



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



Our Ref: CP0000372018

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Hon Dr Sally Talbot MLC
Chair
Legislation Committee – Legislative Council

By email: lclc@parliament.wa.gov.au

Dear Dr Talbot

RESIDENTIAL TENANCIES LEGISLATION AMENDMENT (FAMILY VIOLENCE) BILL 2018

Please find attached for your consideration, the Department of Mines, Industry Regulation and Safety's submission to the Committee's inquiry into the Residential Tenancies Legislation (Family Violence) Amendment Bill 2018.

I would also like take this opportunity to thank the Committee for providing the Department with the opportunity to give evidence at the recent hearing on 23 October 2018.

Yours Sincerely

David Smith
Director General

30 October 2018

att.



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

SUBMISSION TO LEGISLATION COMMITTEE

Inquiry into the
Residential Tenancies Legislation
Amendment (Family Violence) Bill 2018

FOREWARD

Western Australia is the only remaining jurisdiction in Australia that does not have laws to specifically address the difficulties faced by victims of family and domestic violence in relation to their residential tenancy agreements. Western Australia also has the highest rate of family violence within Australia.

The Residential Tenancies Legislation Amendment (Family Violence) Bill 2018 (the Bill) seeks to address this scenario.

As is noted in the submission that follows, there has been a great deal of consultation in the development of the Bill. A number of individuals and organisations have very generously shared their knowledge and their experiences with Department of Mines, Industry Regulation and Safety - Consumer Protection Division to ensure that this Bill seeks to deliver tangible benefits to all stakeholders concerned.

In developing the Bill, we have also had the benefit of reviews of residential tenancy laws in Victoria and New South Wales, as well as the findings of the Victorian Royal Commission into Family Violence. This has allowed us to incorporate into the Bill the elements from those jurisdictions that have worked well, and to seek to improve on those that experience has shown did not work as well.

More recently, Consumer Protection has been able to reach out to a number of states in Canada that have been operating with similar laws as those proposed in the Bill for approximately two years. We are comforted by the feedback from the regulators in those states that their laws have been received well by the community, are making a real difference to victims of family violence and that there is no evidence in any of those states that the laws have been misused by tenants falsely claiming to be a victim of family violence.

Lastly, Consumer Protection has spent much of 2018 working with stakeholders to prepare them for the implementation of these laws in the event that Parliament passes the Bill. Property managers have been participating in compulsory professional development and Consumer Protection has been delivering training workshops to and with a wide number of community organisations. There has been widespread community support for, and anticipation of, these proposed laws.

David Smith
Director General

1. Background.....	1
1.1. Purpose of the Bill	1
1.2. Drivers for reform.....	2
1.3. Review of the Residential Tenancies Act	2
1.4. Special considerations.....	3
1.5. Amendments to Residential Parks (Long-stay Tenants) Act	3
2. Current legislative framework	5
3. Proposed amendments.....	7
3.1. Defining family violence	7
3.2. Termination of victim's interest in tenancy agreement by notice	7
3.3. Termination of perpetrator's interest in tenancy agreement by court	11
3.4. Liability for damage to premises and other debts	12
3.5. Apportionment of security bond	13
3.6. Changes to premises – locks and fixtures	13
3.7. Discrimination on family violence grounds.....	14
3.8. Listing on a tenancy database	14
4. Other jurisdictions	16
4.1. Australia.....	16
4.2. Canada	19
5. Consultation and feedback	20
5.1. Who was consulted in relation to the drafting of the Bill?	20
5.2. Community engagement about the Bill and feedback	22
6. Appendices	24

1. Background

1.1. Purpose of the 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 2006* (RPLST Act).

The amendments are aimed solely at producing better justice outcomes for victims of family violence in respect of their tenancy agreements. The amendments assist in reducing the risk of harm or homelessness to victims of family violence by:

- giving victims of violence the choice to be able to leave the premises without legal consequence if it is no longer safe for them to remain; and
- providing the legal framework for a victim (and any children) to remain in the premises and have the perpetrator removed, if it is safe for them to do so.

In order for any mechanisms to be effective they must:

- allow tenants to act quickly in order to protect their safety;
- give tenants access to resources to allow them to secure alternate housing (this may require release from legal and financial obligations under existing tenancy arrangements and prompt return of pro rata security bond if they are entitled to it); and
- provide certainty to tenants, so that they have freedom to enter into a new tenancy contract without being bound by continuing obligations under a previous tenancy arrangement.

The proposed changes also benefit landlords. Family violence is already happening in tenancies and landlords can experience this through loss of rent if a tenant abandons the premises, or through damage to the premises. These proposed laws, give a tenant a lawful way to leave the tenancy, this provides greater certainty and allows the landlord to re-let the premises as soon as possible thereby mitigating losses

The key intent of the 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 the Bill seek to prevent, or reduce to the greatest extent possible, the consequences of family violence while seeking to ensure perpetrators of family violence are held accountable for their behaviour and the impact it has on others.

1.2. Drivers for reform

Western Australia has the highest rate of reported family and domestic violence in Australia. Family violence is a leading cause of homelessness for women and children and imposes significant cost on the community.

- In 2016, 29,800 Western Australians reported experiencing intimate partner violence.¹
- In 2015-16 there were 34,118 reported offences for family violence related crimes in Western Australia.²
- In 2015-16, there were 27 domestic homicides in Western Australia.³ To date in 2018 there have been 22 domestic homicides in this state. Given that the national average is one domestic homicide per week – Western Australia is significantly overrepresented in this space.
- In 2016-2017, there were 24,626 Western Australians who sought assistance from specialist homelessness services. Of these, 10,868 (or 44 percent) identified as needing homelessness services because they were experiencing family violence.⁴
- The combined health, administration and social welfare costs nationally of family violence have been estimated to be \$21.7 billion a year, with projections suggesting that if no further action is taken to prevent FDV, costs will accumulate to \$323.4 billion over a thirty-year period from 2014-15 to 2044-45.⁵

1.3. Review of the Residential Tenancies Act

In June 2014, in its report *Enhancing Family and Domestic Violence Laws*, the Law Reform Commission of Western Australia, recommended that the former Department of Commerce undertake a review of the interaction of the RT Act and family and domestic violence protection orders.

The proposed amendments arise from public consultation undertaken by the former Department of Commerce – Consumer Protection Division (Consumer Protection) seeking stakeholder and community views on options to amend the RT Act to provide better outcomes for victims of family violence in relation to their tenancy agreements.

A copy of the Options Paper (October 2016) is at **Attachment 1**.

¹ Australian Bureau of Statistics, *Personal Safety Survey 2016*, <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0>

² WA Police data as reported in <http://www.abc.net.au/news/2018-02-21/wa-crime-data-reveals-domestic-violence-surge/9462172>.

³ Data provided by the Department of Communities.

⁴ Australian Institute of Health and Welfare, *Specialist Homelessness Services Annual Report 2016-2017* <https://www.aihw.gov.au/reports/homelessness-services/specialist-homelessness-services-2016-17/data-visualisation>.

⁵ Price Waterhouse Coopers, *A High Price to Pay: The economic case for preventing violence against women* accessed at <https://www.pwc.com.au/publications/economic-case-preventing-violence-against-women.html>.

The Final Report (August 2017), setting out the recommendations for reform, is included at **Attachment 2**, this report includes a cost benefit analysis of the various options considered.

A summary of the consultation process, including details of the stakeholders who were consulted is set out in Part 5 of this submission.

1.4. Special considerations

Family violence is an incredibly complex issue within our community. A number of practical and legal issues must be dealt with in order for a victim to move on from a violent environment.

Access to safe housing is essential for victims of family violence. Current tenancy legislation can sometimes operate as a barrier for tenants in moving on from a dangerous situation and accessing a safe place to live. The aim of the amendments included in the Bill is to remove those barriers.

The proposed amendments will allow tenants who are victims of family violence to act to protect their interests as quickly as possible, particularly in circumstances where their safety is at risk. It is recognised that due to existing demands on the resources of the courts, delays will often arise through the court system. Where appropriate, the amendments avoid requiring application to courts in order to reduce delays.

The proposed framework recognises the emotional and psychological cost to victims of family violence in having to re-tell their story numerous times, for example, to social workers, police and the courts. The proposed changes aim to limit the number of times a victim will be required to detail and provide evidence of the family violence, in particular by allowing for certain professionals to certify that family violence has occurred.

Apart from landlords, the termination of tenancy interests will also have an impact on any co-tenants. The proposed amendments aim to provide sufficient flexibility by allowing a co-tenant of a victim of family violence to choose whether to remain in a tenancy or also terminate.

1.5. Amendments to Residential Parks (Long-stay Tenants) Act

The Bill also amends the RPLST Act to mirror the family violence amendments proposed for the RT Act in relation to on-site home agreements (where both the site and home are being rented). Although amendment of the RPLST Act was not canvassed as part of the family violence consultation undertaken by Consumer Protection, a statutory review of the RPLST Act identified the importance of long-stay tenants having rights and responsibilities that mirror those of tenants under the RT Act to the greatest extent possible.

The discussion throughout this submission, unless otherwise stated, can be taken to apply to both the RT Act and the RPLST Act. For simplicity:

- a reference to 'landlord' means a lessor under the RT Act or a park operator under the RPLST Act;
- a reference to 'tenant' means a tenant under the RT Act or a long-stay tenant pursuant to an on-site home agreement under the RPLST Act; and
- a reference to 'court' means the Magistrates Court for the RT Act or the State Administrative Tribunal for the RPLST Act.

2. Current legislative framework

Both the RT Act and RPLST Act regulate tenancy arrangements between landlords and tenants and establish clear rights and obligations for both parties. The Acts also outline mechanisms for termination of tenancy agreements aimed at providing certainty for both landlords and tenants.

However, if family violence occurs and one or both of the parties to the relationship needs to end their obligations under a tenancy agreement, the current mechanisms for terminating the tenancy agreement are insufficiently flexible to respond to the complexities of family violence.

The following scenarios illustrate the difficulty that can be faced from the victim's, the landlord's and the perpetrator's perspectives under the current legislative framework.

Example A: A victim of family violence is named on a tenancy agreement but, for their ongoing safety, needs to end the tenancy agreement and find alternative premises:

- If the tenancy agreement is periodic (i.e. open dated, with no fixed term), the victim can give 21 days' notice to end the tenancy agreement.⁶ During the 21 days, the victim is still required to pay rent for the existing premises. At the same time the victim must raise the upfront costs to move into new premises. For many victims it is not possible to meet both expenses.
- If the tenancy agreement is for a fixed term, the victim must either seek the agreement of the landlord to terminate the tenancy agreement early,⁷ unilaterally break the lease early and remain liable for rent and other expenses until the premises are re-let, or apply to the court for an order terminating the tenancy agreement on the grounds that they are experiencing hardship.⁸ None of these options is certain as to their outcome. Furthermore, the victim remains liable for expenses at the former premises while at the same time having to raise the upfront costs to move into new premises.
- In some instances a landlord may wish to remove the name of a victim tenant from an agreement, but legally cannot do so without the perpetrator tenant's consent (and the consent of any other co-tenants). The current legal framework therefore allows the perpetrator to continue to exert a degree of power and control over the victim tenant.

⁶ *Residential Tenancies Act 1987*, section 68; *Residential Parks (Long-stay Tenants) Act 2006*, section 44.

⁷ *Residential Tenancies Act 1987*, section 60(g); *Residential Parks (Long-stay Tenants) Act 2006*, section 33(3)(e).

⁸ *Residential Tenancies Act 1987*, section 74; *Residential Parks (Long-stay Tenants) Act 2006*, there is currently no provision for a tenant to apply to terminate the long-stay agreement on the grounds of hardship, a proposed amendment to include a provision is included in the Residential Parks (Long-stay Tenants) Amendment Bill 2018.

Example B: A victim of family violence is named as a tenant on a tenancy agreement in conjunction with the perpetrator; the victim wants to remain at the premises, but have the perpetrator removed from the lease:

- The only mechanism currently available under the RT Act or the RPLST Act for the victim to have the perpetrator's name removed from the agreement is for the victim to terminate the whole agreement, and even then this can only be done with the perpetrator co-tenant's consent. While it is possible for a landlord to immediately enter into a new agreement with the victim, there is no certainty that the landlord will do so. For many tenants who are victims of violence, the most certain outcome is to leave the lease agreement as it is, with the perpetrator's name included.

Example C: A perpetrator is excluded from the premises by a restraining order.

- If the perpetrator's name remains on the tenancy agreement, they remain liable, for the term of the agreement, for rent and any damage that may be caused to the premises despite not being allowed the use of the premises. If they seek to have their name removed from the agreement then, as per above, this would result in the whole agreement having to be terminated and no certainty for the victim that the landlord will enter into a new agreement with them alone.

Case studies outlining issues faced by victims of family violence under the current laws are contained at **Appendix A**. These case studies have been provided by community legal centres, victim support services and victims of family violence themselves.

3. Proposed amendments

3.1. Defining family violence

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

- violence, or a threat of violence, by a person towards a family member of the person; or
- 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.

3.2. Termination of victim's interest in tenancy agreement by notice

The Bill amends the RT Act and the RPLST Act to allow a tenant who is a victim of family violence to terminate their interest in a residential tenancy agreement by issuing the landlord with a notice of termination of agreement on the grounds of family violence. The required period of notice is at least seven days.

A tenant will be required to provide either judicial or non-judicial evidence from an independent third party to verify the family violence for the purposes of termination of the tenancy agreement. One of the following documents must be provided with the notice of termination:

- a domestic violence order (DVO);
- a Family Court injunction or application for a Family Court injunction;
- a copy of a prosecution notice or indictment containing a charge relating to violence against the tenant or a court record of conviction for the charge;
- a report of family violence in a form approved by the Commissioner completed by a person who has worked with the tenant and is one of the following:
 - medical professional;
 - psychologist;
 - social worker;
 - police office;
 - person in charge of a women's refuge; or
 - person of a prescribed class.⁹

A draft of the form for this report is at **Appendix B**. This draft has been developed in consultation with stakeholders.

⁹ It is proposed that the prescribed class of persons will include a child protection worker.

A landlord who receives a termination notice on the grounds of family violence may appeal to the court if the evidence required to accompany the notice does not meet the prescribed requirements. If a landlord appeals the termination notice, the court cannot consider whether family violence has occurred.

The Bill also provides mechanisms for determining whether co-tenants will continue the tenancy following the termination by the victim tenant. A landlord must give any co-tenants a copy of the termination notice received from the victim tenant within seven days after receiving the notice. The co-tenant has the option to also give notice terminating their interest in the tenancy. This notice must be given within seven days of receiving the notice from the landlord and the notice period must be at least 21 days.

Policy considerations

The primary aim of these amendments is to allow a victim to terminate their interest in a tenancy quickly and without financial penalty. The following issues or concerns have been considered in development of this proposed change:

Termination by notice rather than application to court

The proposed amendments will give the tenant the ability to terminate the tenancy by notice rather than by application to the court. A primary rationale for this model is to reduce the need for a victim of family violence to engage with an additional court proceeding when they may already be involved in family court, restraining order or criminal court proceedings.

It is expected that this model will produce more timely and efficient outcomes to the benefit of both the victim and the landlord, as court proceedings can sometimes involve lengthy delays and additional costs. Data provided by the Magistrates Court indicates that it currently takes approximately five weeks for residential tenancies matters to be listed for a first mention. That timeframe becomes longer, approximately an average of 76 days in the Perth court, if the matter is contested and is referred to a hearing.

It is acknowledged that despite the benefits, the notice based model does come with the risk that it might be misused. However, greater weight needs to be given to ensuring that the system is not so difficult or restrictive that it prevents victims of family violence from being able to realise the intended benefit of the amendments. The notice based proposal best achieves this outcome and the requirement for a tenant to provide prescribed evidence is intended to minimise any risk of the provisions being misused.

Western Australia is not unique in proposing to allow a victim tenant to terminate their interest in a tenancy agreement by way of a notice of termination. A number of states in Canada have had similar laws in place for approximately two years. Consumer Protection made contact with the regulatory bodies in Alberta, British Columbia, Ontario and Saskatchewan to enquire if there is any evidence of tenants making false claims of family violence to leave their tenancy early. All of these jurisdictions reported that they had not seen evidence of this and had not received any complaints of misuse from landlords.

New South Wales (NSW) also allows termination of the tenancy agreement by way of a notice and the NSW Parliament has recently passed amendments to their residential tenancy laws which expand the type of evidence that can be used to support the notice of termination.

Non-judicial evidence

In support of a notice of termination a tenant will be required to provide either judicial or non-judicial evidence. Concerns have been raised by some stakeholders that there is potential for abuse, particularly in relation to the provision of the non-judicial evidence (i.e. a report of family violence from a prescribed professional).

Tenants who are victims of family violence often need to be able to terminate a tenancy at short notice and require certainty of outcome in order to be able to move away from an unsafe situation. Any requirement to obtain judicial evidence, such as a domestic violence order, will add delays and uncertainty to the process as well as imposing a greater burden on the court system.

While waiting for a matter to be resolved by the court, victims risk being subjected to more harm, or becoming homeless because they cannot afford to pay rent at two premises. The third alternative is that they stop paying rent to the current landlord in order to be able to move themselves and their children into new premises. None of these potential outcomes is desirable, either for the tenant or the landlord.

The proposed amendments also ensure that those who are unable to seek a violence restraining order, perhaps due to the increased risk this presents to their safety or for other social or cultural reasons, are still able to avail themselves of these termination provisions. In addition, some circumstances of family violence, for example financial abuse of an older relative, may not meet the criteria for application of a domestic violence order.

As indicated above, a key objective of the amendments is to make the system as easy as possible for victims of family violence. The concern that non-judicial evidence is too easy to obtain will be mitigated by the requirement that a prescribed professional must certify that family violence has occurred.

The list of prescribed professionals is based on those who may provide evidence accepted by the Department of Immigration and Border Protection in establishing the existence of family violence in relation to immigration matters.¹⁰ It is also consistent with the types of professionals authorised to sign a family violence report in Alberta, British Columbia and Saskatchewan. The list reflects an appropriately diverse range of service providers that most victims of family violence would have interaction with and, therefore, would be able to obtain a report from with minimal impost. At the same time, these professionals would be considered to be of sufficient standing within the community to satisfy landlords that family violence has been adequately verified.

Each of the prescribed professionals who will be eligible to sign the report operates under a code of ethics with which they are required to comply. As professionals, and persons who deal extensively with victims of family violence in their careers, these professionals will be best placed to identify genuine victims of family violence.

The majority of professionals use the Common Risk Management Framework¹¹ in order to ensure consistent and appropriate responses to instances of family violence in the community. The minimum standard under the Common Risk Management Framework is that service providers will undertake a proper screening process. Screening is a process of enquiry using a standard set of questions or a 'screening tool' to determine whether a person is experiencing family and domestic violence.

The ability to rely on evidence from a listed professional will also mean that victims are not required to repeat their story multiple times.

Similar legislation applies in Alberta, Canada. A tenant who has been a victim of family violence may terminate a tenancy agreement with a notice of termination and a certificate signed by a professional. In response to enquiries from Consumer Protection, the Office of the Status of Women in Alberta reported that in its first two years of operation, the provisions in Alberta have assisted more than 500 victims of family and domestic violence to leave violent homes and move to safer circumstances.

By contrast, the statutory review of the Residential Tenancies Act in NSW¹² noted for several reasons that provisions introduced in 2011 aimed at giving some protection to tenants who were the victims of domestic violence had provided little real protection. For example, the requirement for a victim to obtain a final apprehended violence order could take up to a year to obtain, and in many domestic violence cases was never obtained.

¹⁰ *Migration Act 1994* (Cth) Legislative Instrument IMMI 12/116.

¹¹ Department for Child Protection and Family Support, Western Australian Family and Domestic Violence Common Risk Assessment and Risk Management Framework (second edition) <https://www.dcp.wa.gov.au/CrisisAndEmergency/FDV/Pages/CRARMF2.aspx>.

¹² Fair Trading NSW, *Residential Tenancies Act 2010 – Statutory Review*, (17 June 2016), 29, <https://www.fairtrading.nsw.gov.au/about-fair-trading/have-your-say/residential-tenancy-law-review>.

Impact on co-tenants

The notice based model will clearly be most effective in situations where the victim of family violence is the only named tenant on the tenancy agreement. The process is more complicated in circumstances where other tenants, including the perpetrator, are also named on the tenancy agreement. Any action to terminate the entire tenancy agreement or amend liabilities under the tenancy agreement in any way will have implications for these third parties.

The Bill addresses these issues by giving co-tenants the option to continue the tenancy arrangement or opt to also terminate their interests. Certainty will be provided to landlords through clear notice requirements.

Impact on landlords

It is acknowledged that these changes will have an impact on landlords. There will be no right to compensation for termination under the proposed new provisions. As indicated earlier, the rationale for this proposal is to make it as easy as possible for a victim tenant to leave a violent situation through removal of financial and other burdens.

However, the proposed changes will also benefit landlords in many circumstances by providing certainty and allowing for a lawful termination of a tenancy agreement in circumstances of family violence. As indicated earlier, this places the landlord in a better position with regards to making the premises available for re-letting in a timely manner and to mitigate any costs or losses. This may also result in better outcomes with regards to recovery from the landlord's insurer.

Appendix C outlines a cost analysis of various models for termination of tenancy arrangements in circumstances of family violence. This analysis demonstrates that significantly higher costs can accrue (to both landlords and tenants) if a tenant's only options are to either abandon the premises or seek a termination order from the court.

3.3. Termination of perpetrator's interest in tenancy agreement by court

The Bill will amend the RT Act and RPLST Act to allow either a victim or perpetrator of violence to apply to a court to terminate the perpetrator's interest in a tenancy agreement.

The court may make an order terminating the interest of the perpetrator (excluded tenant) if it is satisfied that a family violence order is in force or that the excluded tenant has, during the tenancy period, committed family violence against the victim (protected tenant) or a dependant of the victim.

In making a determination under such an application the court will be required to consider a number of factors, including:

- the best interests of any child ordinarily resident on the premises (this is the paramount consideration);
- the best interests of the protected tenant, including if the premises are social housing premises, the ability of the tenant to meet any eligibility criteria for the premises;
- the effect the order might have on the landlord and any other tenants;
- the effect the order might have on any pets; and
- the fact that perpetrators of family violence might seek to misuse the protections offered to tenants and landlords under the tenancy Acts to further their violence and the need to prevent this misuse.

The court must specify a day on which the termination order is to take effect that is between seven and 30 days after the making of the order.

Policy considerations

A victim tenant seeking to terminate the perpetrator's interest in a tenancy agreement is affecting a third party's right to live in the property. To avoid the vexatious use of this provision, it is important that the court, as an independent adjudicator, is involved.

The amendments provide for procedural fairness for all parties to the tenancy agreement by ensuring the court can hear from all parties and take into consideration the interests of all parties in deciding the application.

It is acknowledged that the court process can take time, but the need to provide safeguards outweighs the need for greater speed of outcome in this circumstance.

3.4. Liability for damage to premises and other debts

The RT Act and the RPLT Act will be amended to give the court the power to assign liability for damage to the premises to the perpetrator of the violence. This includes debts that would otherwise be assigned to the victim of the family violence under the vicarious liability provisions of the Acts.

Amendments to the right of entry provisions in both Acts will allow access to premises so that landlords can assess any damage.

Policy considerations

Under the current laws, any person named as a tenant will be jointly and severally liable under a tenancy agreement for all debts to the landlord arising under the agreement for the full term of the agreement, including the obligation to pay rent and for any damage caused to premises. In addition, a tenant will be vicariously liable for damage caused by a visitor.¹³

The purpose of these amendments is to ensure that victims of family violence, and any other innocent co-tenants, are not liable for damages caused directly by the perpetrator. If damage to the premises or rent arrears is caused directly by acts of family violence, holding the victim liable for these costs serves only to further victimise them and limits their access to the financial resources needed to move on. This can have the longer term consequence of poverty and difficulty obtaining a new tenancy agreement.

The proposed amendments will not alter the amount a landlord is entitled to recover, only who the landlord is able to recover the damages or debt from. If the perpetrator is not a tenant of the premises, a landlord will have the right to pursue a perpetrator for this debt through ordinary civil proceedings. In some cases landlord insurance may also cover these losses.

All parties, including the victim tenant, the alleged perpetrator tenant and the landlord will have a right to be heard by the court.

3.5. Apportionment of security bond

The Bill will amend the RT Act and the RPLT Act to give the court the power to apportion disposal of the security bond for premises as appropriate. Each tenant will be deemed to have an equal interest in the tenancy bond, unless shown otherwise.

Policy considerations

The amendments will allow the court to dispose of a victim's share in a security bond to the victim if appropriate in the circumstances. The presumption that each tenant has an equal share in the bond is a starting presumption only and the court has the power to determine otherwise depending on the particular circumstances.

3.6. Changes to premises – locks and fixtures

Amendments will allow a tenant who is a victim of family violence to change the locks on the premises without first having to obtain the permission of the landlord. The tenant who has altered a lock or other security device must give the landlord a copy of the key within seven days.

¹³ *Residential Tenancies Act 1987*, section 50; *Residential Parks (Long-stay Tenants) Act 2006*, schedule 1 clause 17.

The landlord must not pass a copy of the key to a tenant who they have been advised in writing is the alleged perpetrator of the family violence.

A tenant who is a victim of family violence will also be able to affix fixtures or make alterations to the premises to improve the security of the premises provided:

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

Policy considerations

The intention of this provision is to allow the premises to be made more secure in a timely manner. The types of changes to the premises that are being considered include installing CCTV cameras, security screens and external lighting.

The tenant will not be required to provide evidence to the landlord that there are reasonable grounds for suspecting that family violence would be committed against them before changing the locks or making other changes.

The requirement that the security upgrades be installed by a qualified tradesperson and further that a tenant restore the premises at the conclusion of the tenancy if requested to do so by the lessor should address concerns about the ability of a tenant to make changes to the landlord's property without the landlord's consent and the impact this may have on the value of the property.

In relation to tenancies with shared premises, such as strata properties, the amendments will only allow for changing of locks and security upgrades to the rental premises, not any common property.

3.7. Discrimination on family violence grounds

A prohibition will be included in the tenancy Acts to prevent discrimination against a tenant or prospective tenant on the grounds that the person has been the victim of family violence or has been convicted of a crime related to family violence. This provision is structured to be similar to the prohibition on discrimination against tenants with children. It is not intended to prevent a landlord from choosing not to enter into a tenancy agreement with a person on other valid grounds.

3.8. Listing on a tenancy database

In 2013, the Residential Tenancies Act was amended to place restrictions on when a tenant could be listed on a residential tenancy database. Current section 82J of the Act allows a tenant to apply to a court to have a listing about them amended or removed if the listing is considered to be unjust in the circumstances.

The amendment contained in the Bill provides guidance to the court that the listing of a person for debt or damage that has arisen out of them being a victim of family violence would be considered to be unjust.

This amendment does not prevent the listing on a database of a tenant who has been a perpetrator of family violence if they have caused damage to the premises or left unpaid rent.

4. Other jurisdictions

4.1. Australia

All Australian states and territories have slightly different laws, see the table below:

LEGISLATION	TERMINATION ON THE GROUNDS OF FAMILY VIOLENCE
ACT <i>Residential Tenancies Act 1997</i> section 85	<ul style="list-style-type: none"> The Tribunal may substitute an occupant's name for the perpetrator's name on a tenancy agreement (effectively terminating a perpetrator's interest in the agreement) if the perpetrator has given an undertaking to leave the premises or the court has issued a final violence restraining order excluding the perpetrator from the premises.
NSW <i>Residential Tenancies Act 2010</i> sections 79 & 100 new sections 105A to 105H ¹⁴	<ul style="list-style-type: none"> When the court makes a final violence restraining order excluding a tenant (perpetrator) from premises, the tenancy of that perpetrator is automatically terminated. This does not affect the tenancy of any remaining co-tenants. If a final violence restraining order has been issued, the victim may issue the lessor with a notice of termination of the fixed term tenancy agreement. The notice period is to be not less than 14 days. New provisions (yet to commence) will allow for a victim to issue a notice of termination effective immediately. The notice must attach one of the following documents - domestic violence order, family court order, evidence of charge or conviction for a family violence offence or a family violence report signed by a medical practitioner.
NT <i>Domestic and Family Violence Act</i> section 23	<ul style="list-style-type: none"> When making a restraining order, the court may also include an order terminating the tenancy agreement or an order creating a new agreement for the benefit of the protected person or for the benefit of the perpetrator if the victim agrees.
QLD <i>Residential Tenancies and Rooming Accommodation Act 2008</i> sections 245, 321 & 323	<ul style="list-style-type: none"> Tribunal can make an order recognising an occupant as a tenant if they have been the victim of family violence by the perpetrator who is a tenant. Tribunal must be satisfied that family violence has occurred. Tribunal may terminate a tenancy agreement if a tenant has been the victim of family violence by a tenant of the premises.
SA <i>Residential Tenancies Act 1995</i> section 89A	<ul style="list-style-type: none"> The Tribunal may make an order terminating a tenancy agreement if a tenant has committed family violence and an intervention order is in force against that tenant, or if the Tribunal is satisfied that an act of domestic abuse has been committed against a person who resides at the premises. The Tribunal may also make an order requiring the lessor to enter into a new agreement with the protected tenant or occupant of the premises.
TAS <i>Family Violence Act 2004</i> section 17	<ul style="list-style-type: none"> If a family violence order is made, a court may also make an order to terminate the residential tenancy agreement and establish a new residential tenancy agreement for the benefit of the victim and any other party who was party to the terminated agreement other than the perpetrator.
VIC <i>Residential Tenancies Act 1997</i> sections 233A & 233B new sections 91V to 91Y ¹⁵	<ul style="list-style-type: none"> If a final violence restraining order is made, the victim may apply to the Tribunal to terminate the existing tenancy agreement and require the lessor to enter into a new agreement with the victim and co-tenants. New provisions (yet to commence) extend this right to a tenant or person who is residing in the premises and is subjected to family violence by another party to the tenancy agreement.

¹⁴ *Residential Tenancies Amendment (Review) Act 2018* (NSW) – passed on 17 October 2018, but not yet commenced.

¹⁵ *Residential Tenancies Amendment Act 2018* (Vic) – passed on 7 September 2018, but not yet commenced.

In developing the proposed changes for Western Australia, Consumer Protection has considered the models and experience in other jurisdictions. The proposed amendments aim to take the best elements from other models and learn from the experience of the others states with regards to what does not work well. The table below summarises the various elements of the different models, including factoring in the impending amendments that have been passed in Victoria and New South Wales.

	NSW	VIC	QLD	SA	WA
Terminating tenant's interest	By notice.	Tribunal.	Tribunal.	Tribunal.	By notice.
Perpetrator a co-tenant	No.	Yes.	Yes.	Yes.	No.
Impact on co-tenants	Terminates tenant's interest only. Co-tenants remain bound given pro rata reduced rent for two weeks. Co-tenants may apply to Tribunal for termination.	Entire agreement terminated.	Entire agreement terminated.	Entire agreement terminated.	Terminates tenant's interest only. Co-tenant given option to terminate their interest in the agreement or continue.
Evidence required to terminate	Restraining order, family court order, evidence of charge or conviction for a family violence offence committed against the tenant, family violence report signed by a medical practitioner.	Restraining order or other evidence of family violence.	Evidence of family violence.	Intervention order or other evidence of family violence.	Restraining order, family court order, evidence of charge or conviction for a family violence offence committed against the tenant, family violence report signed by a prescribed professional.
Terminating perpetrator's interest	Application to the Tribunal.	N/A - entire agreement terminated.	N/A - entire agreement terminated.	N/A - entire agreement terminated.	Application to the court.
Compensation to landlords for early termination	Prohibited.	Prohibited.	Not prohibited by the Act.	Order for compensation can be made against the perpetrator tenant.	Prohibited.
Assignment of liability for debt	Vicarious liability prohibited if damage caused by family violence.	Tribunal may assign liability.	N/A	Tribunal may assign liability.	Court may assign liability.
Changing locks without prior landlord consent	Yes.	Yes - if there is a restraining order in place.	Yes - in an emergency.	No.	Yes.
Security upgrades	With landlord's consent.	With consent of landlord, not to be unreasonably withheld.	With landlord's consent.	With landlord's consent.	May make prescribed security upgrades permitted without consent.

	NSW	VIC	QLD	SA	WA
Tenancy database	Prohibited for victims of FDV.	Listing against victim of FDV prohibited and Tribunal may make an order prohibiting listing of a victim of FDV.	N/A	Tribunal may order that listing of victim of FDV be removed.	Tribunal may order that listing of victim of FDV be removed.

The proposed model for Western Australia applies the most appropriate elements from the other jurisdictions and expands on these elements as follows:

- A victim tenant may terminate their own interest in a tenancy by notice rather than application to the court. This limits the tenant's need for interaction with the courts and provides for more timely, cost effective and certain outcomes. It also minimises the impost on the court system, which could otherwise cause delays in other tenancy matters.
- Greater flexibility is provided with regards to the evidence required to support the termination of a tenant's interest. The ability to provide a report from an independent third party means that a tenant is not required to rely on judicial evidence. The model includes a range of professionals with experience in identifying family violence. This provides for more timely outcomes, limits the victim's exposure to the judicial system and reduces the need for a victim to re-tell their story.
- The model provides greater flexibility with regards to the rights of co-tenants following termination by a victim, by giving co-tenants the option to either continue or end a tenancy agreement.
- Mechanisms are included to allow the court to terminate the interests of the perpetrator only, rather than the whole agreement. This provides stability and certainty for victims and any other co-tenants.
- The Western Australian model addresses those circumstances where the perpetrator is not a co-tenant, but still presents a danger to the victim. This allows the protections to apply to all circumstances where it is no longer safe for a victim of family violence to remain in a tenancy.
- Prior consent of the landlord is not required to change locks or make security upgrades to allow for tenants to act as quickly as possible to make these changes if necessary to protect their safety.
- Mechanisms are included to allow the court to assign liability for debt and damage so that victims of family violence are not further disadvantaged.

- Consistent with most other jurisdictions, compensation is not payable to the landlord for early termination of the tenancy as this would act as a barrier for victims in ending a tenancy.
- Measures are included to prevent listing on a tenancy database so that victims of family violence are not inhibited in obtaining housing.

4.2. Canada

Alberta, British Columbia, Saskatchewan and Ontario in Canada all have laws very similar to those proposed in the Bill. Importantly, in each of those jurisdictions, the tenant who has been a victim of family violence can terminate their own interest in the tenancy agreement by giving the landlord a notice of termination and some form of evidence, such as a report from a prescribed professional (although in Ontario the tenant can sign a declaration on their own behalf and does not need third party verification of family violence).

Consumer Protection has liaised with each of those jurisdictions and all have reported positive outcomes, with no evidence of tenants misusing the provisions.

In Alberta (Population 4.2M), since August 2016 when their laws commenced, 512 victims of family violence have been assisted to leave a violent tenancy environment. There have not been any reports of misuse of the provisions by tenants falsely claiming to be victims of family violence.

In Ontario, where there is no requirement for a third party verifier to sign the tenant's declaration, the relevant regulatory body has not received any complaints from landlords that tenants have made false declarations.

British Columbia also reports that they have not received any complaints from landlords since their laws commenced.

Saskatchewan officers informed Consumer Protection that since their laws commenced on 1 July 2017, they have supported 22 victims of family violence to terminate their tenancy agreements. They have not received any complaints of misuse nor have they seen any evidence of false claims during this time.

5. Consultation and feedback

5.1. Who was consulted in relation to the drafting of the Bill?

The following organisations and individuals were directly invited to make a submission to the review of the interaction between family violence orders and the *Residential Tenancies Act 1987* (the Act):

- Tenancy WA
- The Housing Authority
- Real Estate Institute of Western Australia
- Landlords Advisory Service
- Property Owners Association of WA
- Legal Aid WA
- Women's Domestic Violence Council
- Magistrates Court of Western Australia
- Women's Law Centre
- Aboriginal Family Law Service
- Anglicare
- Communicare
- Relationships Australia
- Family Law Practitioners Association of WA
- Path of Hope
- Angelhands Inc
- Victims of Crime Reference Group
- Department of the Attorney General

The discussion paper was also placed on the Department's website and was promoted through community newspapers and radio.

Submissions were received from the following organisations and individuals:

- Aboriginal Legal Service WA
- Realty Executives, Burmester Phelps & Associates
- Chrysalis Support Services Inc
- Djinda Services
- Equal Opportunity Commission Western Australia

- Goldfields Community Legal Centre Inc
- Domestic Violence Legal Workers Network
- Housing Authority
- Jill Wynne
- Joy Packer
- Family Relationship Centre Geraldton
- Real Estate Institute of Western Australia (REIWA)
- Community Legal Centres Association (WA) Inc
- Aboriginal Family Law Services
- Geraldton Resource Centre Inc
- Private individual (name withheld on request)
- Ruah Community Services
- Tenancy WA (with formal support from Women's Council for Domestic and Family Violence Services; Shelter WA; Accordwest; Welfare Rights and Advocacy Service; Gosnells Community Legal Centre; Goldfields Community Legal Centre; Women's Law Centre of WA)
- Women's Law Centre of WA Inc

In July 2017, REIWA, Tenancy WA and the Housing Authority were provided with detailed information outlining the proposed model of termination of the tenancy agreement by way of termination notice if the tenant who has been a victim of family violence needs to leave the tenancy. Face to face meetings were offered to, and held with, both REIWA and the Housing Authority to discuss this model and obtain their feedback. In-principle support was offered by both organisations at those meetings.

The reforms were also discussed at both the June and the August 2017 meetings of the Property Industry Advisory Committee (PIAC) which includes membership from REIWA (both the President and the CEO at that time), the Australian Property Institute WA Division and the Strata Community Association (WA) Inc. There was no opposition to the proposed amendments raised at those meetings.

Prior to finalising the final report and the drafting instructions, further consultations were had with the newly formed Department of Communities, Department of Justice (responsible for drafting the Restraining Orders and Related Legislation Amendment (Family Violence) Act 2016) as well as the Commissioner for Victims of Crime, the State Solicitors Office and the Chief Magistrate.

On 1 March 2018, a workshop was held with stakeholders from REIWA; Tenancy WA; Magistrates Court; Commissioner for Victims of Crime; Department of Communities (Family and Domestic Violence Unit, Child Protection and Housing Authority), Legal Aid WA and Women's Law Centre WA Inc. in attendance.

Stakeholders were provided with a draft of the Bill prior to the workshop as well as a draft Explanatory Memorandum. The purpose of the workshop was to identify any unintended consequences arising out of the proposed amendments as drafted. Feedback from this workshop informed the final draft of the Bill.

The Chief Magistrate was also consulted and provided with a copy of the Bill.

5.2. Community engagement about the Bill and feedback

Public awareness raising about the Bill has occurred a number of times since this Government first announced it was going to pursue these laws in December 2017. That includes:

- Consumer Protection informing more than 3,000 private landlords who have registered to receive e-bulletins on matters concerning residential tenancies. The Property Owners Association of WA is a recipient of these e-bulletins;
 - on 30 May 2018, an e-bulletin on property condition reports was sent to the private landlords on the database. This e-bulletin included details about the proposed Bill. More than 1 500 recipients opened the email bulletin. Of these, 150 clicked on through to the Department's webpage about the proposed FDV law changes;
 - on 19 July 2018, an e-bulletin was sent to the private lessors on the database inviting them to a free workshop being offered by Shelter WA on the proposed changes contained in the Bill. More than 1 600 people opened this e-bulletin and, of those, 316 clicked through to the Department's webpage about the proposed law changes;
- Consumer Protection presented a workshop on 9 August 2018 about the proposed amendments for private landlords at a forum hosted by Shelter WA during homelessness week;
- Consumer Protection has posted a video about the upcoming laws on its Facebook page – this post has had 1 700 views and no negative feedback or comments have been received;
- A further social media post by Consumer Protection has been viewed 9 900 times; of the 32 comments received to the post, only one raised concern about the rights of landlords and one was from a property manager worried about the system being abused by liars;
- News about the proposed changes has appeared in at least six print media articles including the West Australian, the Sunday Times and community newspapers.

- The proposed new laws have also been broadcast on Ten News, Channel Seven and on Sonshine FM radio.
- Property managers have been undertaking compulsory professional development all year in preparation for the new laws.

In all of this time, only three Ministerial enquiries have been received in relation to the proposed amendment Bill.

In contrast, media about the proposed amendments has consistently resulted in victims of family violence contacting Consumer Protection, their property managers and other community based organisations seeking advice as to when they can access these laws.

6. Appendices

- Appendix A – Case studies
- Appendix B - Draft report of family violence – to be signed by specified professional
- Appendix C – Cost analysis of models for termination

Appendix A – Case studies

CASE STUDY A

In September 2017, a tenant who is a victim of family violence fled her rental premises following a violent assault from her partner. The police pressed charges against the perpetrator tenant, who remained at the tenancy. Under police protection, the victim tenant moved to the north of the State. The perpetrator had protective bail conditions placed upon him.

In December 2017, the family of the victim tenant contacted the property manager to explain the situation and to negotiate to have the victim tenant's name removed from the tenancy agreement. Negotiations were protracted, and in February the property manager told the family that there is a requirement for the perpetrator tenant to agree to have the victim tenant's name removed from the tenancy agreement.

In April 2018, the victim tenant received notice of a court application for termination of the tenancy agreement for non-payment of rent.

The matter was heard at first instance in May 2018 and was adjourned until June 2018. In the meantime, the victim tenant was assisted to apply for termination of her interest in the tenancy agreement on the grounds of hardship. This was heard at the same time as the lessor's application in June.

The court decided to terminate the victim tenant's interest on the grounds of hardship, backdated to September 2017 when the violence occurred. This resulted in the lessor losing the right to claim rent arrears from the victim tenant for the entire period. It likely would have also resulted in the lessor having to pay for the property manager's time in preparing for and attending court.

The entire process took more than six months and resulted in uncertainty and stress for the victim tenant, as well as lengthy period of unpaid rent for the lessor. It also consumed two hearings at the court.

CASE STUDY B

A woman's ex-partner had broken into her rental property, held her hostage and sexually assaulted her repeatedly over three days. She managed to escape and was admitted to hospital with severe physical and mental trauma. The police went to the rental property to gather evidence and found the perpetrator hiding in the house, waiting for her to come home so that he could attack her again. He was arrested, but was released on bail with bail conditions that included an exclusion zone.

Understandably, the woman could not return to the rental property. Quite apart from her ongoing fear for her own safety given that he had managed to enter the premises in the first instance and then had been discovered hiding in the premises waiting for her, the psychological trauma she endured meant returning to the premises was not an option.

The Health Department wrote several letters to the property manager explaining the circumstances and asking that the tenant be released from her tenancy agreement. It took four months for the landlord to agree. During this time the woman was couch surfing with friends as she did not feel safe in her rental property and could not afford to live elsewhere while still paying rent.

CASE STUDY C

Client attended Midland Information Debt and Legal Advocacy Service (Midlas) seeking advice as to how to break her lease as her ex-partner knew where she lived and kept breaking into the house to get to her.

The landlord would not agree to end the lease without cost to the tenant.

The tenant is still in the property, deciding between breaking her lease and being left with a debt she cannot afford or staying and remaining in physical danger until the end of her lease.

The client is on a single Newstart payment. The client has many police reports detailing the extent of the violence she has suffered.

CASE STUDY D

Client attended Midlas for advice after fleeing a rental property with her three children due to severe domestic violence. Client needs to have her name removed from the lease.

A tenant advocate attempted to negotiate with the real estate agent to terminate the client's interest in the lease. The real estate agent was perplexed stating "I have never seen them fight". The real estate agent reluctantly contacted the landlord who would not agree to remove the client's name from lease.

The tenant is in a refuge with her three children awaiting a court date in an effort to terminate the lease due to undue hardship.

The client has been hospitalised many times and has a large number of police reports to back up her claims of domestic violence.

CASE STUDY E

The client lives in a private rental with two children. The tenancy is only in the client's name.

The tenant's violent former partner came to the property and Police were called, and he was then held in remand awaiting court appearance. The client has a VRO against the ex-partner.

The client spoke to the owner and asked to break the lease, as she wanted to move immediately should her former partner be released from custody. The client was also concerned about the risk of further damage to the property.

The owner advised the client that she agreed that the client could vacate the premises, but would be charged rent and costs until such time as she was able to find another tenant. The client is not in a position to pay two rents.

CASE STUDY F

Client approached the Women's Law Centre seeking advice about her options. Her husband, the father of her child had been violent and extremely controlling for years. He was an SAS soldier who had been discharged from the army. He did not have a diagnosis, but she was concerned that he had PTSD or other serious mental illness. He had guns in the house. He would line up the rifle sights on her in the house and monitor her through the gun from across the room, while he ordered her to do things like cook the meal or clean up the room. He would routinely threaten to kill her and himself if she left. Her daughter saw this behaviour.

Applying for a restraining order in this case would be extremely dangerous. It was recommended that the client seek assistance from a women's refuge to leave the state immediately in order to ensure her safety.

She would need every cent she had to make her new start, and would benefit greatly from the ability to terminate her interest in the tenancy by a termination notice with a declaration from the refuge who assisted her to relocate.

CASE STUDY G

A client with five children managed the relationship with her partner by a family agreement that he primarily resided with his own parents, and would come to visit to see the children and would spend time staying over sometimes. This is an Aboriginal extended family.

He had a history of violence, alcoholism and other drug use. On one occasion he stabbed the client. She survived, but was badly injured.

The client did not want to apply for a restraining order as she had a good relationship with the perpetrator's mother, who provided support with the children, but his mother would not keep assisting if there was a restraining order in place. It was important for her children to have a good relationship with his extended family. Also he had breached a range of protective bail conditions in the past, and been returned to custody as a result, and it had not deterred him, so the client did not have any confidence that a restraining order would provide her with any safety, as it was just a piece of paper. She felt safer with the family arrangement than relying on a restraining order. She could demonstrate a number of examples where his family members would come and collect him if he was causing trouble and she called them for help.

CASE STUDY H

A First Nations woman has had to take custody of her grandson out of fear for his health and wellbeing. Her daughter has become violent and threatening, trying to get her child back.

The grandmother is in a rental property. She has had to install deadbolts to the doors and security cameras to the premises without seeking the landlord's permission as her landlord resides overseas and it often takes months for him to respond to the property manager on any issue. She cannot afford to wait and has therefore risked being in breach of the Act and her tenancy agreement in order to protect her grandson.

Appendix B - Draft report of family violence – to be signed by specified professional



Family Violence Report

Section 71AB(2)(d) Residential Tenancies Act 1987 and section 45A(2)(d) Residential Parks (Long-stay Tenants) Act 2006

Section 1 – Tenant Information

Given Name(s)	Surname (Family Name)	
Address of the rental premises	Suburb	Postcode
Telephone Number	Email Address	

Section 2 – Tenant Declaration

I declare the information about family and domestic violence I have provided to the authorised professional listed below is true and accurate to the best of my knowledge and was provided in good faith.

I understand that it is an offence to make a fraudulent declaration, and that I may be liable for a penalty if found guilty of this offence.

Name **Date** **Signature**

Section 3 – Authorised Professional Information

Name of Authorised Professional		Agency Name or Stamp (if applicable)
Occupation / Position		
Business Address		
Suburb	Postcode	

Section 4 - Certified Professional Declaration

<p>By signing below, I declare I am authorised to complete this form (see reverse of form).</p> <p>I declare I have assessed the information provided by the tenant and have determined that he/she, or their dependant(s), has been or is likely to be subjected or exposed to family violence during the tenancy period.</p> <p>Name Date Signature</p>		
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An authorised professional should sign the above declaration only after assessing the tenant and the tenant's circumstances, and should make the determination based upon the accepted standards of their profession and relevant knowledge and professional judgement.

Guidance notes for persons completing this form

PURPOSE

This form is to be completed by prescribed persons under section 71AB(2)(d) of the *Residential Tenancies Act 1987* or section 45A(2)(d) of the *Residential Parks (Long-stay Tenants) Act 2006* for tenants who wish to terminate their interest in a residential tenancy agreement on the grounds that they, or their dependant(s), have been or are likely to be subjected or exposed to family violence during the tenancy period. This form will be provided to the lessor as evidence accompanying a notice of termination of the tenant's interest in the tenancy agreement.

WHO CAN COMPLETE THIS FORM

The following authorised persons who have worked with the tenant can complete this form:

- A person registered under the *Health Practitioner Regulation National Law (Western Australia) Act 2010* in the medical profession;
- A person registered under the *Health Practitioner Regulation National Law (Western Australia) Act 2010* in the psychology profession;
- A social worker as defined in the *Mental Health Act 2014*;
- A police officer;
- A person in charge of a women's refuge;
- A child protection worker designated under the *Children and Community Services Act 2004*.

MEANING OF FAMILY VIOLENCE

Family violence 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.

Examples of behaviour that may constitute family violence include (but are not limited to) the following –

- (a) an assault against the family member;
- (b) a sexual assault or other sexually abusive behaviour against the family member;
- (c) stalking or cyber-stalking the family member;
- (d) repeated derogatory remarks against the family member;
- (e) damaging or destroying property of the family member;
- (f) causing death or injury to an animal that is the property of the family member;
- (g) unreasonably denying the family member the financial autonomy that the member would otherwise have had;
- (h) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or a child of the member, at a time when the member is entirely or predominantly dependent on the person for financial support;
- (i) preventing the family member from making or keeping connections with the member's family, friends or culture;
- (j) kidnapping, or depriving the liberty of, the family member, or any other person with whom the member has a family relationship;
- (k) distributing or publishing, or threatening to distribute or publish, intimate personal images of the family member;
- (l) causing any family member who is a child to be exposed to behaviour referred to in this section.

WHO IS A PERPETRATOR OF FAMILY VIOLENCE

Family violence can be committed by anyone who is in a family relationship with the tenant or their dependent. A family relationship means:

- Spouses or partners, or former spouses or partners of the tenant or their dependent;
- People who are or were related to the tenant or the tenant's dependent, taking into consideration the cultural, social or religious backgrounds of the persons;
- People who are related to the tenant's spouse/former spouse or partner/former partner.
- Persons who are in, or have had, an intimate or other personal relationship with the tenant;
- A tenant and a child, where the child ordinarily or regularly resides with or resided with the tenant or where the tenant is the guardian of the child;
- Personal relationship of a domestic nature between the tenant and another person, in which the lives of the persons are, or were, interrelated and the actions of one person affects, or affected, the other person.

The perpetrator of the family violence does not have to reside at the premises with the tenant in order for family violence to have occurred.

DOCUMENTS MUST BE KEPT CONFIDENTIAL

A lessor must not disclose information contained in this document to another person except in accordance with the *Residential Tenancies Act 1987* or the *Residential Parks (Long-stay Tenants) Act 2006* or another written law. A penalty of a fine of up to \$5 000 applies for failure to comply with this obligation.

A lessor must ensure that information given to them in this document is kept in a secure manner so far as it is reasonably practicable to do so. A penalty of up to \$5 000 applies for failure to comply with this obligation.

Appendix C – Cost analysis of models for termination

Termination of Tenancy Agreement by Notice

(as proposed in the Amendment Bill)

Tenant issues notice of termination - period of notice is seven days



Lessor Issues copy of notice to co-tenants who have seven days to notify lessor of their intentions



Co-tenant(s) give 21 days notice of termination

Lessor certain of availability to re-let at day 14

KEY POINTS

- Lessor receives rent from tenant and/or co-tenant(s) throughout process;
- If co-tenant(s) nominate to remain in the tenancy, no impact on the lessor;
- If the co-tenant(s) terminate the tenancy agreement, lessor has 21 days minimum to secure new tenants;
- Current average vacancy period for Perth tenancies is 49 days (seven weeks) (REIWA data) – therefore worst case scenario potential impact on lessor of 28 days' rent (seven weeks vacancy period, less three week notice period during which co-tenants are paying rent equals four weeks).

Estimate of lessor costs

If there are co-tenants

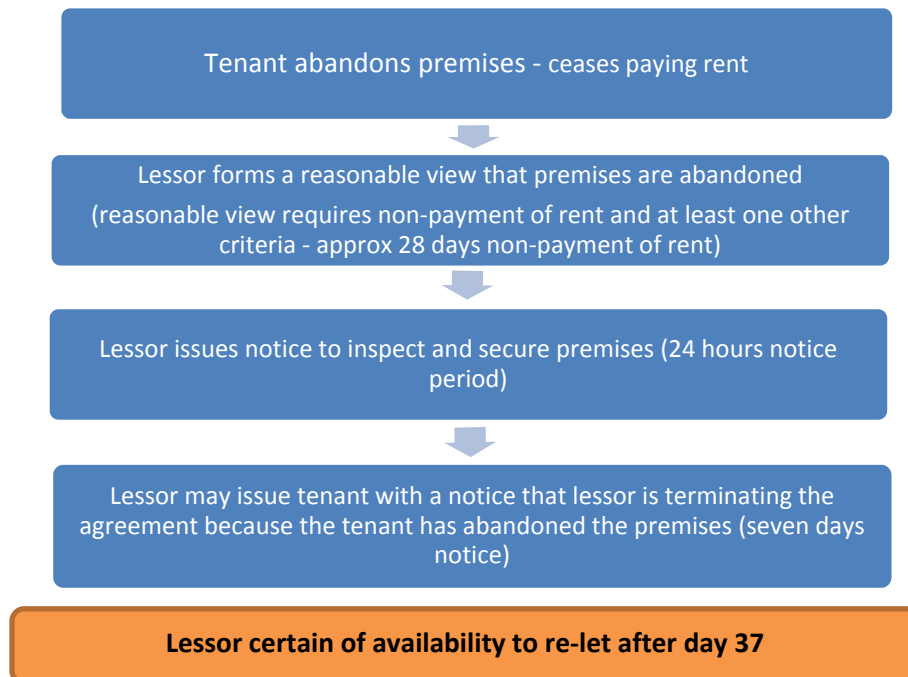
Loss of rent while vacant: 4 weeks x \$350* = **\$1400**

If there are no co-tenants

Loss of rent while vacant 6 weeks x \$350 = **\$2100**

Abandonment of Premises

(only option for some victims of FDV if third party evidence is not allowed)



KEY POINTS

- In order for premises to be considered abandoned, tenant must cease paying rent, therefore lessor is without rent until premises are re-let;
- Instead of issuing the tenant with a notice of termination, the lessor may apply to the court for an order that the premises have been abandoned. This will be a significantly longer process (see next column) and therefore has not been factored into these costings; however there are times where a lessor will want the certainty of a court order rather than relying on their own assessment that premises have been abandoned;
- To form a reasonable view that premises have been abandoned, the Act requires there to be non-payment of rent and other indicators. A reasonable view could not be formed upon the rent being one day late. Therefore, it is likely that several cycles of rent (generally fortnightly cycles) would need to be missed before a reasonable view could be formed;
- Lessor is not reasonably able to seek new tenants until after seven day notice period
Abandonment of premises can give rise to a tenant being listed on a tenancy database. These listings remain for three years.

Estimate of lessor costs

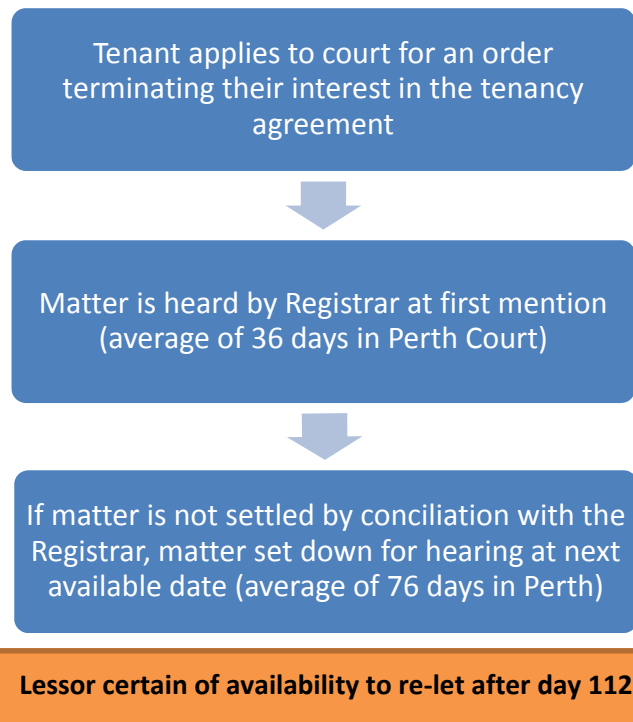
Loss of rent while forming view that premises is abandoned $4 \times \$350 = \1400

Loss of rent during notice period $1 \times \$350 = \350

Loss of rent while vacant: $7 \text{ weeks} \times \$350 = \2450

Total estimated cost to lessor in lost rent **\$4200**

Termination by Court Order only



KEY POINTS

- Although lessor is entitled to receive rent from tenant throughout process, the consequence of this is that a victim of family violence may be forced to remain in the premises or become homeless during this period due to an inability to pay rent at two premises, or alternatively the tenant stops paying rent to this lessor in order to be able to secure new premises, which could mean the lessor is without access to rent until the premises are re-let;
- This is a lengthy process which has no certain outcome - therefore the lessor is realistically not able to seek new tenants until court has made an order terminating the tenancy agreement;
- In the Perth court year to date, the average length of time from application to first mention is 36 days. If the matter does not settle at that date, the average wait to hearing from the first mention is a further 76 days;
- If this model were to be implemented, wait times for all tenancy matters in the court would be negatively impacted;
- Lessors or their property managers will be required to attend court. This involves not only the individual's time, but if the property manager attends, the lessor will incur a fee for their attendance.

Estimate of lessor costs

Property manager attendance at court \$500

Loss of rent from date of hearing until re-let: 7 weeks x \$350 = \$2450

Total estimated cost to lessor **\$2950** if tenant continues to pay rent during court proceedings. If tenant ceases paying rent in order to avoid homelessness and further violence, total estimated cost to lessor is **\$8550** (112 days from application to full hearing)



Government of **Western Australia**
Department of **Commerce**
Consumer Protection

CONSULTATION

Improving the interaction between
Residential Tenancy Laws and
Family Violence Restraining Orders

Options Paper

October 2016

Contents

MESSAGE FROM THE MINISTER.....	i
How to Have Your Say.....	iii
Introduction	1
1. Termination of a tenancy agreement based on family violence	4
2. Recognising certain persons as tenants.....	6
3. Assigning liability for outstanding rent, damages and other charges; disposal of security bond ...	7
4. Listing on a tenancy database.....	9
5. Changing locks and making alterations to the premises to enhance security.....	10
Next steps	12
APPENDIX 1 - <i>Residential Tenancies Act 1987</i> (WA) section 60.....	13
APPENDIX 2 - State and Territory provisions on termination of a tenancy agreement due to family violence	14
APPENDIX 3 - State and Territory provisions on the assignment of liability for debt	23
APPENDIX 4 - State and Territory provisions on tenancy database listings	25
APPENDIX 5 - State and territory provisions on changing of locks and other security devices.....	27

MESSAGE FROM THE MINISTER

Improving the *Residential Tenancies Act 1987* for victims of family violence

I am pleased to release this Options Paper on improving the interaction between the *Residential Tenancies Act 1987* and family violence restraining orders. This discussion paper is an important aspect of the Government's family and domestic violence reform plan titled "Freedom from Fear: Working towards the elimination of family and domestic violence in Western Australia – Action Plan 2015". Another vital aspect of the reform plan is the Restraining Orders and Related Legislation Amendment (Family Violence) Bill 2016 which I introduced into Parliament on 14 September 2016.

Family violence is a significant issue affecting communities not only in this state but across Australia. According to the report of the Western Australian Ombudsman into issues associated with violence restraining orders tabled in November 2015,¹ during the 18 month investigation period of the report, Western Australian Police attended 75,983 incidents of domestic violence.² In November 2015, there was a 40 percent increase in domestic assaults from the same time in the previous year, increasing to 1,219 assaults for the month.³ It is widely accepted that this number greatly underrepresents the extent of family violence in our community because as few as 20 percent of victims will actually report an incident to police or other authorities.

The Western Australian Government has committed to taking decisive action in an effort to address this very complex issue, with a goal to improving safety for victims of family violence and holding the perpetrators of violence accountable for their actions.

As part of the Government's commitment to tackling this issue, in 2013 I asked the Law Reform Commission of Western Australia to investigate the benefits (or otherwise) of having separate family and domestic violence orders and to have provisions for these contained in separate legislation. In 2014, I tabled in Parliament the Commission's report titled *Enhancing Family and Domestic Violence Laws*. The report contained 73 recommendations covering a range of issues, including new definitions for family violence, the creation of a new category of restraining order to respond to family violence and changes to bail and sentencing provisions.

One of the recommendations in the report was for the Department of Commerce to undertake a review of the interaction between the *Residential Tenancies Act 1987* and family violence orders to consider whether any reforms are necessary to better accommodate the parties' circumstances where family violence occurs in a tenancy setting.

This Options Paper is the Government's response to this recommendation.

¹ Ombudsman Western Australia, *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities* November 2015, accessed at <http://www.ombudsman.wa.gov.au/Publications/Documents/reports/FDVROs/FDVRO-Investigation-Report-191115.pdf>

² *Ibid.*, 63.

³ Andrew O'Connor, 'Perth crime continues to rise, as domestic violence, thefts spike' 6 January 2016, ABC News online <http://www.abc.net.au/news/2016-01-06/perth-crime-surge-continues-as-people-property-targeted/7070626>

The importance of home

When a victim of family violence is forced to leave the home, the ramifications for the victim and children that may be affected are far ranging. Not only is there a risk of homelessness, but the disruption to location can lead to loss of employment; disruption to education for children; risk of exposure to further violence if homeless; and impacts to physical and mental health.

The aim of the amendments canvassed in this Options Paper is to support a victim of family violence to remain in the home, wherever it is appropriate and safe to do so, rather than further victimising them by forcing them to leave their home.

Role for stakeholders

The *Residential Tenancies Act 1987* needs to be amended to produce better outcomes for victims of domestic violence. Key stakeholders have an important role to play in assisting to address this very complex community issue by working with the Government to shape the required reforms to achieve the best possible outcomes in a manner that works consistently and coherently with other laws, and at the same time, do not unreasonably burden landlords.

I therefore encourage stakeholders to provide input to the review.

Hon. Michael Mischin MLC

MINISTER FOR COMMERCE

How to Have Your Say

Making a submission

You are invited to make a submission to this consultation. There is no specified format for submissions. You are welcome to:

- write a short letter outlining your views; or
- respond to questions included in this paper.

Where to send submissions

Submissions can be mailed to:

Residential Tenancies (Family Violence) Review

Department of Commerce

(Consumer Protection Division)

Locked Bag 14

Cloisters Square WA 6850

Or emailed to: consultations@commerce.wa.gov.au

Submissions close

The closing date for submissions is: 16 December 2016.

How input will be used

The information gathered from this consultation process will assist in developing proposals for consideration by the Government.

Information provided may become public

After the consultation period concludes, all responses received may be made publicly available on the Department of Commerce website. Please note that because your feedback forms part of a public consultation process, the Government may quote from your comments in future publications. If you prefer your name to remain confidential, please indicate that in your submission. As submissions made in response to this paper may be subject to freedom of information requests, please do not include any personal or confidential information that you do not wish to become available publicly.

Introduction

The purpose of this Options Paper is to seek stakeholder feedback into preferred drafting options to amend the *Residential Tenancies Act 1987* (the RT Act) so that victims of family violence are able to achieve better outcomes from the justice system in relation to their tenancy agreements.

Family violence is behaviour which results in physical, sexual and/or psychological damage, forced social isolation, economic deprivation, or behaviour that causes the victim to live in fear.⁴ Family violence knows no boundaries. Factors such as age, gender, socio-economic status, religion, cultural background and educational level do not protect someone from being a victim of family violence just as they do not determine who might be a perpetrator of violence.

Family violence affects everyone in the family. Children are particularly vulnerable whenever family violence occurs. Exposure to family violence causes serious emotional, psychological, social and behavioural harm to children.⁵

Quite apart from the physical and emotional toll that family violence inflicts upon victims and their friends and families, family violence and sexual assault perpetrated against women costs the community. Nationally this figure is \$13.6 billion each year and is likely to rise to \$15.6 billion by 2021 if extra steps to reduce the incidence of family violence are not taken.⁶

Both Federal and State governments are committed to bringing an end to the increased incidence of family violence within our community. The Commonwealth, along with state and territory governments, have developed *The National Plan to Reduce Violence against Women and their Children 2010 – 2022*.⁷ The Western Australian Government's framework to implement this national plan at a local level is outlined in *Western Australia's Family and Domestic Violence Prevention Strategy to 2022*.⁸ Supplementary to this, the Western Australian Government has developed the *Freedom from Fear: Working towards the elimination of family and domestic violence in Western Australia Action Plan 2015*⁹ (the Action Plan).

Referral to the Law Reform Commission of Western Australia

⁴ Department for Child Protection and Family Support 'Reporting Family and Domestic Violence: Resource for Journalists'

https://www.dcp.wa.gov.au/CrisisAndEmergency/FDV/Documents/Reporting%20family%20and%20domestic%20violence_Resource%20for%20Journalists.pdf p 4.

⁵ Ibid p6.

⁶ Department of Social Services (Cth) <https://www.dss.gov.au/our-responsibilities/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children-2010-2022>, p1.

⁷ Department of Social Services (Cth) <https://www.dss.gov.au/our-responsibilities/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children-2010-2022>.

⁸ Department for Child Protection (WA) <https://www.dcp.wa.gov.au/Documents/WA%20FDV%20Prevention%20Strategy%20to%202022.pdf>.

⁹ Department for Child Protection and Family Support <https://www.dcp.wa.gov.au/CrisisAndEmergency/FDV/Documents/2015/FFFActionPlan2015.pdf>.

In August 2013, the Hon. Michael Mischin MLC, Attorney General and Minister for Commerce, asked the Law Reform Commission of Western Australia (LRCWA) to:

- investigate and consider the benefits (or otherwise) of having separate family and domestic violence legislation including the outcomes and effectiveness of separate legislation;
- provide advice on the utility and legal consequences of separating family and domestic violence restraining orders from the *Restraining Orders Act 1997*;
- provide advice on the provisions which should be included in family and domestic violence legislation if it were to be developed (whether in a separate Act or otherwise); and
- report to the Government on the adequacy thereof and on any desirable changes to the existing law of Western Australia and the practices in relation thereto.

Although the LRCWA was not specifically tasked to comment on the relationship between restraining orders and the RT Act, the LRCWA noted in its discussion paper and final report that the issue had been raised by a sufficient number of stakeholders that it warranted inclusion in the Report. Recommendation 33 of the Report states:

That the Department of Commerce undertake a review of the interaction of the *Residential Tenancies Act 1987* (WA) and family and domestic violence protection orders to consider whether any reforms are necessary or appropriate to accommodate the circumstances of tenants who may be subject to or protected by a family and domestic violence protection order.¹⁰

Implementing the Law Reform Commission of WA's recommendations

The Government has clearly stated its intention to progress (where relevant and appropriate), the recommendations arising out of the Report.¹¹

On 8 March 2015, the Government announced that it would overhaul current restraining order legislation as part of a comprehensive reform package to provide better protection to victims of family violence in Western Australia. This objective was realised when on 14 September 2016, the Attorney General introduced into Parliament the Restraining Orders and Related Legislation Amendment (Family Violence) Bill 2016 (the ROAR Bill). The ROAR Bill seeks to introduce a new definition of family violence and implement a new category of restraining order that is specifically targeted at family violence in order to improve the overall legal response to family violence.

In working towards the implementation of recommendation 33 of the Report, the Department of Commerce – Consumer Protection Division (Consumer Protection) has examined:

- the LRCWA report and some of the submissions made by stakeholders to that inquiry;
- tenancy and family and domestic violence laws throughout Australia;
- the Freedom from Fear Action Plan 2015 of the Western Australian Government;

¹⁰ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws* (Project No. 104) June 2014, 109.

¹¹ Department for Child Protection and Family Support
<https://www.dcp.wa.gov.au/CrisisAndEmergency/FDV/Documents/2015/FFFActionPlan2015.pdf> p13.

- the Council of Australian Governments' (COAG) work on the issue of family and domestic violence; and
- the final report of the 2016 Victorian Royal Commission into Family Violence.

What the research says

According to Homelessness Australia, in 2011-2012, 34 percent of people assisted by specialised homelessness service required assistance due to family violence.¹² In real numbers, this represents over 7200 people.

According to the website of the Australian Institute of Health and Welfare:¹³

People who leave their home because of domestic and family violence often experience severe social and personal disruption, poorer housing conditions and financial disadvantage (Spinney & Blandy 2011).

In recognition of this, federal and state/territory governments have introduced programs which aim to break the link between domestic and family violence and homelessness by focusing on ways in which those victims of domestic and family violence can safely remain in their family home.

Giving victims of family violence the ability and right to remain safely in their home, where appropriate, is a key aim for both state and federal governments. Fundamental to this aim is ensuring that the law and legal system in relation to family violence and residential tenancy work effectively together at the point at which they intersect. This means giving courts the power to make orders in respect of residential tenancy agreements, such as removing the perpetrator or victim from an existing tenancy agreement while allowing the other party to continue, terminating an agreement in its entirety, or allocating liability for outstanding rent and damages.

¹² Homelessness Australia 'Homelessness in Western Australia'

<http://www.homelessnessaustralia.org.au/images/publications/Infographics/WA - updated Jan 2014.pdf>

¹³ <http://www.aihw.gov.au/homelessness/domestic-violence-and-homelessness/>.

1. Termination of a tenancy agreement based on family violence

Current provisions of the *Residential Tenancies Act 1987*

The grounds for terminating a tenancy agreement are set out in section 60 of the RT Act (**Appendix 1**).

If family violence occurs and one or both of the parties needs to end their obligations under a tenancy agreement, the current mechanisms for terminating a tenancy agreement are often insufficiently flexible to respond effectively to the complexities of family violence. The following scenarios illustrate the difficulty that can be faced from both the victim's and the perpetrator's perspectives.

Example A: A victim of family violence is named on a tenancy agreement but, for their ongoing safety, needs to end the tenancy agreement and find alternative premises:

- If the tenancy agreement is periodic (i.e. open dated, with no fixed term), the victim can give 21 days' notice to end the tenancy agreement.¹⁴ During the 21 days, the victim is still required to pay rent for the existing premises. At the same time the victim must raise the upfront costs to move into new premises. For many victims it is not possible to meet both expenses.
- If the tenancy agreement is for a fixed term, the victim must either seek the agreement of the lessor to terminate the tenancy agreement early,¹⁵ unilaterally break the lease early and remain liable for rent and other expenses until the premises are re-let, or apply to the court for an order terminating the tenancy agreement on the grounds that they are experiencing hardship.¹⁶ None of these options is certain as to their outcome. Furthermore, as per the above, the victim remains liable for expenses at the former premises while at the same time having to raise the upfront costs to move into new premises.

Example B: A victim of family violence who is named as a tenant on a tenancy agreement in conjunction with the perpetrator; the victim wants to remain at the premises but have the perpetrator removed from the lease:

- The only mechanism currently available under the RT Act for the victim to have the perpetrator's name removed from the agreement is for the victim to terminate the whole agreement. While it is possible for a lessor to immediately enter into a new agreement with the victim, there is no certainty that the lessor will do so. For many tenants who are victims of violence, the most certain outcome is to leave the lease agreement as it is, with the perpetrator's name included.

Example C: A perpetrator is excluded from the premises by a restraining order.

- If the perpetrator's name remains on the tenancy agreement, they remain liable, for the term of the agreement, for rent and any damage that may be caused to the premises despite not being allowed the use of the premises. If they seek to have their name removed from the agreement then, as per above, this would result in the whole

¹⁴ *Residential Tenancies Act 1987*, section 68.

¹⁵ *Residential Tenancies Act 1987*, section 60(g).

¹⁶ *Residential Tenancies Act 1987*, section 74.

agreement being terminated and no certainty for the victim that the lessor will enter into a new agreement with them alone.

Other jurisdictions

Each state and territory adopts a slightly different approach to the termination of a tenancy agreement where family violence has occurred. The provisions from legislation in the other jurisdictions that address this issue are contained in **Appendix 2**.

Proposal for amendment

The proposal is to amend the RT Act to give the Magistrate's Court the power, upon receipt of an application from a tenant or resident¹⁷ who is a victim of family violence, to make an order to terminate the tenancy agreement and make any of the following orders:

- requiring the lessor to enter into a new tenancy agreement with the protected tenant for the remainder of the term of the tenancy; or
- an order for possession of the premises on a date specified by the court.

If an order is made requiring the lessor to enter into a new agreement with the protected tenant, it is proposed that the terms of the new agreement be the same as the former agreement, including amount of rent, save for any amendments to the terms that may be made by the court.

Parties to an application made under this proposed provision would include:

- the applicant tenant;
- the lessor; and
- any other tenants or resident/s at the premises (for example, in a share house there may be other tenants that had no involvement in the family violence).

Questions

1.1	<p>When deciding whether to require a lessor to enter into a tenancy agreement with the applicant, what factors, if any, should the court be required to take into account? For example:</p> <ul style="list-style-type: none">• the ability of the applicant (and any proposed co-tenants) to maintain their obligations under the new agreement;• any reasonable objections of the lessor;• the views of any co-tenants;• any eligibility criteria (e.g. public housing or community housing eligibility criteria);• relative hardship of the applicant and the lessor. <p>Are there any other factors to be listed?</p> <p>Should this list be exhaustive or should the court be given discretion to consider any other factors that may be relevant in the particular case?</p>
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¹⁷ A resident is a person who lives at the premises but is not named on the lease. For example, in the case of a couple, sometimes only one partner is named on a lease document.

Questions	
1.2	<p>Who should be entitled to make an application under this provision? For example:</p> <ul style="list-style-type: none"> • a person protected by a restraining order only if they are listed as a tenant on the tenancy agreement; • a person who acts as guardian in relation to a child; or • the Housing Authority in respect of a social housing tenancy agreement. <p>Why?</p>
1.3	<p>When should a person be able to make an application under this provision? For example,</p> <ul style="list-style-type: none"> • only when a final restraining order is granted; • when an interim restraining order is granted; • if family violence can be proven to have occurred/be occurring, whether or not an application has been made for an interim or final restraining order. <p>Why?</p>
1.4	<p>Are there any other issues in relation to termination of a tenancy agreement that need to be raised?</p>

2. Recognising certain persons as tenants

On 1 July 2013, the RT Act was amended to include section 59C; Recognition of certain persons as tenants, as follows:

- (1) A person who is not a tenant but who is occupying residential premises to which a residential tenancy agreement applies may apply to a competent court to be recognised as a tenant under the agreement or to be joined as a party to any proceedings before the court relating to the premises, or both.
- (2) An application by a person to be recognised as a tenant may be made at the same time as any other application or during proceedings before the court or independently of any such other application or proceedings.
- (3) On application by a person under this section the court may make either or both of the following orders —
 - (a) an order recognising the person as a tenant under a residential tenancy agreement and in that case the person is to be taken, for the purposes of this or any other Act and of the agreement, to be a tenant under the agreement;
 - (b) an order joining the person as a party to proceedings.
- (4) In making an order referred to in subsection (3)(a) the court may order that the tenancy be continued on such of the terms and conditions of the residential tenancy agreement as it thinks are appropriate having regard to the circumstances of the case.

Section 59C allows a resident of premises, who is not named as a tenant on a residential tenancy agreement, to be recognised as a tenant. The purpose of this provision was originally to allow persons who had been residents of premises at the time of a named tenant's death would be able to remain on as tenants rather than face the prospect of eviction.¹⁸

Although section 59C was initially inserted for a different purpose, it was recognised during debate on the Residential Tenancies Amendment Bill 2011 that this provision would also be useful where family violence has occurred in a residential tenancy setting.¹⁹ Prior to the implementation of section 59C, if only the perpetrator was named on a residential tenancy agreement, it would not be possible for a magistrate to exclude the perpetrator from the premises and allow the victim to remain, as the victim essentially had no legal right to the premises.

Section 59C can operate so that the victim of the violence can apply to the Magistrate's Court to be recognised as a tenant on the residential tenancy agreement therefore granting them a legal interest in the premises. Once this occurs, it is open to a magistrate to allow the victim to remain in the home and include an exclusion from the premises clause in a restraining order made against the perpetrator.

While section 59C has benefits for victims of violence, it also has a significant limitation in that it cannot be used to remove the perpetrator's name from the lease. As already noted, this means that the perpetrator remains liable for the premises even though they may be legally excluded from the premises. For the victim, it can mean that it is more difficult to send a clear message to the perpetrator that they cannot come to the premises. It also means the victim remains linked to the perpetrator via the tenancy agreement.

Proposal for amendment

There is no proposal at this stage to amend section 59C.

Questions	
2.1	Should section 59C of the RT Act be retained so that it can continue to operate as a standalone provision for its original intended purpose, but also in conjunction with the other proposed amendments outlined in this paper? If no, why not?

3. Assigning liability for outstanding rent, damages and other charges; disposal of security bond

Joint tenants under a residential tenancy agreement are jointly and severally liable for all debts to the lessor arising under a residential tenancy agreement. If damage to the premises or rent arrears is caused directly by acts of family violence, holding the victim liable for these costs serves only to further victimise them.

¹⁸ Department of Consumer and Employment Protection *Review of the Residential Tenancies Act 1987 (WA) – Policy Position Paper (January 2008)*, p151.

¹⁹ The Hon Troy Buswell MLA, Legislative Assembly Hansard, 6 September 2011, p6810b-6840a
[http://www.parliament.wa.gov.au/Hansard/hansard.nsf/0/b243dee7a69868cd48257906001df4f7/\\$FILE/A38+S1+20110906+p6810b-6840a.pdf](http://www.parliament.wa.gov.au/Hansard/hansard.nsf/0/b243dee7a69868cd48257906001df4f7/$FILE/A38+S1+20110906+p6810b-6840a.pdf)

Section 17A of the RT Act provides a mechanism for one co-tenant to sue another co-tenant for their portion of any amount that was payable to the lessor under a residential tenancy agreement. This is not considered to be a satisfactory resolution of the issue noted above for two reasons, namely:

- the debt must be fully paid to the lessor before an application can be made to recover some or all of the amount from a co-tenant; and
- it requires a victim to make a further application to the court against the perpetrator.

Other jurisdictions

New South Wales, South Australia and Victoria all have provisions in their legislation that address this issue. The relevant provisions are contained in **Appendix 3**.

Proposal for amendment

It is proposed that the RT Act be amended to enable a Magistrate, when determining an application to terminate a residential tenancy agreement due to family violence, to also assign liability for rent and damages owed to the lessor as at the date the agreement is terminated.

It is noted that it will not always be possible for a lessor to provide the court with particulars of damage and costs of repair at the same time as a decision is being made regarding termination of a tenancy agreement. The court has a general power to adjourn proceedings under section 20(h) of the RT Act. This would allow the court to give parties the time to gather the appropriate information. All parties would also need to be given an opportunity to respond to any claims for unpaid rent or damages that are raised by the lessor.

It is also proposed to give the court the power to determine the disposal of the security bond in accordance with allocation of liability for the debt. For example, if it is established that the victim and the perpetrator of the violence both contributed to the security bond, and the perpetrator is found to be liable to the lessor for unpaid rent and/or damage to the premises, the court would be able to order that the perpetrator's share of the security bond be paid to the lessor while the victim's share of the security bond be transferred to the new agreement with the lessor or disposed of to the victim, whichever is appropriate in the circumstances. It should be noted that if the perpetrator's share of the security bond is insufficient to meet the unpaid rent and damages to the premises, the lessor would need to pursue the perpetrator for the balance of the debt.

It is important to note that the proposed changes will not affect the amount that the lessor is entitled to claim as damages. The lessor will still be able to claim the full amount for unpaid rent and damage to the premises, and will still have available all the current processes for pursuing an unpaid debt through the court system. The proposed changes simply determine who is liable to the lessor for the debt.

Questions	
3.1	Is it necessary to give the court the power to make an order granting the lessor access to the premises to make an assessment of damages for the purpose of this provision, or are existing right of entry provisions in section 46 of the RT Act sufficient?
3.2	Are there any other issues in relation to assignment of liability under the agreement and disposal of security bond that need to be raised?

4. Listing on a tenancy database

Residential tenancy databases (RTDs) are electronic databases operated by private companies. Information about tenants and their rental history is collected and listed on RTDs. Most real estate agents subscribe to one or more RTD and use them to screen prospective tenants. RTDs enable agents and property owners to assess risk when reviewing a prospective tenant.

On 1 July 2013, nationally consistent provisions regarding when a tenant can be listed on an RTD commenced in Western Australia. Section 82E of the RT Act provides that a person can only be listed if:

- the tenant was named on a residential tenancy agreement that has ended;
- the tenant breached a provision of the agreement; and
- as a consequence of that breach, the tenant owes the lessor an amount that is greater than the security bond or a court has made an order terminating the agreement.

Being listed on a RTD can have long term ramifications for an individual's ability to obtain a future residential tenancy agreement. For many, RTD listings may result in long periods of homelessness and/or tenuous security of tenure.

As currently drafted, section 82E could be used to list a victim of family violence, even if they were seeking to have the tenancy agreement terminated under the proposed new provisions. This outcome would be entirely contrary to the efforts of governments to support victims of family violence to obtain secure and stable accommodation.

Some jurisdictions have amended their residential tenancy laws to give the court the power to make an order prohibiting a listing of a tenant on a RTD if the court is satisfied that the victim of the family violence did not themselves cause or reasonably cause a breach of the residential tenancy agreement, and the nature of any breach of the agreement resulted from an act of family violence against the tenant.²⁰

Other jurisdictions

Queensland's and South Australia's legislation contains provisions that deal with this issue. The relevant provisions are contained in **Appendix 4**.

Proposal for amendment

It is proposed to amend the RT Act to include the power for the court to prohibit the listing of a tenant on a RTD by a lessor, a property manager or an RTD operator if the court is satisfied that:

- the tenant has not themselves caused a breach of the agreement; or
- any breach of the agreement was the result of family violence against the tenant.

²⁰ See for example Residential Tenancies (Domestic Violence Provisions) Amendment Bill 2015 (SA), cl 7; *Residential Tenancies Act 1997* (Vic), section 439E.

Questions	
4.1	Is it necessary to give the court any further guidance when making a decision under this proposed provision? If so, what should that guidance be?
4.2	Are there any other issues in relation to listing on an RTD that need to be raised?

5. Changing locks and making alterations to the premises to enhance security

Physical safety in the home is fundamental to long term security of tenure. Often this requires a change of locks to the premises to ensure the perpetrator cannot access the premises with existing keys. It may also require the additional of other security measures, such as security cameras, sensor lights and alarms, securing external sheds and external roof entrances, or changing remote garage door codes.

Section 45(b) of the RT Act prohibits a lessor or tenant from altering, removing or adding locks without the consent of the other party either at the time or immediately before making the changes. Section 59F(1) of the RT Act provides that it is an offence to breach section 45(b) without “reasonable excuse.”

Arguably, changing the locks immediately following removal of a perpetrator of violence from the home without first seeking the approval is probably a “reasonable excuse” and therefore not in violation of section 59F(1) of the RT Act. This viewpoint, however, is not settled.

In some jurisdictions the residential tenancy laws specifically allow for the changing of locks in either an emergency²¹ or where the premises are the subject of an exclusion provision in an order.²²

All of these examples still require the tenant to meet the cost of the new locks and to give the lessor or property manager a key to the new locks as soon as possible after the locks are changed.

In addition to the issue of changing of locks, the Victorian Royal Commission into Family Violence addressed the issue of not prohibiting the tenant from making other alterations to the premises at their own cost, such as installing security cameras.

Section 47 of the RT Act addresses the issue of whether a tenant is allowed to make alterations or affix fixtures to premises with the consent of the lessor. This section allows a lessor to nominate one of two options:

- the tenant shall not affix fixtures or make alterations to the premises under any circumstances; or
- the tenant may affix fixtures or make alterations, but only with the lessor’s consent.

²¹ *Residential Tenancies and Rooming Accommodation Act 2008* (Qld), section 211.

²² *Residential Tenancies Act 1997* (Vic), section 70A.

Where a lessor allows the tenant to make alterations with their consent, the RT Act also provides that the lessor shall not unreasonably withhold that consent.²³ If a tenant makes alterations to the premises, they must restore the premises to their former condition or compensate the lessor if removing a fixture damages the premises.²⁴

The Royal Commission report highlights that if a lessor refuses to give consent, or elects not to allow any modifications to the premises under any circumstances, this has the potential to undermine the ability of victims to remain safely in their home.²⁵

Other jurisdictions

Most of the other states and territories have provisions in respect to the changing of locks and security devices. These relevant provisions are contained in **Appendix 5**.

Proposal for amendment

It is proposed to amend the RT Act to make clear that a tenant who has been subjected to family violence may alter the locks to any external doors and windows of the premises without first obtaining the permission of the lessor. In conjunction with this amendment, it is proposed to require the tenant to provide the lessor with a copy of the key as soon as practicable after the locks have been changed.

In relation to making alterations or affixing fixtures, it is proposed to amend the RT Act to allow a tenant who is protected by a restraining order to affix such fixtures and make such alterations to the premises as are necessary to improve the security of the premises provided that:

- the cost of making the alterations is borne by the tenant;
- installation of fixtures such as security cameras and other security devices is undertaken by a qualified tradesperson; and
- the tenant restores the premises to their original condition at the end of the tenancy agreement if they choose to take the alterations, such as security cameras, with them to new premises or the lessor requires them to do so.

It is also proposed to prohibit a lessor or property manager from giving a copy of a key for any newly installed locks to a perpetrator who has been excluded from the premises. This provision is proposed so as to give certainty to a lessor or property manager who may be faced with demands from a perpetrator whose name remains on a tenancy agreement that they be given access to the premises.

²³ *Residential Tenancies Act 1987* (WA), section 47(2)(a).

²⁴ *Residential Tenancies Act 1987* (WA), section 47(2)(c).

²⁵ *Royal Commission into Family Violence* (Vic): *Report and recommendations*, 125.

Questions	
5.1	Is it necessary to impose a timeframe, such as seven days, for a tenant to provide a key to the lessor?
5.2	Should any permission for a victim of family violence to make alterations to premises be limited to security devices, for example, security cameras, alarms, security screens? Why or why not? If your answer is yes, what devices should be permissible?
5.3	Are there any other issues in relation to altering locks and making alterations to premises that need to be raised?

Next steps

Following receipt of submissions from stakeholders, Consumer Protection will develop recommendations regarding amendment of the RT Act to the Minister for Commerce and the Government for their approval.

APPENDIX 1 - *Residential Tenancies Act 1987* (WA) section 60

How residential tenancy agreements are terminated

Despite any Act or law to the contrary, a residential tenancy agreement shall not terminate or be terminated except in one of the following circumstances —

- (a) where the lessor or tenant gives notice of termination under this Act and —
 - i. the tenant delivers up vacant possession of the premises on or after the expiration of the period of notice required under this Act; or
 - ii. a competent court, upon application by the lessor, terminates the agreement under section 71;
- (b) in the case of a tenancy for a fixed term, where the lessor or tenant gives a notice of termination under section 70A and —
 - i. the tenant delivers up possession of the premises on or after the day on which the term of the agreement expires in accordance with that section; or
 - ii. a competent court, upon application by the lessor, terminates the agreement under section 72;
- (c) where a competent court terminates the agreement under section 73, 74, 75A or 75;
- (d) where a person having superior title to that of the lessor becomes entitled to possession of the premises;
- (e) where a mortgagee in respect of the premises takes possession of the premises in pursuance of the mortgage;
- (f) where the tenant abandons the premises;
- (g) where the tenant delivers up vacant possession of the premises pursuant to an agreement in writing between the lessor and the tenant to terminate the residential tenancy agreement;
- (h) where the agreement terminates by merger;
- (i) where every tenant dies.

APPENDIX 2 - State and Territory provisions on termination of a tenancy agreement due to family violence

STATE OR TERRITORY	LEGISLATION	RELEVANT PROVISIONS
ACT	<i>Residential Tenancies Act 1997</i> , section 85	<p>(1) This section applies if—</p> <ul style="list-style-type: none"> (a) the tenant, or a co-tenant, (the removed person) has given an undertaking to a court to leave the premises; or (b) a court has made an order, other than an interim order, to remove the removed person from the premises. <p>(2) An occupant (the occupant) of the premises, other than the removed person, may apply to the ACAT to be the tenant or co-tenant under the residential tenancy agreement for the premises instead of the removed person.</p> <p>(3) To remove any doubt, the application may be made by the occupant even though the occupant is not a tenant or co-tenant under the residential tenancy agreement.</p> <p>(4) The ACAT may make an order substituting the occupant as the tenant, or co-tenant, if—</p> <ul style="list-style-type: none"> (a) the grounds of the application are proved; and (b) the lessor has been given an opportunity to be heard on the application.
NSW	<i>Residential Tenancies Act 2010</i> , sections 79 and 100	<p>Section 79</p> <p>(1) On the making of a final apprehended violence order that prohibits a co-tenant or a tenant from having access to the residential premises, the tenancy of that co-tenant or tenant under the residential tenancy agreement is terminated. Such a termination does not affect the tenancy of any co-tenant not subject to the order.</p> <p>(2) The Tribunal may, on application by a remaining occupant or co-tenant, make an order recognising the remaining occupant as a tenant under the residential tenancy agreement, if the tenant, or a co-tenant or a former tenant or co-tenant is prohibited by a final apprehended violence order from having access to the residential premises.</p> <p>(3) An order under this section may vest a tenancy over the residential premises in an occupant on such of the terms of the previous residential tenancy agreement as the Tribunal thinks appropriate having regard to the circumstances of the case.</p> <p>(4) An application for an order under this section may be made at the same time as any other application or during proceedings before the Tribunal or independently of any such other application or proceedings.</p>

STATE OR TERRITORY	LEGISLATION	RELEVANT PROVISIONS
		<p>(5) A Tribunal may not make an order under this section in respect of a social housing tenancy agreement unless the remaining occupant meets any applicable eligibility requirements of the social housing provider for tenancy of the premises.</p> <p>Section 100</p> <p>(1) A tenant may give a termination notice for a fixed term agreement on any of the following grounds:</p> <ul style="list-style-type: none"> (a) – (c) (omitted) (d) that a co-tenant or occupant or former co-tenant or occupant is prohibited by a final apprehended violence order from having access to the residential premises. <p>(2) The termination notice must specify a termination date that is not earlier than 14 days after the day on which the notice is given.</p> <p>(3) The termination notice may specify a termination date that is before the end of the fixed term of the residential tenancy agreement.</p> <p>(4) The tenant is not liable to pay any compensation or other additional amount for the early termination of the agreement.</p>
NT	<i>Domestic and Family Violence Act</i> , section 23	<p>(1) This section applies if:</p> <ul style="list-style-type: none"> (a) the defendant and protected person live together or previously lived together in premises; and (b) the defendant or protected person is a tenant of the premises or both of them are tenants of the premises (regardless of whether anyone else is a tenant of the premises); and (c) either: <ul style="list-style-type: none"> i. a court DVO includes a premises access order for the premises; or ii. the protected person no longer wishes to live in the premises. <p>(2) The court may make the following orders in the DVO:</p> <ul style="list-style-type: none"> (a) an order terminating the tenancy agreement; (b) an order creating a new tenancy agreement (the replacement agreement): <ul style="list-style-type: none"> i. for the benefit of the protected person and anyone else who was a party to the terminated agreement other than the defendant; or ii. (ii) with the agreement of the protected person, for the benefit of the defendant and anyone else who

STATE OR TERRITORY	LEGISLATION	RELEVANT PROVISIONS
		<p>was a party to the terminated agreement.</p> <p>(3) The orders may be made only if:</p> <ul style="list-style-type: none"> (a) the court is satisfied: <ul style="list-style-type: none"> i. the domestic relationship between the protected person and defendant has broken down permanently; and ii. there is no reasonable likelihood of them living in the premises free of domestic violence; and iii. the protected person or defendant (as appropriate) will be able to comply with the replacement agreement; and iv. it is appropriate in the circumstances to make the order; and (c) the landlord consents to the orders or, if the landlord refuses consent, the court is satisfied the refusal is unreasonable; and (d) the protected person consents to the orders. <p>(4) The landlord and anyone else having an interest in the premises are entitled to appear and be heard in relation to the matter.</p> <p>(5) The replacement agreement must have the same conditions as the terminated agreement other than the names of the tenants.</p> <p>(6) If the terminated agreement is for a fixed term, the date of expiry of the replacement agreement must be the same as that of the terminated agreement.</p> <p>(7) Part 12 of the <i>Residential Tenancies Act</i> applies to the terminated agreement as if the tenants had given up vacant possession of the premises.</p>
QLD	<i>Residential Tenancies and Rooming Accommodation Act 2008</i> , sections 245, 321 and 323	<p>Section 245</p> <p>(1) This section applies to—</p> <ul style="list-style-type: none"> (a) the domestic associate of the tenant occupying the premises with the tenant; and (b) a cotenant whose domestic associate is the other, or another, cotenant. <p>(2) The person may apply to a tribunal for an order to be recognised as the tenant, or a cotenant, under the agreement instead of the person's domestic associate because the person's domestic associate has committed domestic violence against the person.</p> <p>(3) The tribunal may make the order if it is satisfied the person has established the ground of the application.</p> <p>(4) In deciding the application, the tribunal must have regard to the following issues (the domestic violence issues)—</p>

STATE OR TERRITORY	LEGISLATION	RELEVANT PROVISIONS
		<p>(a) whether the person has applied for a protection order against the person's domestic associate;</p> <p>(b) if an application was made—whether a domestic violence order was made and, if made, whether it is in force;</p> <p>(c) if a domestic violence order has been made—whether a condition was imposed prohibiting the person's domestic associate from entering, or remaining, on the premises.</p> <p>(5) Subsection (4) does not limit the issues to which the tribunal may have regard.</p> <p>(6) If the tribunal makes the order, it may make any other order it considers appropriate.</p> <p>(7) A person in whose favour an order is made under subsection (3) is taken to be the tenant, or a cotenant, under the agreement on the terms the tribunal orders.</p> <p>(8) The tribunal may not make an order under subsection (3) without giving the lessor an opportunity to be heard on the application.</p> <p>(9) In this section—</p> <p>domestic associate means a person in any of the following relationships—</p> <p>(a) an intimate personal relationship;</p> <p>(b) a family relationship;</p> <p>(c) an informal care relationship.</p> <p>Section 321</p> <p>(1) The domestic associate of the tenant occupying the premises with the tenant may apply to a tribunal for a termination order because the tenant—</p> <p>(a) has intentionally or recklessly caused, or is likely to intentionally or recklessly cause, serious damage to the premises; or</p> <p>(b) has committed domestic violence against the domestic associate.</p> <p>Section 323</p> <p>(1) This section applies if—</p> <p>(a) the domestic associate of the tenant, or an occupant of the premises, makes an application to a tribunal for a</p>

STATE OR TERRITORY	LEGISLATION	RELEVANT PROVISIONS
		<p>termination order for damage or injury; and</p> <p>(b) the applicant believes on reasonable grounds the tenant is likely to cause further damage or injury for which a termination order could be sought.</p> <p>(2) The applicant may apply to a tribunal for an order to restrain the tenant from causing the further damage or injury.</p>
SA	<p><i>Residential Tenancies Act 1995</i>, section 89A</p>	<p>Termination based on domestic abuse</p> <p>(1) The Tribunal may, on application by a tenant or a co-tenant, terminate a residential tenancy from a date specified in the Tribunal's order if satisfied—</p> <ul style="list-style-type: none"> (a) that an intervention order is in force against a person who resides at the residential premises for the protection of— <ul style="list-style-type: none"> i. the applicant; or ii. a domestic associate of the applicant who normally or regularly resides at the residential premises; or (b) that a person who resides at the residential premises has committed domestic abuse against— <ul style="list-style-type: none"> i. the applicant; or ii. a domestic associate of the applicant who normally or regularly resides at the residential premises. <p>(2) The Tribunal may, on application by the South Australian Housing Trust, a subsidiary of the South Australian Housing Trust, or a community housing provider registered under the <i>Community Housing Providers National Law</i> , terminate a residential tenancy from a date specified in the Tribunal's order if satisfied—</p> <ul style="list-style-type: none"> (a) that an intervention order is in force against a tenant for the protection of a person who normally or regularly resides at the residential premises; or (b) that a tenant has committed domestic abuse against a person who normally or regularly resides at the residential premises. <p>(3) For the purposes of an application under this section, the applicant, the landlord and any tenant or co-tenant under the residential tenancy agreement are parties to proceedings concerning the tenancy dispute.</p> <p>(4) The Tribunal may, on application by a party to proceedings under this section, make 1 or more of the following additional orders:</p> <ul style="list-style-type: none"> (a) subject to this section, an order requiring the landlord to enter into a new residential tenancy agreement with the applicant or a co-tenant under the terminated agreement (or both) for the remainder of the term of the tenancy; (b) an order that the landlord may enter the residential premises at a time determined by the Tribunal to inspect the premises before a determination is made under this section; (c) an order for possession of the premises on a date specified by the Tribunal;

STATE OR TERRITORY	LEGISLATION	RELEVANT PROVISIONS
		<p>(d) if the Tribunal is satisfied that—</p> <ul style="list-style-type: none"> i. the applicant did not cause or reasonably cause a breach of the residential tenancy agreement; or ii. the nature of any breach of the residential tenancy agreement resulted from an act of abuse or domestic abuse against the applicant, <p>an order that the landlord, landlord's agent or a database operator must not list the applicant's personal information in a residential tenancy database under section 99F(1).</p> <p>(5) The Tribunal must not make an order under subsection (4)(a) requiring the landlord to enter into a new residential tenancy agreement with a co-tenant who is—</p> <ul style="list-style-type: none"> (a) the person referred to in subsection (1)(a) against whom an intervention order is in force; or (b) the person referred to in subsection (1)(b) whom the Tribunal is satisfied has committed domestic abuse against an applicant or a domestic associate of the applicant who normally or regularly resides at the residential premises, if the landlord indicates, as part of proceedings before the Tribunal, that the landlord considers it would be unreasonable for such an order to be made. <p>(6) Before making an order under subsection (4)(a), the Tribunal must be satisfied—</p> <ul style="list-style-type: none"> (a) that any tenant or co-tenant under the new residential tenancy agreement could reasonably be expected to comply with the obligations under the agreement; and (b) in a case where the landlord is the South Australian Housing Trust or a subsidiary of the South Australian Housing Trust—that any tenant under the new residential tenancy agreement meets the eligibility requirements of the Trust; and (c) in a case where— <ul style="list-style-type: none"> i. the landlord is a community housing provider registered under the <i>Community Housing Providers National Law</i> ; and ii. the residential premises constitute community housing within the meaning of that Law, that any tenant under the new residential tenancy agreement meets the eligibility requirements for such community housing and any membership or other requirements of the landlord associated with occupation of those premises. <p>(7) If the landlord or any co-tenant objects to an application for the making of an order under subsection (1) or (4)(a), the Tribunal must not make the order unless satisfied that the hardship likely to be suffered by the applicant or a domestic associate of the applicant who normally or regularly resides at the residential premises would, if the order were not made, be greater than any hardship likely to be suffered by the objector as a consequence of the making of the order.</p> <p>(8) A new residential tenancy agreement entered into by order of the Tribunal under subsection (4)(a) must be on the same terms and conditions as the terminated tenancy agreement, subject to any changes determined by the Tribunal.</p>

STATE OR TERRITORY	LEGISLATION	RELEVANT PROVISIONS
		<p>(9) In considering an application under this section, the Tribunal must have regard to such of the following orders and proceedings (if any) as are relevant to the application:</p> <ul style="list-style-type: none"> (a) an order, injunction, undertaking, plan, recognisance or other form of obligation imposed or agreement made under the <i>Family Law Act 1975</i> of the Commonwealth; (b) an order made under the <i>Children's Protection Act 1993</i>; (c) an order made under the <i>Intervention Orders (Prevention of Abuse) Act 2009</i>; (d) a pending application for an order referred to in paragraph (a), (b) or (c); (e) any other relevant legal proceedings.
TAS	<i>Family Violence Act 2004</i> , section 17	<p>(1) If the person against whom an FVO is to be made is a tenant of residential premises occupied by an affected person, a court may make an order under section 16 to –</p> <ul style="list-style-type: none"> (a) terminate the residential tenancy agreement ("the original agreement"); and (b) establish a new residential tenancy agreement ("the replacement agreement") for the benefit of the affected person and any other party who was party to the terminated agreement other than the person against whom the FVO is made. <p>(2) A replacement agreement is to have the same terms and conditions, other than the names of the tenants, as the original agreement.</p> <p>(3) Where the original agreement was for a fixed term, the date of expiry of the replacement agreement is to be the same as that of the original agreement.</p> <p>A Where a court has made an order terminating a residential tenancy agreement and establishing a new residential tenancy agreement and a security deposit has been paid as required under the <i>Residential Tenancy Act 1997</i> in respect of the original agreement, the court may make an order stating that the deposit in respect of the original agreement is the security deposit in respect of the replacement agreement.</p> <p>B If an order is made under subsection (3A) –</p> <ul style="list-style-type: none"> (a) the owner of the residential property may not require any further security deposit in respect of the replacement agreement; (b) no disbursement or refund of the security deposit is payable under the <i>Residential Tenancy Act 1997</i> on the termination of the original agreement; and (c) on the termination of the replacement agreement, the security deposit is to be disbursed or refunded as if it

STATE OR TERRITORY	LEGISLATION	RELEVANT PROVISIONS
		<p>were the termination of the original agreement.</p> <p>(4) Before an order is made under this section, any person having an interest in the residential premises is entitled to appear and be heard in relation to the matter.</p>
VIC	<p><i>Residential Tenancies Act 1997</i>, sections 233A & 233B</p>	<p>Section 233A</p> <p>(1) In this section—</p> <p>"final order" means—</p> <p>(a) a final order within the meaning of the <i>Family Violence Protection Act 2008</i> ; or</p> <p>(b) a final order within the meaning of the <i>Personal Safety Intervention Orders Act 2010</i> .</p> <p>(2) This section applies if —</p> <p>(a) a tenant is excluded from rented premises under an exclusion condition included in a final order; and</p> <p>(b) a protected person under the final order—</p> <p>i. is also a party to the tenancy agreement for the rented premises; or</p> <p>ii. has been residing in the rented premises as the protected person's principal place of residence but is not a party to the tenancy agreement.</p> <p>(3) The protected person may apply to the Tribunal for an order—</p> <p>(a) terminating the existing tenancy agreement; and</p> <p>(b) requiring the landlord of the premises to enter into a tenancy agreement with the protected person and other persons (if any) specified in the application.</p> <p>(4) For the purposes of proceedings in relation to an application for an order under subsection (3), each of the following persons is a party to the proceeding—</p> <p>(a) the protected person;</p> <p>(b) the landlord;</p> <p>(c) the excluded tenant;</p> <p>(d) any other existing tenants.</p> <p>Section 233B</p> <p>(1) On receipt of an application under section 233A(3) , the Tribunal may make an order terminating the existing tenancy agreement and requiring the landlord to enter into a new tenancy agreement with the protected person and other persons (if any) specified in the application if the Tribunal is satisfied that—</p> <p>(a) the protected person and other persons (if any) could reasonably be expected to comply with the duties of a</p>

STATE OR TERRITORY	LEGISLATION	RELEVANT PROVISIONS
		<p>tenant under a tenancy agreement to which this Act applies;</p> <ul style="list-style-type: none"> (b) the protected person or the protected person's dependent children would be likely to suffer severe hardship if the protected person were compelled to leave the premises; (c) the hardship suffered by the protected person would be greater than any hardship the landlord would suffer if the order were made; (d) it is reasonable to do so given the length of the exclusion under the final order and the length of the existing tenancy agreement; and (e) it is reasonable to do so given the interests of any other tenants (other than the excluded tenant) under the existing tenancy agreement and, in particular, whether the other tenants support the protected person's application. <p>(2) If the Tribunal makes an order under subsection (1) the new tenancy agreement must—</p> <ul style="list-style-type: none"> (a) be subject to the same rent and frequency of rent payments as the existing tenancy agreement; (b) if the existing tenancy agreement is a fixed term agreement, run for a term not longer than the remainder of that fixed term; and (c) otherwise, be on the same terms and conditions as the existing tenancy agreement, subject to any changes the Tribunal determines. <p>(3) If the Tribunal makes an order under subsection (1) the existing tenancy agreement is terminated on the signing of the new tenancy agreement.</p>

APPENDIX 3 - State and Territory provisions on the assignment of liability for debt

STATE OR TERRITORY	LEGISLATION	RELEVANT PROVISIONS
NSW	<i>Residential Tenancies Act 2010</i> , section 100(1)(d) and (4)	<p>(1) A tenant may give a termination notice for a fixed term agreement on any of the following grounds:</p> <p style="padding-left: 40px;">(d) that a co-tenant or occupant or former co-tenant or occupant is prohibited by a final apprehended violence order from having access to the residential premises.</p> <p>(4) The tenant is not liable to pay any compensation or other additional amount for the early termination of the agreement.</p>
SA	<i>Residential Tenancies Act 1995</i> , sections 89A(10), (11) and (12)	<p>(10) If a residential tenancy is terminated under this section because of an intervention order in force against a co-tenant under the residential tenancy agreement, or because a co-tenant under the agreement has committed domestic abuse, the Tribunal may order the co-tenant to make a payment of compensation to the landlord for loss and inconvenience resulting, or likely to result, from the termination of the tenancy or from any additional order made under subsection (4).</p> <p>(11) If the Tribunal finds, in relation to a residential tenancy that is terminated under this section, that 1 or more, but not all, of the co-tenants under the residential tenancy agreement are responsible for damage to the residential premises or ancillary property, the Tribunal may determine that the responsible co-tenant or co-tenants are liable (to the exclusion of other co-tenants) for making any payment of compensation ordered under section 110(1)(c).</p> <p>(12) If 1 or more, but not all, of the co-tenants under a residential tenancy agreement are liable under subsection (10) or (11) for making a payment of compensation, the following provisions apply:</p> <p style="padding-left: 40px;">(a) the Tribunal may give a direction under section 110(1)(i) that the bond (if any) be paid to the landlord and any co-tenant who is not liable for making the payment in such proportions as the Tribunal thinks fit; and</p> <p style="padding-left: 40px;">(b) a direction under paragraph (a) may not operate to limit the amount of bond payable to a landlord under section 110(1)(i).</p>
VIC	<i>Residential Tenancies Act 1997</i> , section 233C	<p>(1) If the Tribunal decides to make an order under section 233B, the Tribunal may determine the liabilities of the excluded tenant, the protected person or any other tenants under the existing tenancy agreement in relation to a bond paid for the rented premises and any other existing liabilities under the existing tenancy agreement,</p>

STATE OR TERRITORY	LEGISLATION	RELEVANT PROVISIONS
		<p>including, for example—</p> <ul style="list-style-type: none"> (a) liabilities relating to damage caused to the rented premises; and (b) liabilities relating to outstanding utility charges. <p>(2) To remove doubt, the termination of a tenancy agreement under section 233B does not give rise to a right to claim compensation on the part of any party to the agreement for early termination of the agreement.</p> <p>(3) For the purpose of making a determination under subsection (1), the Tribunal may adjourn the hearing to allow an inspection of the rented premises in accordance with section 86(1)(g).</p>

APPENDIX 4 - State and Territory provisions on tenancy database listings

STATE OR TERRITORY	LEGISLATION	RELEVANT PROVISIONS
QLD	<i>Residential Tenancies and Rooming Accommodation Act 2008</i> , section 461	<p>(1) A person (the tenant) who has been listed on a tenancy database may apply to a tribunal for an order under this section.</p> <p>(2) The tribunal may order a person to take stated steps to—</p> <ul style="list-style-type: none"> (a) have the tenant's name or other personal information about the tenant omitted from the database; or (b) have stated changes made to the personal information about the tenant that is included in the database. <p>(3) The tribunal may make the order only if it is satisfied—</p> <ul style="list-style-type: none"> (a) the database includes personal information about the tenant that is incorrect or misleading; or (b) the inclusion of the tenant's name or other personal information about the tenant in the database is unjust in the circumstances, having regard to— <ul style="list-style-type: none"> (i) the reason for the listing; (ii) the tenant's involvement in the acts or omissions giving rise to the reason for the listing; (iii) the adverse consequences suffered, or likely to be suffered, by the tenant because of the listing; and (iv) any other relevant matter. <p><i>Examples for paragraph (b)—</i></p> <p><i>Y is listed on a tenancy database for a reason relating to damage caused to premises by Y's spouse in the course</i></p>

STATE OR TERRITORY	LEGISLATION	RELEVANT PROVISIONS
		<i>of an incident of domestic violence. Because of the listing, Y cannot obtain appropriate and affordable accommodation</i>
SA	<i>Residential Tenancies Act 1995, section 89A(4)(d)</i>	<p>(4) The Tribunal may, on application by a party to proceedings under this section, make 1 or more of the following additional orders:</p> <p style="padding-left: 40px;">(d) if the Tribunal is satisfied that—</p> <p style="padding-left: 80px;">i. the applicant did not cause or reasonably cause a breach of the residential tenancy agreement; or</p> <p style="padding-left: 80px;">ii. the nature of any breach of the residential tenancy agreement resulted from an act of abuse or domestic abuse against the applicant,</p> <p>an order that the landlord, landlord's agent or a database operator must not list the applicant's personal information in a residential tenancy database under section 99F(1).</p>

APPENDIX 5 - State and territory provisions on changing of locks and other security devices

STATE OR TERRITORY	LEGISLATION	RELEVANT PROVISIONS
ACT	<i>Residential Tenancies Act 1997</i> , Schedule 1 clause 54(4)	The lessor or the tenant may change locks (at his or her own cost) in an emergency without the agreement of the other party.
NSW	<i>Residential Tenancies Act 2010</i> , section 72	<p>(1) A copy of the key or any other opening device or information required to open a lock or other security device that is altered, added or removed by a landlord or tenant must be given to the other party not later than 7 days after it is altered, added or removed, unless:</p> <ul style="list-style-type: none"> (a) the other party agrees, or (b) the Tribunal authorises a copy not to be given. <p>(2) This section does not require a copy of a key or other opening device or information to be given to a person who is prohibited from having access to the residential premises by an apprehended violence order.</p> <p>(3) This section is a term of every residential tenancy agreement.</p>
QLD	<i>Residential Tenancies and Rooming Accommodation Act 2008</i> , section 211	<p>(1) If the lessor or tenant changes a lock, the party must give to the other party a key for the changed lock, unless—</p> <ul style="list-style-type: none"> (a) the other party agrees to not being given a key; or (b) a tribunal orders that a key not be given. <p>(2) However, the lessor or tenant may change a lock only if—</p> <ul style="list-style-type: none"> (a) the party has a reasonable excuse for making the change; or (b) the other party agrees to the change. <p>(3) Without limiting subsection (2)(a), it is a reasonable excuse for the lessor or tenant to change a lock if it is changed in an emergency or under an order of a tribunal.</p>
TAS	<i>Residential Tenancies Act 1997</i> section 57	A tenant may, without the authority of an order of the Court or the consent of the owner of the residential premises, add, alter or remove any lock or other security device –

STATE OR TERRITORY	LEGISLATION	RELEVANT PROVISIONS
		<p>(a) if –</p> <p>(i) an FVO, within the meaning of the <i>Family Violence Act 2004</i>, is in force under that Act; or</p> <p>(ii) a PFVO, within the meaning of the <i>Family Violence Act 2004</i>, is in force under that Act; and</p> <p>(b) the FVO or PFVO was made for the purpose of protecting the tenant.</p>
VIC	<i>Residential Tenancies Act 1997</i> , section 70A	<p>(1) This section applies if—</p> <p>(a) a tenant is excluded from rented premises because of an exclusion condition included in a family violence intervention order or, family violence safety notice or a personal safety intervention order; and</p> <p>(b) a protected person under the family violence intervention order or, family violence safety notice or a personal safety intervention order—</p> <p>i. is also a party to the tenancy agreement for the rented premises; or</p> <p>ii. has been residing in the rented premises as the protected person's principal place of residence but is not a party to the tenancy agreement.</p> <p>(2) The protected person may change any external door or window lock, including a lock in a master key system, of the rented premises, whether or not the protected person is a party to the tenancy agreement.</p> <p>(3) As soon as practicable after the protected person changes any external door or window lock, the protected person must—</p> <p>(a) give the landlord or landlord's agent—</p> <p>i. a key to the lock; and</p> <p>ii. either a certified extract of the family violence intervention order or, family violence safety notice or a personal safety intervention order or a copy of the order or notice; and</p> <p>(b) give a key to the lock to the parties to the tenancy agreement, other than the excluded tenant.</p> <p>(4) The protected person is not required to give the excluded tenant a key to the lock—</p> <p>(a) in the case of a family violence intervention order or a personal safety intervention order, unless the exclusion condition in the family violence intervention order or a personal safety intervention order ends; or</p> <p>(b) in the case of a family violence safety notice, until the family violence safety notice ends.</p> <p>(5) A landlord or landlord's agent must not give the excluded tenant any key provided under subsection (3)(a) if he or she knows that the tenant has been excluded from the rented premises under a family violence intervention order or, family violence safety notice or a personal safety intervention order.</p> <p>(6) If a certified extract or a copy of a notice or order has been given to a landlord or landlord's agent under subsection (3)(a)(ii), the landlord and landlord's agent are taken to know that the tenant has been excluded from the rented</p>

STATE OR TERRITORY	LEGISLATION	RELEVANT PROVISIONS
		<p>premises.</p> <p>(7) A landlord or landlord's agent may only disclose, or give a copy of, a certified extract or a copy of a notice or order received under subsection (3)(a)(ii) to—</p> <ul style="list-style-type: none"> (a) if given to the landlord, the landlord's agent; (b) if given to the landlord's agent, the landlord; (c) in either case, the legal representative of the landlord or landlord's agent; (d) any other person as prescribed. <p>(8) This section applies despite anything in section 70.</p>

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**IMPROVING THE RESPONSIVENESS OF THE
RESIDENTIAL TENANCIES ACT 1987 TO
FAMILY VIOLENCE**

Final Report

August 2017

EXECUTIVE SUMMARY	3
INTRODUCTION	7
Stakeholder consultation.....	7
1. DEFINING FAMILY VIOLENCE	8
THE BENEFIT OF A CONSISTENT DEFINITION.....	9
2. TERMINATION OF A TENANCY AGREEMENT ON THE GROUNDS OF FAMILY VIOLENCE	11
2.1. METHOD OF TERMINATING THE AGREEMENT.....	11
ALTERNATIVE PROPOSAL – NOTICE OF TERMINATION ON GROUNDS OF FAMILY VIOLENCE.....	11
How the notice based model would work where other co-tenants are affected.....	12
OTHER JURISDICTIONS.....	13
2.2. INDEPENDENT EVIDENCE OF FAMILY VIOLENCE	16
2.3. ACCEPTABLE FORMS OF NON-JUDICIAL EVIDENCE.....	19
2.4. CONSEQUENCES ON TERMINATION IF THE PARTIES RECONCILE	19
2.5. FACTORS TO GUIDE THE COURT	20
Best interests of the child.....	20
Aboriginal or Torres Strait Islander	20
Risk of homelessness	20
Pets in the household	21
Potential of further damage to the premises and relative hardship to the lessor	21
Non-exhaustive list	22
2.6. TIMING OF APPLICATIONS TO THE COURT.....	23
2.7. ROLE FOR THIRD PARTY APPLICANTS	24
3. RETAINING SECTION 59C.....	25
4. ASSIGNING LIABILITY FOR DAMAGES TO THE PREMISES	26
5. RESIDENTIAL TENANCY DATABASE LISTINGS	29
6. CHANGING THE LOCKS AND INSTALLING OTHER SECURITY MEASURES.....	30
Keys.....	31
Installing security devices.....	31
7. OTHER ISSUES RAISED BY STAKEHOLDERS	33
Prohibit discrimination against victims of family violence	33
The Housing Authority’s Three Strikes Policy.....	33
Education and Support	33
Attachment A - Schedule 1 <i>Migration Regulations</i> 1994 - IMMI 12/116.....	35

EXECUTIVE SUMMARY

In June 2014, in the context of its report *Enhancing Family and Domestic Violence Laws*, the Law Reform Commission of Western Australia recommended that the former Department of Commerce undertake a review of the interaction between the *Residential Tenancies Act 1987* (the RT Act) and family violence orders to consider whether any reforms are necessary to better accommodate the parties' circumstances where family violence occurs in a tenancy setting.

The current government, in providing support for the implementation of the Law Reform Commission's recommendations, announced their policy to be:

“provide the legal protection of accommodation and housing rights and status of victims of family and domestic violence. This measure will allow a lease to be transferred into the victim's name providing them with the opportunity to remain in the property. This move will help to change the common situation where victims and their children are forced to uproot their lives and leave the family home.”¹

In October 2016, the Department of Commerce – Consumer Protection Division (Consumer Protection) released an options paper to consult with community stakeholders on preferred drafting options to amend the RT Act so that victims of family violence are able to achieve better outcomes from the justice system in relation to their tenancy agreements.

In all, 20 submissions were received from a variety of stakeholders, including government departments, tenant advocates, lessor and property manager groups, advocates for victims of family violence and individuals who themselves had experienced family violence. Consumer Protection also examined the legislation in other Australian states and territories, reviews of those legislative frameworks and the final report of the 2016 Victorian Royal Commission into Family Violence.

This report on the consultation findings contains 12 recommendations for amendment of the RT Act. These amendments are aimed solely at producing better justice outcomes for victims of family violence in respect of their tenancy agreements; to give victims of violence the choice to be able to leave the premises without legal consequence if it is no longer safe for them to remain or alternatively, to provide the legal framework for a victim and their children to remain in the premises if it is safe for them to do so. The improved certainty for tenants also produces improved certainty for lessors, and ultimately better protection of their asset.

The 12 recommendations are:

Recommendation 1

It is recommended that the definition of family violence in the RT Act mirror the definition of family violence contained in section 5A of the *Restraining Orders Act 1997*, as amended by the *Restraining Orders and Related Legislation (Family Violence) Act 2016*.

Recommendation 2

It is recommended that the RT Act be amended to:

¹ WA Labor 2015 Platform, clause 142.

- i. Enable a tenant who is a victim of family violence to terminate their interest in a tenancy agreement by issuing the lessor with a notice of termination on the grounds of family violence. The notice period should be not less than seven days.
- ii. Require the tenant to provide evidence to the lessor of the existence of family violence in a form set out in the RT Act.
- iii. Where the evidence provided does not meet the prescribed requirements, allow the lessor to appeal the termination notice to the Magistrates Court, noting that if the court finds that the evidence does meet the prescribed requirements then the magistrate must terminate the tenant's interest in the tenancy agreement.
- iv. Require a lessor who receives a termination notice in accordance with (i) above to provide a copy of the notice to any co-tenants named on the tenancy agreement and to provide them with not less than seven days to advise the lessor if they wish to continue with the tenancy agreement or terminate the tenancy agreement. The co-tenants should then be provided with not less than 21 days to deliver up vacant possession of the premises.
- v. Require a tenant who is a victim of family violence who wishes to remain in the premises and who wants to have the perpetrator's interest in the tenancy agreement terminated to apply to the court for an order. The lessor and any co-tenants will be joined as parties to the proceedings.
- vi. Allow a perpetrator to apply to the court to terminate their own interest in a tenancy agreement, but only if the perpetrator has been excluded from the tenancy premises by way of court order or bail conditions.
- vii. Require the court to determine the perpetrator's liability for any unpaid rent, damages to the premises and compensation to the lessor at the time of removing the perpetrator's name from the lease, irrespective of whether it is the perpetrator or the victim who is making the application to have the perpetrator's interest in the tenancy agreement terminated.

Recommendation 3

It is recommended that the RT Act be amended to provide that acceptable evidence of family violence include:

- an interim or final family violence order pursuant to the *Restraining Orders Act 1997*;
- an injunction made under sections 68B or 114 of the *Family Law Act 1975* (Cth) or sections 235 or 235A of the *Family Court Act 1997* (WA);
- where either party has been convicted, or is charged with, an offence involving violence, or a threat of violence, to the other party; and
- prescribed non-judicial evidence.

Recommendation 4

It is recommended that the RT Regulations be amended to prescribe non-judicial evidence consistent with the evidence requirements detailed in schedule 1 of the *Migration Regulations 1994* IMMI 12/116.

Recommendation 5

It is recommended that the RT Act be amended to:

- i. include the following list of factors for the magistrate to take into consideration when deciding a family violence related application:
 - a. the best interests of any child of the victim of family violence as a paramount consideration;
 - b. the ability of the applicant (and any proposed co-tenants) to maintain their obligations under the new agreement;
 - c. the risk to the victim of homelessness if the perpetrator's name is not removed from the tenancy agreement;
 - d. any reasonable objections of the lessor;
 - e. the views of any co-tenants;
 - f. any eligibility criteria for the victim to remain in the premises (e.g. public housing or community housing eligibility criteria);
 - g. the presence of pets in the household; and
 - h. hardship of the lessor or co-tenant.
- ii. require that if a lessor or co-tenant wants to object to the making of an order in favour of a victim of family violence, the lessor or co-tenant must satisfy the court that their hardship will exceed that suffered by the victim if the court makes the order requested by the victim; and
- iii. allow the magistrate to take any other relevant factors into consideration.

Recommendation 6

It is recommended that the RT Act be amended to allow an application to have a perpetrator's name removed from a tenancy agreement to be heard by a court at the same time as an application for a family violence restraining order.

Recommendation 7

It is recommended that the RT Act be amended to allow for third parties to be able to commence proceedings to remove a perpetrator's name from the tenancy agreement on behalf of a victim of family violence and for categories of third party applicants to be prescribed in the RT Regulations.

Recommendation 8

It is recommended that section 59C of the RT Act be retained in its current form.

Recommendation 9

It is recommended that the RT Act be amended to:

- i. enable a magistrate to determine and assign liability for any damage or other debt arising under the tenancy agreement to the perpetrator tenant, the victim tenant and/or any other co-tenant as the court determines appropriate in the circumstances;
- ii. enable the magistrate to apportion the disposal of bond to the lessor and any non-liaible co-tenant as appropriate;
- iii. to empower the magistrate to determine a date and time for the lessor to have access to the premises to allow for a full assessment of the damages prior to any assignment of liability being concluded; and
- iv. clarify the relationship between this provision and s27C(4).

Recommendation 10

That the RT Act be amended to enable a magistrate to make an order to amend or remove a listing on a residential tenancy database if the circumstances giving rise to the listing result from family violence.

Recommendation 11

It is recommended that the RT Act be amended to:

- i. make clear that a tenant who has been subjected to family violence may alter the locks to any external doors and windows of the premises without first obtaining the permission of the lessor;
- ii. require the tenant to provide the lessor with a copy of the key as soon as practicable after the locks have been changed and in any event within seven days;
- iii. prohibit a lessor or property manager from giving a copy of a key for any newly installed locks to a perpetrator who has been excluded from the premises; and
- iv. allow a tenant who is victim of family violence to affix such fixtures and make such alterations to the premises as are necessary to improve the security of the premises provided that:
 - a. the cost of making the alterations is borne by the tenant;
 - b. installation of fixtures such as security cameras and other security devices is undertaken by a qualified tradesperson;
 - c. the tenant has regard to the look and feel and age of the property when selecting security devices; and
 - d. the tenant restores the premises to their original condition at the end of the tenancy agreement if they choose to take the alterations, such as security cameras, with them to new premises or the lessor requires them to do so.

Recommendation 12

That the RT Act be amended to prohibit a lessor from discriminating against a potential, current or former tenant on the grounds that they have been or are perceived to be a victim of family violence.

INTRODUCTION

On 28 October 2016, the then Minister for Commerce, the Hon Michael Mischin MLC, launched an options paper to canvass ways in which the *Residential Tenancies Act 1987* (the RT Act) should be amended to compliment the *Restraining Orders and Related Legislation Amendment (Family Violence) Act 2016* (the FV Amendment Act). The options paper looked at the interaction between tenancy laws and family violence orders to determine which reforms are necessary to better support victims of family violence when it occurs in a rental property.

The amendments contained in the FV Amendment Act and the impetus to review the RT Act arose out of a report of the Law Reform Commission of WA titled *Enhancing Family and Domestic Violence Laws*.²

The current government's policy in relation to combatting family violence includes support for implementing the reforms recommended by the Law Reform Commission of WA and, relevant to this initiative, extends to:

Establish a legislative framework which would prevent perpetrators of any form of family and domestic violence, to enjoy a sole possession of the proprietary rights, as a result of their abusive behaviour, or to otherwise legally benefit from abusive behaviour, either temporarily or permanently.³

Stakeholder consultation

The options paper was circulated to approximately 30 stakeholder groups representing family violence support services, tenant advocates, landlord and property manager representatives, government agencies, the legal profession and the courts. The options paper was also made available on the then Department of Commerce - Consumer Protection Division web page and promoted through local media.

A total of twenty submissions in all were received. These included submissions from individuals who themselves had experienced family violence while living in rental premises, as well as representatives from the groups listed above.

As noted in the options paper, giving victims of family violence the ability and right to remain safely in their home, where appropriate, is a key aim for both state and federal governments. Fundamental to this aim is ensuring that the law and legal system in relation to family violence and residential tenancies work effectively together at the point at which they intersect.

Overall, there is broad in-principle stakeholder support for amending the RT Act to produce more options and better outcomes for victims and children experiencing family violence.

Stakeholder responses to each of the questions raised in the options paper have been analysed against the policy rationale and are summarised in this report. This analysis, as well as research into the law in other Australian jurisdictions, has informed the recommendations contained in this report.

Some stakeholders have raised issues in addition to their responses to the questions posed in the options paper. These issues have been summarised in the final part of this report and responses to those issues have been provided where possible.

² Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws* (Project No. 104) June 2014.

³ WA Labor 2015 Platform, clause 142.

1. DEFINING FAMILY VIOLENCE

The options paper did not canvass how family violence would be defined within the RT Act.

Tenancy WA, the Geraldton Resource Centre and Djinda Services all recommended that the definition of family violence in the RT Act be consistent with the definition of family violence in the FV Amendment Act.

The definition of family violence in the FV Amendment Act is contained in new section 5A. This reads:

- (1) A reference in this Act to **family violence** is 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.
- (2) Examples of behaviour that may constitute family violence include (but are not limited to) the following —
 - a. an assault against the family member;
 - b. a sexual assault or other sexually abusive behaviour against the family member;
 - c. stalking or cyber-stalking the family member;
 - d. repeated derogatory remarks against the family member;
 - e. damaging or destroying property of the family member;
 - f. causing death or injury to an animal that is the property of the family member;
 - g. unreasonably denying the family member the financial autonomy that the member would otherwise have had;
 - h. unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or a child of the member, at a time when the member is entirely or predominantly dependent on the person for financial support;
 - i. preventing the family member from making or keeping connections with the member's family, friends or culture;
 - j. kidnapping, or depriving the liberty of, the family member, or any other person with whom the member has a family relationship;
 - k. distributing or publishing, or threatening to distribute or publish, intimate personal images of the family member;
 - l. causing any family member who is a child to be exposed to behaviour referred to in this section.
- (3) For the purposes of this Act, a person who procures another person to commit family violence is taken to have also committed the family violence.

This definition inserted by the FV Amendment Act is consistent with the definition of family violence in both the *Family Law Act 1975* (Cth)⁴ and the *Family Court Act 1997* (WA).⁵

⁴ Section 4AB.

⁵ Section 9A.

Ruah Community Services (Ruah) recommended that family violence be defined consistently with the WA Common Risk Assessment and Risk Management Framework (the risk management framework). The risk management framework defines family violence as:

A key characteristic of family and domestic violence is an ongoing pattern of behaviours intended to coerce, control and create fear. These behaviours may take a number of forms including, but not limited to, physical, sexual, emotional and psychological abuse.⁶

Although the risk management framework definition of family violence is not identical to that contained within the FV Amendment Act definition, its intent and outcomes are consistent.

The Housing Authority's publication on family violence defines it as "*behaviour which results in physical, sexual and/or psychological damage, forced isolation, financial deprivation or other behaviour which causes the victim to live in fear*".⁷ Once again, while the wording is not a mirror of that used in FV Amendment Act, the intent and the outcomes appear to be the same.

Other submissions did not address the issue of a definition of family violence; presumably because the options paper did not raise this issue.

THE BENEFIT OF A CONSISTENT DEFINITION

Achieving and implementing a consistent definition of family violence was one of the top five priorities identified under the heading of family violence and the court system at the COAG National Summit on Reducing Violence against Women and their Children held in 2016.⁸

The Australian Law Reform Commission (the ALRC) in its report *Family Violence – A National Legal Response*,⁹ discussed the value of having a consistent definition and understanding of what constitutes family violence. The ALRC noted the advantages included:

- being educative of what constitutes family violence, both within the legal system itself and within the broader community – this itself is viewed to lead to better and more safe outcomes;
- facilitating equality of treatment of victims irrespective of where they live within the State or Nation and ensuring greater consistency of outcomes; and
- forming an important component for the development of integrated systems and responses across a range of government and non-government service providers, thereby improving seamlessness.

⁶ Department of Child Protection and Family Support, *WA Common Risk Assessment and Risk Management Framework*, 2nd edition 2015, 8, as cited in submission from Ruah Community Services and accessible at <https://www.dcp.wa.gov.au/CrisisAndEmergency/.../CRARMFFinalPDFAug2015.pdf>.

⁷ Housing Authority, *Family and Domestic Violence* accessed at http://www.housing.wa.gov.au/HousingDocuments/Family_Domestic_Violence_brochure.pdf on 10 March 2017.

⁸ The Council of Australian Governments National Summit on Reducing Violence against Women and their Children, accessed at <https://coagvawsummit.pmc.gov.au/>.

⁹ Australian Law Reform Commission, *Family Violence – A National Legal Response* (11 November 2010), Chapter 5, accessed at http://www.alrc.gov.au/publications/5.%20A%20Common%20Interpretative%20Framework%20%E2%80%94%20Definitions%20in%20Family%20Violence%20Legislation/commi#_ftn326.

The purpose of having more streamlined service delivery and more consistency of outcomes is that victims of family violence will be able to have more faith that if they report an incidence of family violence, they will receive the support and assistance they need and the perpetrator will be held to account. This in turn should contribute to a reduction in the occurrence of family violence within the community.

These benefits are consistent with the overarching goal of the proposed amendments to the RT Act; namely to provide better justice outcomes for victims of family violence through more seamless service delivery. In light of this, it is recommended that the definition of family violence to be inserted into the RT Act mirror the definition of family violence in the FV Amendment Act.

Recommendation 1

It is recommended that the definition of family violence in the RT Act mirror the definition of family violence contained in section 5A of the *Restraining Orders Act 1997*, as amended by the *Restraining Orders and Related Legislation (Family Violence) Act 2016*.

2. TERMINATION OF A TENANCY AGREEMENT ON THE GROUNDS OF FAMILY VIOLENCE

2.1. METHOD OF TERMINATING THE AGREEMENT

In all other Australian jurisdictions other than New South Wales (NSW), a tenancy agreement can only be terminated on the grounds of family violence by way of an order made by the relevant court or tribunal. In New South Wales, there are two processes by which a tenancy agreement can be terminated on the grounds of family violence. Firstly, when the court makes a final violence restraining order that excludes a tenant (perpetrator) from premises, the tenancy of that perpetrator is automatically terminated. Alternatively, if a final violence restraining order has been issued, the victim may issue the lessor with a notice of termination of the fixed term tenancy agreement.

The options paper proposed to amend the RT Act to give the Magistrate's Court the power, upon receipt of an application from a tenant or resident who is a victim of family violence, to make an order to terminate the tenancy agreement and make any of the following orders:

- requiring the lessor to enter into a new tenancy agreement with the protected tenant for the remainder of the term of the tenancy; or
- an order for possession of the premises on a date specified by the court.

The options paper was drafted on the basis that this would be the model implemented in Western Australia.

For the purpose of further discussion, this option will be referred to as the court based model.

ALTERNATIVE PROPOSAL – NOTICE OF TERMINATION ON GROUNDS OF FAMILY VIOLENCE

Although the options paper did not seek out alternate options, some stakeholders¹⁰ advocated an alternative model for terminating a tenancy agreement on the basis of family violence. These stakeholders advocated that, when family violence had occurred, the tenancy agreement should be able to be terminated by way of the victim issuing the lessor with a notice of termination, rather than requiring an order from the court. A primary rationale for this proposal is to reduce the need for a victim of family violence to engage with an additional court proceeding when they may already be involved in family court, restraining order and criminal court proceedings. It was also suggested that this model would produce more timely and efficient outcomes to the benefit of both the victim and the lessor, as court proceedings can sometimes involve lengthy delays.¹¹

¹⁰ Tenancy WA, Community Legal Centres Association of WA Inc, Domestic Violence Legal Workers Network, Women's Law Centre WA.

¹¹ The Domestic Violence Legal Workers Network noted that if a victim is required to make an application to the court to terminate their own interest in a tenancy agreement, it could take at least two to three weeks for a first court date to be granted and then often several weeks, if not months longer, if the application is objected to and a hearing is required.

To ensure that such a provision would not be misused, the submissions recommended that a tenant who sought to issue a notice of termination on the grounds of family violence must be required to include with the notice, prescribed evidence of the family violence. The submissions also recommended that lessors be given the right to appeal the termination notice to the court if the evidence given by the tenant does not fulfil the prescribed requirements. However, if the evidence does fulfil the evidentiary requirements, it was submitted that the courts should be required to terminate the tenancy agreement.

Varying views were provided on the period of notice that should apply to a notice of termination on the grounds of family violence. Suggestions ranged from two days' notice of termination up to seven days' notice.

For the purpose of further discussion, this option will be referred to as the notice based model.

How the notice based model would work where other co-tenants are affected

The notice based option would clearly be effective in situations where the victim of family violence is the only named tenant on the tenancy agreement. Such a process, however, would be complicated where other tenants, including the perpetrator, are named on the tenancy agreement. This is because any action to terminate the entire tenancy agreement or amend liabilities under the tenancy agreement in any way will have implications for these third parties.

There appear to be four possible scenarios of leasing arrangements that need to be considered irrespective of which model of termination is adopted. These scenarios are outlined in Table 1 below with suggested processes for termination of the victim's and/or perpetrator's interest that could operate within a notice based model. As indicated in the table, it is possible to accommodate the different tenancy scenarios within the notice based model.

Table 1 – Process for termination of a tenancy agreement under the notice based model.

TENANCY SCENARIO	PROCEDURE UNDER THE NOTICE BASED MODEL
The victim of family violence is the only named tenant on the tenancy agreement and wants to end the agreement.	<ul style="list-style-type: none"> • Tenant issues the lessor with a notice of termination on the grounds of family violence. • Notice of termination must be accompanied by prescribed evidence of family violence. • Lessor has right to appeal to the court on the grounds that the evidence provided does not comply with the Act.
The victim of family violence is one of two or more tenants ¹² named on a tenancy agreement, and the victim wants to remove their name from the tenancy agreement and leave the premises.	<ul style="list-style-type: none"> • Tenant issues the lessor with a notice of termination on the grounds of family violence. • Notice of termination must be accompanied by prescribed evidence of family violence. • Lessor has right to appeal to the court on the grounds that the evidence provided does not comply with the Act. • Lessor must notify any other co-tenants of the termination notice and give the co-tenants the right to terminate their interest in tenancy agreement within a specified period or to continue with the tenancy agreement on current terms.
The victim of family violence wants to remain in the premises and wants to have the perpetrator's name removed from the lease.	<ul style="list-style-type: none"> • The victim of family violence makes an application to the court to terminate the perpetrator's interests in the tenancy agreement. • If the victim is not currently named on the tenancy agreement, they must also apply to be recognised as a tenant. • Evidence of family violence must be presented to the court. • The lessor and any other co-tenants would be joined as parties to the proceeding.
The perpetrator of family violence is named on the tenancy agreement and wants to terminate their liability under the tenancy agreement.	<ul style="list-style-type: none"> • This option would only be available if a perpetrator is restrained from entering the premises by order of a court (in order to protect themselves against liability for damage caused while they are prohibited from entering the premises). • The perpetrator tenant would make an application to the court to terminate their liability under the tenancy agreement. • Any co-tenants and the lessor would be joined as parties.

OTHER JURISDICTIONS

As noted above, all Australian jurisdictions other than NSW require an order from the court to terminate a tenancy agreement on the grounds of family violence. Table 2 below outlines how the provisions of each state and territory operate.

¹² The other tenants may or may not include the perpetrator of the violence – for example, a victim may be in a share tenancy and the perpetrator does not reside at the premises, however because the perpetrator continues to come to the premises to intimidate the victim, the victim feels that she or he has to leave.

Table 2 – Process for termination of a tenancy agreement on the grounds of family violence in other jurisdictions

STATE OR TERRITORY	LEGISLATION	HOW AGREEMENTS ARE TERMINATED ON THE GROUNDS OF FAMILY VIOLENCE
ACT	<i>Residential Tenancies Act 1997</i> , section 85	<ul style="list-style-type: none"> The Tribunal may substitute an occupant's name for the perpetrator's name on a tenancy agreement (effectively terminating a perpetrator's interest in the agreement) if the perpetrator has given an undertaking to leave the premises or the court has issued a final violence restraining order excluding the perpetrator from the premises.
NSW	<i>Residential Tenancies Act 2010</i> , sections 79 and 100	<ul style="list-style-type: none"> When the court makes a final violence restraining order that excludes a tenant (perpetrator) from premises, the tenancy of that perpetrator is automatically terminated. If there are other tenants on the tenancy agreement, this does not affect the tenancy of any of the remaining co-tenants. If a final violence restraining order has been issued, the victim may issue the lessor with a notice of termination of the fixed term tenancy agreement. The notice period is to be not less than 14 days.
NT	<i>Domestic and Family Violence Act</i> , section 23	<ul style="list-style-type: none"> When making a restraining order, the court may also include an order terminating the tenancy agreement or an order creating a new agreement for the benefit of the protected person or for the benefit of the perpetrator if the victim agrees.
QLD	<i>Residential Tenancies and Rooming Accommodation Act 2008</i> , sections 245, 321 and 323	<ul style="list-style-type: none"> Tribunal can make an order recognising an occupant as a tenant if they have been the victim of family violence by the perpetrator who is a tenant. Tribunal must be satisfied that family violence has occurred. Tribunal may terminate a tenancy agreement if a tenant has been the victim of family violence by a tenant of the premises.
SA	<i>Residential Tenancies Act 1995</i> , section 89A	<ul style="list-style-type: none"> The Tribunal may make an order terminating a tenancy agreement if a tenant has committed family violence and an intervention order is in force against that tenant, or if the Tribunal is satisfied that an act of domestic abuse has been committed against a person who resides at the premises. The Tribunal may also make an order requiring the lessor to enter into a new agreement with the protected tenant or occupant of the premises.
TAS	<i>Family Violence Act 2004</i> , section 17	<ul style="list-style-type: none"> If a family violence order is made, a court may also make an order to terminate the residential tenancy agreement and establish a new residential tenancy agreement for the benefit of the victim and any other party who was party to the terminated agreement other than the perpetrator.
VIC	<i>Residential Tenancies Act 1997</i> , sections 233A & 233B	<ul style="list-style-type: none"> If a final violence restraining order is made, the victim may apply to the Tribunal to terminate the existing tenancy agreement and require the lessor to enter into a new agreement with the victim and any other co-tenants other than the perpetrator.

ADVANTAGES AND DISADVANTAGES OF EACH MODEL

The advantages and disadvantages of each model are outlined in Table 3 below.

Table 3 – Advantages and disadvantages of the termination models.

MODEL	ADVANTAGES	DISADVANTAGES
Court based model	<ul style="list-style-type: none">• Court considers all evidence and determines if termination of the agreement is appropriate.• Reduces risk for termination grounds to be misused.	<ul style="list-style-type: none">• All matters will require a court order to be made.• Increased impost on the court system.
Notice based model	<ul style="list-style-type: none">• Reduces the need for a victim of family violence to have to engage with the court system.• More timely outcomes if only a notice of termination is required.• Lessor has right of appeal if evidence does not meet the statutory requirements.• Only contested matters or applications to remove the perpetrators name from the lease would proceed to court.	<ul style="list-style-type: none">• Higher risk of inappropriate use of the termination notice process.

Although the Real Estate Institute of Western Australia (REIWA) only provided comment on the court based termination model (because the notice based model was not presented in the options paper as an option), their comments are relevant and important in analysing the advantages and disadvantages of a notice based model. REIWA raised concern in their submission that a lessor should be protected from mischievous tenants seeking to improperly utilise a capacity to terminate a tenancy agreement on grounds of family violence. It is acknowledged that despite the benefits, the notice based model does come with a higher risk that it might be misused than the court based model. However, greater weight needs to be given to making the system as easy as possible for victims of family violence. The notice based proposal best achieves this outcome.

It is also noted that the risk to lessors can be managed within the notice based model. By requiring a victim of family violence to provide independent evidence of family violence as part of the termination notice process rather than simply relying on the tenant's own assertions, and allowing a lessor to appeal to the court in the event that the evidence does not meet the legislated requirements, the risk of a tenant wrongfully taking advantage of this provision is greatly reduced.

From the above analysis, it is evident that the benefits of the alternative proposal outweigh the benefits of the court based model. In light of this, the notice based model is the preferred model to be incorporated into the RT Act.

Recommendation 2

It is recommended that the RT Act be amended to:

- i. Enable a tenant who is a victim of family violence to terminate their interest in a tenancy agreement by issuing the lessor with a notice of termination on the grounds of family violence. The notice period should be not less than seven days.
- ii. Require the tenant to provide evidence to the lessor of the existence of family violence in a form set out in the RT Act.
- iii. Where the evidence provided does not meet the prescribed requirements, allow the lessor to appeal the termination notice to the Magistrates Court, noting that if the court finds that the evidence does meet the prescribed requirements then the magistrate must terminate the tenant's interest in the tenancy agreement.
- iv. Require a lessor who receives a termination notice in accordance with (i) above to provide a copy of the notice to any co-tenants named on the tenancy agreement and to provide them with not less than seven days to advise the lessor if they wish to continue with the tenancy agreement or terminate the tenancy agreement. The co-tenants should then be provided with not less than 21 days to deliver up vacant possession of the premises.
- v. Require a tenant who is a victim of family violence who wishes to remain in the premises and who wants to have the perpetrator's interest in the tenancy agreement terminated to apply to the court for an order. The lessor and any co-tenants will be joined as parties to the proceedings.
- vi. Allow a perpetrator to apply to the court to terminate their own interest in a tenancy agreement, but only if the perpetrator has been excluded from the tenancy premises by way of court order or bail conditions.
- vii. Require the court to determine the perpetrator's liability for any unpaid rent, damages to the premises and compensation to the lessor at the time, irrespective of whether it is the perpetrator or the victim who is making the application to have the perpetrator's interest in the tenancy agreement terminated.

2.2. INDEPENDENT EVIDENCE OF FAMILY VIOLENCE

Irrespective of whether a tenancy agreement is terminated by the giving of a notice to the lessor, or by way of an order of the court, the issue is what evidence should be required to prove that family violence has occurred and to justify termination of the tenancy agreement on these grounds. The question posed in the options paper was, should an interim or a final family violence restraining order be the only evidence suitable to access these termination provisions, or should the termination provisions be extended to circumstances where an interim or final family violence restraining order has not been obtained?

Half of the submissions¹³ advocated that the right to terminate a tenancy agreement on the grounds of family violence not be limited to either an interim or final family violence order. The Housing Authority submitted that the right to terminate a tenancy agreement should be dependent upon the victim having obtained a final family violence restraining order. REIWA stated that the right to terminate a tenancy

¹³ Tenancy WA, Community Legal Centres Association WA Inc, Domestic Violence Legal Workers Network, Women's Law Centre, Geraldton Resource Centre, Chrysalis Support Services, Centrecare Family Support Services Geraldton, Ruah Community Services, Djinda Services, Aboriginal Legal Service WA.

agreement should arise if either an interim or final violence restraining order had been granted to the victim but that other forms of evidence should also be required as they had been led to believe that it can sometimes be too easy for a person to obtain an interim restraining order.

The key reason given by the stakeholders advocating against limiting the termination provision to only those with either an interim or final family violence restraining order is that, for many victims, seeking a protection order from the court heightens the risk of further violence rather than deterring it. For these victims, the better option can often be to leave their current premises and effectively go into hiding. If access to the termination provisions is limited only to victims of family violence who have obtained an interim or a final family violence order, these other victims who for whatever reason do not seek a family violence restraining order will be prevented from lawfully terminating their tenancy agreement.

The *Residential Tenancies Act 2010* (NSW) (the NSW Act) currently requires a final restraining order to have been issued against a co-tenant or resident of the premises before a tenancy agreement can be terminated on the grounds of family violence. A recently completed statutory review of the NSW Act¹⁴ determined that this provision had provided very little in the way of real protection to victims of family violence because it can sometimes take a long time to obtain a final restraining order and this is too long for a victim who needs to leave the premises promptly. The review recommended that the NSW Act be amended to allow a tenant to terminate a tenancy agreement upon receiving either:

- an interim, provisional or final apprehended violence order; or
- a Family Law Act injunction.

The Royal Commission into Family Violence¹⁵ recommended also that an order terminating a tenancy agreement be able to be made by the Tribunal without requiring that a final restraining order is in place excluding the perpetrator from the premises.

Both Queensland¹⁶ and South Australian¹⁷ residential tenancies laws allow the Tribunal to make an order terminating the tenancy agreement on an application from a tenant or resident if the respective Tribunal in those jurisdictions is satisfied that family violence has occurred. The Tribunal in each jurisdiction does not require either an interim or final family violence order to be satisfied that family violence has occurred.

ADVANTAGES AND DISADVANTAGES OF THE DIFFERENT FORMS OF EVIDENCE

Based on stakeholder feedback and analysis of the laws in other jurisdictions, three options for evidence are apparent. These are:

- final family violence order or family court injunction only;
- an interim or final family violence order or family court injunction; or
- all of the above and independent non-judicial evidence.

The advantages and disadvantages of these three options are examined in Table 4.

¹⁴ Fair Trading NSW, *Residential Tenancies Act 2010 Statutory Review* 17 June 2016, page 29.

¹⁵ Royal Commission into Family Violence: Report and recommendations, 2016, page 125.

¹⁶ *Residential Tenancies and Rooming Accommodation Act 2008* (Qld), section 245.

¹⁷ *Residential Tenancies Act 1995* (SA), section 89A.

Table 4 – Advantages and disadvantages of the evidence options

TYPE OF EVIDENCE	ADVANTAGES	DISADVANTAGES
Final family violence order/family law injunction	<ul style="list-style-type: none"> Evidence of family violence has been determined by a court before a termination notice is issued. 	<ul style="list-style-type: none"> The time taken to obtain a final family violence order may be too long for a victim who needs to terminate or vary their tenancy agreement in order to improve their physical safety. Does not extend the termination provisions to victims who are unable to seek a violence restraining order due to the increased risk this presents to their safety.
Interim or final family violence order/family law injunction	<ul style="list-style-type: none"> Evidence of family violence has been determined by a court before a termination notice is issued. More timely in that a victim does not have to wait to obtain a final family violence order before terminating a tenancy agreement. 	<ul style="list-style-type: none"> Does not extend the termination provisions to victims who are unable to seek a violence restraining order due to the increased risk this presents to their safety.
Judicial and non-judicial evidence	<ul style="list-style-type: none"> Extends the termination provisions to victims who are unable to seek a violence restraining order due to the increased risk this presents to their safety. Evidence must be from an independent third party. 	<ul style="list-style-type: none"> Perception that non-judicial evidence is too easy to obtain and therefore increases risk of misuse of the termination provisions.

As noted above, greater weight needs to be given to making the system as easy as possible for victims of family violence. That is the primary rationale of these amendments. As has been noted in the NSW experience, if the law does not achieve this, it ceases to be used and victims may be forced into staying in dangerous tenancies.

For this reason, the option of allowing an interim or final family violence restraining order, a Family Law order or independent non-judicial evidence is the preferred option. The concern that non-judicial evidence is too easy to obtain can be mitigated by prescribing the forms of evidence that would be acceptable.

Recommendation 3

It is recommended that the RT Act be amended to provide that acceptable evidence of family violence include:

- an interim or final family violence order pursuant to the *Restraining Orders Act 1997*;
- an injunction made under sections 68B or 114 of the *Family Law Act 1975* (Cth) or sections 235 or 235A of the *Family Court Act 1997* (WA);
- where either party has been convicted, or is charged with, an offence involving violence, or a threat of violence, to the other party; and
- prescribed non-judicial evidence.

2.3. ACCEPTABLE FORMS OF NON-JUDICIAL EVIDENCE

Four stakeholders¹⁸ suggested that statutory declarations or letters from independent third parties such as doctors, psychologists, family violence service providers or the police would be appropriate forms of evidence of the occurrence of family violence.

Tenancy WA noted that the Department of Immigration and Border Protection has a prescribed list of professionals and the evidence that is acceptable from them to establish the existence of family violence in relation to immigration matters and suggested that this might be a helpful reference point.

Non-judicial evidence that is accepted by the Department of Immigration and Border Protection is set out in legislative instrument IMMI 12/116. The schedule of possible sources of evidence of family violence is at **Appendix A** of this report. The list would appear to reflect an appropriately diverse range of service providers that most victims of family violence would have interaction with and, therefore, would be able to obtain a report or letter from with minimal impost. At the same time, these professionals would be considered to be of sufficient standing within the community to satisfy lessors that family violence has been adequately verified.

Recommendation 4

It is recommended that the RT Regulations be amended to prescribe non-judicial evidence consistent with the evidence requirements detailed in schedule 1 of the *Migration Regulations 1994* IMMI 12/116.

2.4. CONSEQUENCES ON TERMINATION IF THE PARTIES RECONCILE

The Housing Authority stated in its submission that consideration needs to be given to how the termination of a tenancy agreement, or an individual's interest/liability under a tenancy agreement, might be reversed in the event that the parties reconcile.

It is a fact that victims of family violence may often reconcile with the perpetrator of family violence on a number of occasions. According to the 2012 Personal Safety Survey of the Australian Bureau of Statistics, more than one third of women who were currently in an abusive relationship had at some point separated from the perpetrator and had subsequently reconciled.¹⁹ Family violence is a complex reality for many within the community. The decisions made by victims of family violence are influenced by many often conflicting pressures upon them.

The overarching policy rationale of the proposed amendments is to provide better outcomes for victims of family violence, which includes removing barriers to achieving just outcomes. While some tenancy agreements may be terminated on the grounds of family violence, and it is later found the couple have reconciled, this consequence for lessors and tenants is far less than the consequence that would be experienced by a victim of family violence if the system is too difficult for them to terminate their tenancy agreement.

¹⁸ Tenancy WA, CLC Association of WA, Women's Law Centre WA, Djinda Services.

¹⁹ Australian Bureau of Statistics, *Personal Safety Survey*, 2012, Table 29, as cited in Parliament of Australia, *Domestic, family and sexual violence in Australia: an overview of the issues* (research papers 2014-2015) accessed at http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1415/ViolenceAust#_ftn167.

In light of this, it is recommended that there be no consequence built in to the RT Act if the parties reconcile after a tenancy agreement has been terminated on the grounds of family violence.

2.5. FACTORS TO GUIDE THE COURT

In deciding whether to remove the perpetrator's name from the tenancy agreement, particularly where the reason for doing so is to protect the victim of family violence, it is important that the court have some guidance as to what factors to take into account.

The options paper suggested the following examples:

- the ability of the applicant (and any proposed co-tenants) to maintain their obligations under the new agreement;
- any reasonable objections of the lessor;
- the views of any co-tenants;
- any eligibility criteria (e.g. public housing or community housing eligibility criteria); and
- relative hardship of the applicant and the lessor.

Stakeholders broadly agreed with the list of factors, save for the relative hardship of the applicant and lessor.

Best interests of the child

A number of stakeholders²⁰ also advocated for the safety and wellbeing of any children residing at the premises to be the paramount consideration of the magistrate in deciding whether to terminate a tenancy agreement. It was noted that children may suffer a great deal if they are forced to move from their home, be dislocated from school and family supports and have to re-establish in new and often temporary surrounds. The Geraldton Resource Centre also highlighted that male children over the age of 13 are often excluded from women's refuges. This can present even greater hardships for families escaping family violence if children are forced to be housed separately.

Aboriginal or Torres Strait Islander

Djinda Services advocated for a person's identity as Aboriginal or Torres Strait Islander to be a factor to be considered by a magistrate. The reasons given for this position is the higher risk facing of family violence facing Aboriginal and Torres Strait Islander women and children. According to Djinda Services, Aboriginal and Torres Strait Islander women are 45 times more likely to be a victim of family violence and 10 times more likely to be domestic homicide victims than non-Aboriginal women. Djinda Services states that because of this high incidence of family violence towards Aboriginal women and children, an understanding of how family violence differs amongst Aboriginal and Torres Strait Islander communities will be essential for magistrates to consider.

Risk of homelessness

The risk of homelessness to the victim and any children has also been noted as a factor that the magistrate should take into consideration.²¹ The high incidence of homelessness as a consequence of family violence was discussed in the options paper. According to Homelessness Australia, in 2011-2012, 34 percent of people assisted by specialised homelessness services in Western Australia required assistance due to family

²⁰ Domestic Violence Legal Workers Network, Aboriginal Legal Service, Geraldton Resource Centre, Aboriginal Family Law Service, Women's Law Centre WA.

²¹ Djinda Services, Geraldton Resource Centre, Domestic Violence Legal Workers Network, Women's Law Centre.

violence.²² In real numbers, this represents over 7 200 people. Djinda Services noted that homelessness can often lead to poverty, loss of employment and physical and mental health problems. For children, homelessness can represent loss of school contact and in some circumstances, removal from the family by child protection workers.

Pets in the household

Some stakeholders²³ suggested that the presence of pets should be a factor for the magistrate to take into consideration. If the family is currently residing in premises that allow for pets to be present, it is preferable that the family be allowed to remain there with their pets and the perpetrator removed from the lease as it can be difficult often to find alternative accommodation that will allow pets. According to the RSPCA WA,²⁴ many victims of violence will stay in a violent relationship because there are no options for the safe care of their pet and they refuse to leave the pet alone with the perpetrator.

Potential of further damage to the premises and relative hardship to the lessor

The risk of the perpetrator causing damage to the premises was raised by some stakeholders as a factor relevant for the magistrate to take into account.²⁵ In this context, the potential for the perpetrator to cause further damage to the lessor's asset could add weight to the reasoning to remove the perpetrator's name from the tenancy agreement.

Some stakeholders²⁶ raised concern about the inclusion of "the relative hardship of the applicant and lessor" as a factor for the court to take into consideration. The reason for this concern is that it is difficult to balance the financial hardship of a lessor (for example, a lessor who may have a substantial mortgage over the rental premises) against the potential for homelessness and associated hardships that might be experienced by a victim of family violence if they were not allowed to terminate a tenancy agreement on the grounds of family violence.

These stakeholders suggested that the criteria of "any reasonable objection of the lessor" should be broad enough to enable a lessor to be heard and for the court to take into account factors relevant to the lessor.

In a similar vein, the Aboriginal Legal Service recommended that if the court is to take into account the relative hardship of the lessor and the tenant, then the court should also take into account the relative hardship experienced by any of the tenant's children.

All other stakeholders broadly supported the inclusion of relative hardship of the lessor and applicant. REIWA stated that the court should take into account the relative hardship that would be experienced by any co-tenants and the lessor.

Tenancy WA noted that in South Australia, the *Residential Tenancies Act 1995* (SA) requires that if a lessor or co-tenant wants to object to the making of an order in favour of a victim of family violence, the lessor or

²² Homelessness Australia 'Homelessness in Western Australia'.

[http://www.homelessnessaustralia.org.au/images/publications/Infographics/WA - updated Jan 2014.pdf](http://www.homelessnessaustralia.org.au/images/publications/Infographics/WA_-_updated_Jan_2014.pdf).

²³ Geraldton Resource Centre, Chrysalis Support Service, Centrecare Family Support Geraldton, Women's Law Centre, Domestic Violence Legal Worker's Network.

²⁴ <https://www.rspcawa.asn.au/news/2017-01-16-new-scheme-to-support-pet-owners-affected-by-domestic-violence>.

²⁵ Women's Law Centre, Geraldton Resource Centre, Chrysalis Support Services, Centrecare Family Relationship Geraldton.

²⁶ Tenancy WA, Djinda Services.

co-tenant must satisfy the court that their hardship will exceed that suffered by the victim if the court makes the order requested by the victim.²⁷

Non-exhaustive list

The Housing Authority submitted that the list should exhaustively state the factors the magistrate may take into consideration. All other stakeholders pointed to the importance of a magistrate being given flexibility in the form of discretion to make an order that best suits the circumstances of each individual case.

PREFERRED FACTORS

There is merit in the proposal to require the court to give paramount consideration to the best interests of any child that may be residing at the premises. This is in keeping with Australia's obligations as signatories to the Convention on the Rights of the Child which states:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.²⁸

It is also consistent with the guidelines for assessing the impact of proposed legislation and policy on children and young people developed by the Commissioner for Children and Young People Western Australia.²⁹

There is also support for including risk of homelessness and the presence of pets as factors for the court to consider.

The arguments in support of listing a person's identity as Aboriginal or Torres Strait Islander are acknowledged. However, for the purpose of these reforms, it is suggested that factors such as best interests of the child being a paramount consideration and risk of homelessness if the orders are not made will address the risks faced by Aboriginal and Torres Strait Islander women and children without requiring a victim to have to disclose their Aboriginal or Torres Strait Islander identity to the court.

In respect of the arguments raised against the court giving consideration to the relative hardship of the lessor, the example from the South Australian legislation that requires a lessor or co-tenant to satisfy the court that their hardship will exceed that suffered by the victim if the court makes the order requested by the victim appears to be a fair compromise of stakeholders' interests and for that reason is preferred.

In light of the almost unanimous support for the court to be able to take other relevant factors into consideration, the non-exhaustive list is preferred.

²⁷ Section 89A(7).

²⁸ *Convention on the Rights of the Child*, article 3(1).

²⁹ Commissioner for Children and Young People, *Improving legislation and policy for children and young people*, accessed on 22 March 2017 at <https://www.ccpw.wa.gov.au/our-work/improving-legislation/>.

Recommendation 5

It is recommended that the RT Act be amended to:

- i. include the following list of factors for the magistrate to take into consideration when deciding a family violence related application;
 - a. the best interests of any child of the victim of family violence as a paramount consideration;
 - b. the ability of the applicant (and any proposed co-tenants) to maintain their obligations under the new agreement;
 - c. the risk to the victim of homelessness if the perpetrator's name is not removed from the tenancy agreement;
 - d. any reasonable objections of the lessor;
 - e. the views of any co-tenants;
 - f. any eligibility criteria for the victim to remain in the premises (e.g. public housing or community housing eligibility criteria);
 - g. the presence of pets in the household; and
 - h. hardship of the lessor or co-tenant.
- ii. require that if a lessor or co-tenant wants to object to the making of an order in favour of a victim of family violence, the lessor or co-tenant must satisfy the court that their hardship will exceed that suffered by the victim if the court makes the order requested by the victim; and
- iii. allow the magistrate to take any other relevant factors into consideration.

2.6. TIMING OF APPLICATIONS TO THE COURT

One of the key elements that a number of stakeholders³⁰ noted was the importance of enabling the court to simultaneously hear applications for restraining orders as well as applications under the RT Act to resolve tenancy matters. This is to minimise the number of dealings a victim of family violence would be required to have with the court system.

As the only tenancy application to be initiated at court by a victim of violence will be to have the perpetrator's name removed from the tenancy agreement, it is this application that would be combined with a restraining order application.

There is no impediment to enabling the court to deal with both a tenancy application and a restraining order application at the same time. By way of analogy, section 59C of the Act provides that an application under that section "may be made at the same time as any other application or during proceedings before the court or independently of any such other application or proceedings". A similar provision could be included in any new section that allows a victim to apply to the court to have the perpetrator's name removed from the tenancy agreement.

However, there will be no compulsion on the court to decide a tenancy application made at the same time as a restraining order application. As restraining order applications are frequently heard ex-parte in the first instance, a court would be more likely than not to adjourn the tenancy application to a separate date so as to allow the lessor and the perpetrator to be joined to the proceedings. That having been said, there may

³⁰ Goldfields Community Legal Centre, Women's Law Centre, Tenancy WA, Geraldton Resource Centre, Aboriginal Family Law Service.

be times where the court feels compelled by the circumstances to resolve both applications at that initial hearing. Therefore it is proposed that the RT Act be amended to enable the court to do so.

Recommendation 6

It is recommended that the RT Act be amended to allow an application to have a perpetrator's name removed from a tenancy agreement to be heard by a court at the same time as an application for a family violence restraining order.

2.7. ROLE FOR THIRD PARTY APPLICANTS

Victims of family violence may not always be able to apply to the court to remove a perpetrator's name from a tenancy agreement on their own initiative. This can be for a range of reasons, including being overwhelmed by the trauma of the violence they have suffered, being incapacitated through injury, or being too afraid of retribution by the perpetrator. In these circumstances, it may be appropriate for an independent third party to intervene and make an application on behalf of the victim.

It is important to note that amendments made to section 22(2) of the RT Act in 2011 have the effect of allowing employees of a number of family violence not-for-profit organisations to advocate for a victim of family violence in court proceedings of this nature. There is no further need to amend the RT Act to allow for advocacy or support during proceedings. However, whether the RT Act needs to be amended to give a third party standing to commence proceedings is a matter that warrants consideration.

The options paper explored which third parties should be empowered to commence proceedings on behalf of a victim of family violence and suggested the following options:

- a victim protected by a restraining order only if they are listed as a tenant on the tenancy agreement;
- a person who acts as guardian in relation to a child; or
- the Housing Authority in respect of a social housing tenancy agreement.

There was generally broad support for a range of third parties to be able to commence proceedings to terminate a tenancy agreement where doing so would be in support of the victim of family violence. Additional categories that were suggested by stakeholders included the WA Police and a Child Protection officer.

There was also broad support for the Housing Authority being able to terminate a tenancy agreement with a perpetrator of family violence in favour of a victim of family violence; similar to the provision in the *Residential Tenancies Act 1995* (SA).³¹ The Housing Authority stated that further consideration of this proposal is needed before they could support the proposal.

Recommendation 7

It is recommended that the RT Act be amended to allow for third parties to be able to commence proceedings to remove a perpetrator's name from the tenancy agreement on behalf of a victim of family violence and for categories of third party applicants to be prescribed in the RT Regulations.

³¹ section 89A.

3. RETAINING SECTION 59C

Section 59C allows a resident of premises, who is not named as a tenant on a residential tenancy agreement, to be recognised as a tenant. The purpose of this provision was originally to allow persons who had been occupants of premises at the time a named tenant dies or no longer occupies the tenancy to be able to apply to the court to remain on as tenants rather than face the prospect of eviction.

Although section 59C was initially inserted for this different purpose, it was recognised during debate on the Residential Tenancies Amendment Bill 2011 in Parliament that this provision would also be useful where family violence has occurred in a residential tenancy setting. Prior to the implementation of section 59C, if only the perpetrator was named on a residential tenancy agreement, it would not be possible for a magistrate to exclude the perpetrator from the premises and allow the victim to remain, as the victim essentially had no legal right to the premises.

Section 59C operates so that the victim of the violence can apply to the Magistrate's Court to be recognised as a tenant on the residential tenancy agreement therefore granting them a legal interest in the premises. Once this occurs, it is open to a magistrate to allow the victim to remain in the home and include an "exclusion from the premises" clause in a restraining order made against the perpetrator.

The options paper noted that there was no plan to amend section 59C at this point in time. However, stakeholders were asked if there was merit in retaining section 59C in the RT Act to operate in conjunction with the other family violence amendments proposed.

Stakeholders who responded to this question supported the retention of section 59C in the RT Act.³²

The Housing Authority raised its concern that section 59C cannot operate as intended when it was originally inserted (i.e. to allow an occupant to be named on a tenancy agreement upon the death of an existing tenant) because it can only operate while a tenancy is ongoing. As the Housing Authority notes, a tenancy agreement terminates upon the death of the last remaining tenant.³³ While this may be the case, the provision would still have effect in circumstances where only one of two or more tenants die, and also in the family violence scenario as is discussed above.

The Housing Authority noted in its submission that it would seek to make separate submissions at a later stage to amend the operation of section 59C in respect of social housing tenancy agreements.

Recommendation 8

It is recommended that section 59C of the RT Act be retained in its current form.

³² CLC Association of WA, Tenancy WA, Womens Law Centre, Geraldton Resource Centre, Chrysallis Support Services Inc, Centrecare Family Relationship Geraldton, REIWA, Ruah Community Services, Djinda Services, Aboriginal Family Law Services.

³³ Section 60(i).

4. ASSIGNING LIABILITY FOR DAMAGES TO THE PREMISES

The options paper noted that joint tenants, the most common form of tenancy arrangement, are jointly and severally liable for all debts to the lessor arising under a tenancy agreement. This has the consequence of further victimising a victim of family violence if they are held liable for damage caused directly by the perpetrator. It can also have the longer term consequence of poverty and difficulty obtaining a new tenancy agreement if they are left responsible for family violence related tenancy debt.

To provide more just outcomes for victims of family violence, the options paper proposed that the RT Act be amended to enable a magistrate, when determining an application to terminate a residential tenancy agreement due to family violence, to also assign liability for rent and damages owed to the lessor as at the date the agreement is terminated. An example of this type of provision is included in the *Residential Tenancies Act 1997* (Vic)³⁴ which provides:

(1) If the Tribunal decides to make an order under section 233B, the Tribunal may determine the liabilities of the excluded tenant, the protected person or any other tenants under the existing tenancy agreement in relation to a bond paid for the rented premises and any other existing liabilities under the existing tenancy agreement, including, for example—

(a) liabilities relating to damage caused to the rented premises; and

(b) liabilities relating to outstanding utility charges.

(2) To remove doubt, the termination of a tenancy agreement under section 233B does not give rise to a right to claim compensation on the part of any party to the agreement for early termination of the agreement.

(3) For the purpose of making a determination under subsection (1), the Tribunal may adjourn the hearing to allow an inspection of the rented premises in accordance with section 86(1)(g).

Stakeholders were asked whether the RT Act needed to be amended to amend the right of entry provisions for a lessor to provide a lessor with the opportunity to enter the premises to properly assess the damage and also whether there were any other factors that needed to be addressed in the RT Act.

STAKEHOLDER FEEDBACK

Some stakeholders³⁵ supported the proposal for the RT Act to be amended to enable the court to make an order allowing the lessor to enter the premises to make an assessment of the damages for the purpose of a family violence application. The *Residential Tenancies Act 1995* (SA)³⁶ provides an example as it allows the Tribunal to make an order that the landlord may enter the residential premises at a time determined by the Tribunal to inspect the premises.

³⁴ Section 233C.

³⁵ Tenancy WA, the Housing Authority, the Geraldton Resource Centre, Chrysalis Support Services, Centrecare Family Relationship Geraldton, REIWA, RUAAH Community Services.

³⁶ Section 89A(4)(b).

Several stakeholders³⁷ noted the difficulty that can be experienced by victims of family violence as a consequence of being held vicariously liable for the actions of the perpetrator of family violence pursuant to section 50³⁸ of the RT Act.

Although vicarious liability pursuant to section 50 of the RT Act is limited to where a person is lawfully on the premises, these stakeholders advocated that a victim of family violence should not be held vicariously liable for any damage caused by the perpetrator of violence, irrespective of whether the perpetrator is on the premises with the permission of the victim. The reason for this proposal is that family violence is a complex set of factors and often it is not as simple as a victim of violence denying a perpetrator permission to be on the premises. For many victims, it is safer for them to allow the perpetrator onto the premises, or at least not to stand in their way. For others, they simply have no choice, but what in those circumstances might appear to be consent or permission is a person acting under duress.

In respect of other issues to be taken into consideration, the Geraldton Resource Centre raised concern that a police report should not be the only evidence on which liability for damage to the premises can be assigned to the perpetrator of violence. The Geraldton Resource Centre noted that for many victims of family violence, making reports to the police can increase their risk of further harm from the perpetrator, so not all victims will take this step. The Geraldton Resource Centre therefore advocated that a magistrate should be able to consider other forms of evidence when making a decision about liability for damage to the premises and other debts of the tenancy.

The Housing Authority stated that the lessor should be a party to any proceeding where liability for debt is being decided.

REIWA raised concern about the impact on landlord's insurance if a security bond is split. For example, in the *Residential Tenancies Act 1995* (SA), the Tribunal can award that the security bond be paid to the lessor and any co-tenant who is not liable for any debt from the tenancy in such proportions as the Tribunal thinks fit.

REIWA noted a case example where the court released part of the bond to the departing tenant. This left only a partial bond being held by the Bond Administrator. Because the lessor had not sought to top up the bond to the equivalent of four week's rent from the remaining tenant, the landlord's insurance provider would not pay the full entitlement under the policy. This is a valid concern; however it only applies where the tenancy remains on foot with at least one of the existing tenants and either the victim or the perpetrator's share of the security bond is disposed of by the court. In this situation, lessors can be educated on the importance of seeking a top up of the security bond from the remaining tenants. This scenario would not apply to circumstances where the tenancy agreement is terminated and the court is disposing of the security bond in the usual manner.

Another consideration raised by REIWA is the need to consider the application of section 27C(4) of the RT Act, which requires the lessor to prepare a final property condition report within 14 days of the end of the tenancy agreement, if only one person's interest in the tenancy agreement is being terminated. A regulation may need to be drafted to clarify whether and/or how section 27C(4) would apply in this circumstance.

³⁷ Tenancy WA, Community Legal Centre Association WA, Geraldton Resource Centre, Chrysallis Support Services Inc, Centrecare Family Relationship Geraldton.

³⁸ Section 50 of the RT Act provides that where a person other than the tenant is lawfully on the premises, the tenant is vicariously responsible for any act or omission by that person that would, if it had been an act or omission by the tenant, have constituted a breach of the agreement.

PROPOSED AMENDMENT

It is proposed to amend the RT Act to provide a magistrate similar powers to those afforded to the Tribunal in Victoria, the ability to assign liability for damages and other debts arising out of the tenancy agreement to the perpetrator of the violence if the damage and debt was caused as a result of the violence. This would include debts that would otherwise be assigned to the victim of the family violence under the vicarious liability provisions of the RT Act.

Similar to the legislation in South Australia, it is proposed to provide a magistrate the power to dispose of the existing security bond in accordance with any finding of liability for debt and to return any portion of security bond to the non-labile tenant.

It is also proposed to amend the RT Act to give the magistrate the power to make an order granting the lessor access to the premises on a specified date and time for the purposes of assessing any damage to the premises prior to a final order of liability being made. The RT Act or the regulations will need to clarify the relationship of this new power to the existing section 27C(4), which requires the lessor to prepare a final property condition report within 14 days of the end of the tenancy agreement.

Recommendation 9

It is recommended that the RT Act be amended to:

- i. enable a magistrate to determine and assign liability for any damage or other debt arising under the tenancy agreement (including pursuant to section 50 of the RT Act) to the perpetrator (irrespective of whether or not the perpetrator is a tenant), the victim tenant and/or any other co-tenant as the court determines appropriate in the circumstances;
- ii. enable the magistrate to apportion the disposal of bond to the lessor and any non-labile co-tenant as appropriate;
- iii. to empower the magistrate to determine a date and time for the lessor to have access to the premises to allow for a full assessment of the damages prior to any assignment of liability being concluded; and
- iv. to clarify the relationship between this provision and section 27C(4).

5. RESIDENTIAL TENANCY DATABASE LISTINGS

Residential tenancy databases (RTDs) are electronic databases operated by private companies. Information about tenants and their rental history is collected and listed on RTDs. Most real estate agents subscribe to one or more RTD and use them to screen prospective tenants. RTDs enable agents and property owners to assess risk when reviewing a prospective tenant.

On 1 July 2013, nationally consistent provisions regarding when a tenant can be listed on an RTD commenced in Western Australia. Section 82E of the RT Act provides that a person can only be listed if:

- the tenant was named on a residential tenancy agreement that has ended;
- the tenant breached a provision of the agreement; and
- as a consequence of that breach, the tenant owes the lessor an amount that is greater than the security bond or a court has made an order terminating the agreement.

Being listed on a RTD can have long term ramifications for an individual's ability to obtain a future residential tenancy agreement. For many, RTD listings may result in long periods of homelessness and/or tenuous security of tenure.

As currently drafted, section 82E could be used to list a victim of family violence, even if they were seeking to have the tenancy agreement terminated under the proposed new provisions. This outcome would be entirely contrary to the efforts of governments to support victims of family violence to obtain secure and stable accommodation.

The options paper proposed to introduce a provision similar to that in Queensland³⁹ or South Australia⁴⁰ that will allow the court to make an order requiring the removal or amendment of a listing if the family violence is the underlying cause of the listing.

Stakeholders were asked if it was desirable or necessary to give the court any further guidance in respect of this proposal.

STAKEHOLDER FEEDBACK

All stakeholders supported this proposal. The feedback provided supported that any amendments mirror the type of provisions that are present in either Queensland or South Australian.

Recommendation 10

That the RT Act be amended to enable a magistrate to make an order to amend or remove a listing of a victim of family violence on a residential tenancy database if the circumstances giving rise to the listing result from family violence.

³⁹ *Residential Tenancies and Rooming Accommodation Act 2008*, section 461.

⁴⁰ *Residential Tenancies Act 1995*, section 89A(4)(d).

6. CHANGING THE LOCKS AND INSTALLING OTHER SECURITY MEASURES

The RT Act currently prohibits a tenant or a lessor from altering, removing or adding locks without the consent of the other party either at the time or immediately before making the changes.⁴¹ It is an offence to do so without reasonable excuse.⁴²

The options paper noted that if the policy objective of achieving security of tenure for victims of family violence and giving them a real choice to remain in the home then it may be necessary to amend the RT Act to provide certainty to victims of their right to change the locks without obtaining the prior permission of the lessor.

The options paper also noted the recommendation of the Victorian Royal Commission into Family Violence that the law should be amended so that a victim of family violence is not prohibited from making other alterations to the premises at their own cost, such as installing security cameras.

The options paper contained the following proposal:

It is proposed to amend the RT Act to make clear that a tenant who has been subjected to family violence may alter the locks to any external doors and windows of the premises without first obtaining the permission of the lessor. In conjunction with this amendment, it is proposed to require the tenant to provide the lessor with a copy of the key as soon as practicable after the locks have been changed.

In relation to making alterations or affixing fixtures, it is proposed to amend the RT Act to allow a tenant who is protected by a restraining order to affix such fixtures and make such alterations to the premises as are necessary to improve the security of the premises provided that:

- *the cost of making the alterations is borne by the tenant;*
- *installation of fixtures such as security cameras and other security devices is undertaken by a qualified tradesperson; and*
- *the tenant restores the premises to their original condition at the end of the tenancy agreement if they choose to take the alterations, such as security cameras, with them to new premises or the lessor requires them to do so.*

It is also proposed to prohibit a lessor or property manager from giving a copy of a key for any newly installed locks to a perpetrator who has been excluded from the premises. This provision is proposed so as to give certainty to a lessor or property manager who may be faced with demands from a perpetrator whose name remains on a tenancy agreement that they be given access to the premises.

Stakeholders were asked whether a timeframe should be imposed for the tenant to provide new keys to the lessor and whether the security alterations allowed by a lessor should be limited to security devices. Stakeholders were also invited to raise any other issues that were important in relation to this issue.

⁴¹ Section 45(b).

⁴² Section 59F(1).

STAKEHOLDER FEEDBACK

Keys

Stakeholder responses were evenly divided on whether the tenant should be required to provide the keys to the lessor as soon as practicable but without stating a specific timeframe and those that thought it was important to specify a timeframe.

Those stakeholders⁴³ who advocated for the “as soon as practicable” approach argued that this would be more flexible to the capabilities of a tenant in a time of potential high stress and crisis.

REIWA stated that it was important for a timeframe of seven days to be stated as it was important for a lessor to have access to any new keys in the case of an emergency and entry to the premises is required. REIWA also noted that this provision would not extend to the tenant being allowed to change locks that belong to a strata body.

Tenancy WA agreed that in providing a specified timeframe, it removes the ambiguity and risk of disputes if the requirement is stated as simply as soon as practicable. The Housing Authority does not retain copies of keys for each tenancy and therefore acknowledged that this issue did not apply to their circumstances.

It is acknowledged that a specified timeframe lacks flexibility, however, a dispute arising between the parties would only compound the stress being experienced by the victim of family violence at this time. Unnecessary disputes also add costs to the system in the form of involvement by Consumer Protection, advocates and the courts. For these reasons, a requirement that a tenant provide any new keys to the lessor as soon as practicable, but in any event within seven days, is preferred.

Installing security devices

The majority of stakeholders who answered the question of whether permissible alterations to the premises should be limited to a prescribed list of security devices advocated that there should not be a list that would have the effect of limiting the types of security improvements a tenant would be allowed to make to the premises.⁴⁴ The Aboriginal Legal Service of WA noted that necessary security improvements might extend to increasing the height of the perimeter fencing or improving external lighting to the premises.

The remaining stakeholders⁴⁵ advocated for a limit to the types of security that a tenant could add to the premises without having to seek the permission of the lessor. The Aboriginal Family Law Services suggested that the list should be limited to:

- changes to the locks to doors and windows;
- security cameras;
- alarms; and
- security screens.

The Aboriginal Family Law Service suggests that any alterations for the purposes of security beyond this list should require the permission of the lessor.

⁴³ Ruah Community Services, Djinda Services, Geraldton Resource Centre, Chrysallis Support Services, Centrecare Family Relationship Geraldton.

⁴⁴ CLC association of WA, Tenancy WA, Domestic Violence Legal Workers Network, Geraldton Resource Centre, Chrysallis Support Services Inc, Centrecare Family Relationship Geraldton, Djinda Services, ALSWA.

⁴⁵ Housing Authority, REIWA, RUAH Community Services, Aboriginal Family Law Services.

REIWA stated that any alteration to the premises should be carefully considered so as not to impact on the property style, look and design and ongoing maintenance of the premises. REIWA is of the view that a lessor should always retain the right to have a say in what is added to the premises before it happens.

A reasonable compromise to address the concerns raised in respect of each of these options would be to allow a tenant who is victim of family violence to affix such fixtures and make such alterations to the premises as are necessary to improve the security of the premises provided that the tenant has regard to the look and feel and age of the property when selecting security devices and the tenant restores the premises to their original condition at the end of the tenancy agreement.

Additional comments

In addressing the question of any additional issues to consider, the Housing Authority suggested that a tenant should be required to notify a lessor of any changes made to the premises, either in the form of changed locks or additional security.

The Geraldton Resource Centre raised the concern that requiring a qualified tradesperson to change locks and/or alter the security of the premises may unreasonably raise the costs for victims of family violence in regional areas. This is a valid concern, however, from a lessor's perspective, it will be important to balance this against the need to ensure that an unqualified person doesn't cause significant damage or danger to the premises, especially if the work involves electrical devices.

It should also be noted that REIWA's concern regarding strata company locks may also extend to some aspects of the external surfaces of some strata premises or that some strata rules may preclude the installation of some security devices, such as window screens, if they are not in conformity with the look of the remainder of the strata property. Any permission given to a tenant under the RT Act would not override strata rules in these circumstances.

Recommendation 11

It is recommended that the RT Act be amended to:

- i. make clear that a tenant who has been subjected to family violence may alter the locks to any external doors and windows of the premises without first obtaining the permission of the lessor;
- ii. require the tenant to provide the lessor with a copy of the key as soon as practicable after the locks have been changed and in any event within seven days;
- iii. prohibit a lessor or property manager from giving a copy of a key for any newly installed locks to a perpetrator who has been excluded from the premises; and
- iv. allow a tenant who is victim of family violence to affix such fixtures and make such alterations to the premises as are necessary to improve the security of the premises provided that:
 - a. the cost of making the alterations is borne by the tenant;
 - b. installation of fixtures such as security cameras and other security devices is undertaken by a qualified tradesperson;
 - c. the tenant has regard to the look and feel and age of the property when selecting security devices; and
 - d. the tenant restores the premises to their original condition at the end of the tenancy agreement if they choose to take the alterations, such as security cameras, with them to new premises or the lessor requires them to do so.

7. OTHER ISSUES RAISED BY STAKEHOLDERS

Stakeholders raised a number of issues in addition to the questions posed in the options paper. These are outlined below.

Prohibit discrimination against victims of family violence

The Women's Law Service of WA advocated for the inclusion of a catch all provision in the RT Act that would prohibit discrimination on the part of lessors to lessees on the basis of actual or perceived family violence. This would operate to guard against such circumstances as a person being denied a tenancy agreement simply on the basis that the applicant has been a victim of family violence; preventing a property manager or lessor from disclosing to another lessor that the tenant terminated the agreement on the grounds of family violence; and preventing a lessor from seeking to terminate a tenant's tenancy agreement simply because the tenant is a victim of family violence. Tenancy WA also advocated for anti-discrimination provisions to be implemented.

The proposal is similar to the current section 56 of the RT Act which prohibits a person from refusing to enter into a tenancy agreement with a person simply because it is proposed that children will reside at the premises. The suggested amendment is supported because it further advances the policy rationale of providing more just outcomes to victims of family violence. A provision of this nature may help to lend meaning to other parts of the RT Act for example sections 71⁴⁶ and 75A⁴⁷. It may also have the potential to operate to prevent unjust outcomes for victims of family violence in circumstances that have not been anticipated by the proposals contained in this report. It also sends the very clear message that a victim of family violence is not to be further victimised and that the community will not stand for family violence and its unnecessary consequences.

Recommendation 12

That the RT Act be amended to prohibit a lessor from discriminating against a potential, current or former tenant on the grounds that they have been or are perceived to be a victim of family violence.

The Housing Authority's Three Strikes Policy

Although outside the scope of the options paper, The Equal Opportunity Commissioner and the Aboriginal Legal Service of WA raised concern about the manner in which the Housing Authority's three strikes policy is impacting negatively on victims of family violence. The issues raised in these submissions will be raised in consultation with the Minister for Housing.

Education and Support

Many stakeholders expressed the need for there to be:

- education for magistrates, court staff, lessors and property managers to support them in their understanding of the complex nature of family violence and to implement the proposed amendments; and

⁴⁶ Application by lessor for order from the court terminating the tenancy agreement and order for possession of the premises.

⁴⁷ Application by a social housing provider for an order of the court terminating the tenancy agreement on the grounds of objectionable behaviour.

- there be funding for tenant advocacy services to enable them to support victims of family violence in accessing the proposed new provisions.

Property managers are required to undertake continuing professional development each year. The content of this CPD is determined by Consumer Protection as the regulator of that industry. Consumer Protection is looking to introduce education for property managers on the subject of family violence, including understanding the complex nature of family violence, the different types of support services available for victims and the proposed changes to the RT Act.

These changes to the RT Act, like all legislative amendments, to the extent that they may impact on demand for tenant support services, would be factored in to any future reviews of the Tenancy Advice and Education Services funding program.

Attachment A - Schedule 1 Migration Regulations 1994 - IMMI 12/116

Type of Evidence	includes the following detail
<p>Medical report, hospital report, discharge summary or statutory declaration that is made by either a person who is:</p> <ul style="list-style-type: none"> • registered as a medical practitioner and is performing the duties of a medical practitioner; or • registered as a nurse within the meaning of section 3 of the <i>Health Insurance Act 1973</i> and is performing the duties of a registered nurse. 	<ul style="list-style-type: none"> • Identifies the alleged victim, and • Details the physical injuries or treatment for mental health that is consistent with the claimed family violence.
<p>Either a report, record of assault, witness statement or statutory declaration that is made by:</p> <ul style="list-style-type: none"> • a police officer of a State or Territory • a police officer of the Australian Federal Police <p>OR</p> <p>a witness statement that is made by someone other than the alleged victim to a police officer during the course of a police investigation.</p>	<ul style="list-style-type: none"> • Identifies the alleged victim, and • Identifies the alleged perpetrator, and • Details an incident/s of family violence.
<p>Report or statutory declaration made by an officer of:</p> <ul style="list-style-type: none"> • a child welfare authority, or • a child protection authority of a State or Territory. 	<ul style="list-style-type: none"> • Details fears for the dependent child's safety due to family violence within the household, and • Identifies the alleged perpetrator.
<p>Letter or assessment report made by:</p> <ul style="list-style-type: none"> • a women's refuge, or • family/domestic violence crisis centre <p>on the organisation's letterhead.</p>	<ul style="list-style-type: none"> • States that the alleged victim has made a claim of family violence, and • States whether the alleged victim was subject to family violence, and • Identifies the alleged perpetrator, and details any evidence used to form the opinion.
<p>Statutory declaration made by:</p> <ul style="list-style-type: none"> • a member of the Australian Association of Social Workers, or • a person who is eligible to be a member of that Association <p>who has provided counselling or assistance to the alleged victim while performing the duties of a social worker.</p>	<ul style="list-style-type: none"> • States in their opinion the alleged victim was subject to family violence, and • Details the reasons for the opinion, and • Identifies the alleged perpetrator.

Type of Evidence	includes the following detail
Statutory declaration made by a registered psychologist in a State or Territory who has treated the alleged victim while performing the duties of a psychologist.	<ul style="list-style-type: none"> • States in their opinion the alleged victim was subject to family violence, and • Details the reasons for the opinion, and • Identifies the alleged perpetrator.
Statutory declaration made by a family consultant appointed under the <i>Family Law Act 1975</i> or a family relationship counsellor who works at a Family Relationship Centre listed on the Australian Government Family Relationships website.	<ul style="list-style-type: none"> • States that the alleged victim has been treated or counselled, by the family consultant or family relationship counsellor, and • States that in their opinion the alleged victim was subject to family violence, and • Details the reasons for the opinion, and • Identifies the alleged perpetrator.
Statutory declaration or a letter on the school's letterhead made by a school counsellor or school principal in their professional capacity.	<ul style="list-style-type: none"> • States that they have made, or been made aware of, observations that are consistent with the alleged victim's claims that they were subject to family violence, and • Identifies the alleged perpetrator, and • Provides details of those observations.