly pursuant to section 45A and cannot examine whether or not the terminating long-stay tenant, or a dependant of the tenant, has been or might be subject to family violence.

Subsection (4) sets out the orders the SAT may make upon determining an application made under subsection (2). Namely, the SAT can either find that a notice has not been properly given and therefore the terminating tenant's interest in the long-stay on-site agreement has not been terminated, or the park operator's application must be dismissed.

New section 74B sets out the process if the perpetrator's interest in the long-stay on-site agreement is to be terminated. A perpetrator's interest in a long-stay on-site agreement, unless they are a co-tenant who is terminating his or her own interest in the long-stay on-site agreement pursuant to section 45B, can only be terminated by way of a SAT order made pursuant to section 74B.

Subsection (1) defines excluded tenant, family violence order and protected tenant.

Subsection (2) provides that despite any other provision of the RPLST Act, the long-stay agreement or any other written law, the SAT may terminate the perpetrator's (excluded tenant's) interest in the long-stay on-site agreement if it is satisfied that a family violence order is in place against the perpetrator or if the perpetrator has committed family violence against the protected tenant or a dependant of the protected tenant during the tenancy period.

Subsection (3) outlines that an application pursuant to subsection (2) can be made to the SAT by the perpetrator (excluded) tenant, the protected tenant or a prescribed person on behalf of the protected tenant. The list of prescribed persons could include child protection workers and police officers.

Subsection (4) sets out the list of factors that the SAT must take into consideration when determining an application made pursuant to subsection (2). This list is not exhaustive but sets out the minimum considerations for the SAT. Under current section 32(4) of the *State Administrative Tribunal Act 2004*, the SAT will continue to be able to inform itself on any matter as it sees fit.

Subsection (5) provides that the best interest of any child who is ordinarily resident at the premises is the primary consideration.

If the SAT makes an order terminating a perpetrator's interest in a long-stay on-site agreement pursuant to subsection (2), subsection (6)

provides that the order must take effect not less than seven days and not more than 30 days after the order is made.

The purpose of new section 45C is to require the SAT to determine the rights and liabilities of the parties to a long-stay on-site agreement where at least one of the tenant's interests in the agreement has been terminated. The clause also allows the SAT to apportion the disposal of a security bond to individual long-stay tenants and/or the park operator as appropriate.

Ordinarily, all co-tenants to a long-stay on-site tenancy agreement are either jointly liable or jointly and severally liable for any damages and rent owing to the park operator. In circumstances of family and domestic violence, requiring a victim tenant to be liable for damages and unpaid rent that has arisen as a consequence of family violence may cause that tenant to be further victimised. Similarly, by maintaining joint or joint and several liabilities, a perpetrator who has caused damage to the premises or has withheld financial resources to impede payment of rent is not being held accountable for their actions and the impact these actions may have on others.

It is not intended that the park operator receive less than they are entitled to at law as compensation under the RPLST Act. The purpose of this clause is simply to determine which parties are liable to pay the compensation.

New section 74C enables the SAT to determine the rights and liabilities of the parties to a long-stay agreement after the termination of a tenant's interest in the long-stay agreement on the grounds of family violence. Subsection (1) enables a current tenant or former tenant to apply to the SAT for a determination of the rights and liabilities of the parties to the agreement once the former tenant's interest in the long-stay on-site agreement has been terminated on the grounds of family violence.

A long-stay tenant or former tenant could make this application immediately upon termination of the former tenant's interest in the long-stay agreement, or at such time as the park operator may seek to recover damages and unpaid rent from them.

Subsection (2) requires the SAT to determine the rights and liabilities of parties to the agreement either when hearing an application made under subsection 1 or when hearing an application under section 74B(3). Section 74B(3) relates to an application to have a perpetrator's interest in the long-stay on-site agreement terminated. The purpose of extending the SAT's obligation to determining the parties' rights and liabilities to an application pursuant to section 74B(3) is to ensure the SAT deals with all issues pertaining to the long-stay agreement at that point in time.

Subsection 2(b) provides that the SAT may order a party to the long-stay on-site agreement to pay compensation to another party for loss or injury, other than personal injury, relating to the termination of the agreement. It is important to note that subsection (6) confirms that the

compensation does not include compensation for early termination of the tenancy agreement. This is because the termination of the tenancy agreement is a lawful termination pursuant to the RPLST Act and not a break lease situation.

In circumstances where the perpetrator who is responsible for the damage to the premises is not named on the long-stay on-site agreement and is therefore not a party to the agreement, the SAT could not, under this subsection, assign liability for those damages to the perpetrator. In that circumstance, subsection 2(b) allows the SAT to find that the victim tenant is not liable to pay for those damages. The park operator would be able to pursue the perpetrator for the damage through ordinary civil proceedings.

Subsection (3) clarifies that the SAT may make an order pursuant to subsection (2) to apportion the disposal of the security bond to the park operator and each long-stay tenant as appropriate. This would allow the SAT to order disposal of the victim tenant's share in the security bond to the victim tenant if the SAT were to find, under subsection (2), that the victim tenant was not required to pay any compensation to the park operator. Subsection (4) sets out that each long-stay tenant and park operator has an equal share in the security bond unless the SAT determines otherwise.

Subsection (5) provides principles to guide the SAT when making a determination pursuant to subsection (2), namely:

- a. that family violence is a fundamental violation of human rights and is unacceptable in any form;
- b. the need to prevent further victimisation of a person who has experienced family violence through the unjust application of the principle of joint and several liability or the principle of vicarious liability;
- c. the need to maximise the safety of persons who have experienced family violence by reducing any financial burden arising from the family violence;
- d. the need to prevent, or reduce to the greatest extent possible, the consequences of family violence;
- e. the need to protect the wellbeing of children by preventing them from being subjected or exposed to further family violence;
- f. the need to encourage perpetrators of family violence to accept responsibility for their behaviour and the effect it has on others.

Subsection 6 clarifies that the SAT cannot order compensation for early termination of the long-stay agreement under subsection (2).

If an order is not sought or made in accordance with section 74C, the contractual rights and responsibilities that have accrued up to the date of termination of the person's interest in the agreement remain in place.

Clause 32 Section 94A inserted

Clause 32 inserts new section 94A into the RPLST Act. New section 94A has the effect of applying section 44C of the Restraining Orders Act to proceedings under this Act. Section 44C of the Restraining Orders Act outlines how cross-examination of a victim of family violence is to be handled by the SAT where the perpetrator of the family violence is not represented in the proceedings.

Clause 33 Schedule 1 clause 12 amended

Clause 33 inserts subsection (8) to make it a term of every on-site agreement to allow a long-stay tenant, without having obtained the permission of the park operator, to alter or add a lock or a similar device as a means of securing the premises if a former tenant's interest in the long-stay on-site agreement has been terminated or if it is necessary to prevent the commission of family violence that the tenant suspects, on reasonable grounds, is likely to be committed against them or their dependant(s).

The intention of this provision is to allow the premises to be made more secure in a timely manner. The long-stay tenant is not required to provide evidence to the park operator that they have reasonable grounds of suspecting that family violence would be committed against them before changing the locks.

Subsection (8)(b) requires a tenant who has altered a lock or other security device to provide the park operator with a copy of the key for the new lock or similar device as soon as practicable, and in any event, within seven days of making the alteration or addition. A long-stay tenant commits an offence if they fail to provide the new key to the park operator in accordance with this requirement without reasonable excuse. Subsection (9) provides for a penalty of up to \$5 000, in addition to any civil liability a tenant may incur. Subsection (10) provides that the obligation to provide a copy of the key to the park operator does not arise if the park operator is a person reasonably suspected of being likely to commit the family violence.

Subsection (8)(c) prohibits a park operator who has been provided with a new key to pass that key on to an excluded tenant or to a person who the tenant has instructed the lessor not to give the copy of the key. A penalty of a fine of \$20 000 applies to a breach of this subsection.

Clause 34 Schedule 1 clause 13 amended

Schedule 1 clause 13 of the RPLST Act sets out the circumstances under which a park operator may enter the agreed premises and any other premises occupied by the long-stay tenant pursuant to a long-stay tenancy agreement. Clause 34 amends Schedule 1 clause 13 to expand the circumstances under which a park operator may enter the premises to include for the purposes of inspecting the agreed premises and assessing any damage after termination of a tenant's

interest pursuant to a notice of termination on the grounds of family violence, or where an application has been made pursuant to new section 74B to have a tenant's interest in the long-stay on-site agreement terminated on the grounds of family violence.

Subsection (3) and (4) are inserted to set out the timeframes for the park operator to make entry and the notice period required, depending upon whether the former tenant's interest is terminated by way of notice to the lessor (3) or by way of application to the SAT (4).

Where a tenant's interest is terminated by way of a notice of termination given to the park operator in accordance with subsection 45A(1) or 45B(4), the park operator may enter the premises:

- not more than seven days after receiving notice under section 45A(1) or 45B(4); and
- not less than three days after giving notice to each long-stay tenant of the park operator's intention to enter the premises.

Where a tenant's interest is terminated by way of an order of the SAT under section 74B, the park operator may enter the premises:

- not more than 10 days before the hearing of the application under section 74B; and
- not less than three days after giving notice to each long-stay tenant of the park operator's intention to enter the premises.

Clause 35 Schedule 1 clause 14 amended

Clause 35 amends Schedule 1 clause 14 to insert new subsection (4) which provides that it is a term of every long stay agreement that a long-stay tenant may affix any prescribed fixture, or make any prescribed alteration, alteration or addition to the premises after termination of a perpetrator's interest in the long-stay on-site agreement or in any event that is necessary to prevent the commission of family violence which the tenant suspects on reasonable grounds is likely to be committed against the tenant or their dependant(s).

Subsection (5) sets out the conditions that apply to the tenant if exercising their rights pursuant to subsection (4) namely that:

- a. the cost of making the prescribed alterations must be borne by the long-stay tenant; and
- b. work on the prescribed alterations must be undertaken by a qualified tradesperson; and
- c. the prescribed alterations must be effected having regard to the age and character of the property and any applicable strata company by-laws; and
- d. the long-stay tenant must restore the premises to their original condition at the end of the residential tenancy agreement if the park operator requires the tenant to do so.

The purpose of new subsection (4) is to allow a long-stay tenant who is remaining in a tenancy to make those premises as safe as possible without having to first obtain the permission of the park operator.

Clause 36 Glossary amended

Clause 36 inserts new definitions for DVO and **Family Court injunction** into the glossary.

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

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

Clause 36 also amends the definition of **notice of termination** to include termination of a tenant's interest in the agreement.

Clause 37 Various penalties amended

Clause 37 amends various penalty clauses throughout the RPLST Act to accommodate changes in drafting conventions. The amendments do not alter the subsection to which the penalty applies or the amount of the current penalty.