Report 38

STANDING COMMITTEE ON LEGISLATION

Residential Tenancies Legislation Amendment (Family Violence) Bill 2018

Presented by
Hon Dr Sally Talbot MLC (Chair)

November 2018
Standing Committee on Legislation

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ISBN 978-1-925578-57-7
CONTENTS

Executive summary ............................................................................................................................... i

1 Referral and procedure .................................................................................................................. 1

2 Committee approach to the inquiry ............................................................................................. 1

3 Purpose of the Bill .......................................................................................................................... 2

4 What is family violence? ................................................................................................................. 2

5 Policy................................................................................................................................................ 2
   Government policy on family violence ......................................................................................... 2
   The policy of the Bill ...................................................................................................................... 3

6 Background of the Bill ................................................................................................................... 7

7 Scrutiny of selected clauses in the Bill.......................................................................................... 9
   Part 1, clause 2 .................................................................................................................................. 9
   Part 2, clause 5 .................................................................................................................................. 10
   Part 2, clause 6 .................................................................................................................................. 17
   Part 2, clause 10 .............................................................................................................................. 18
   Part 2, clause 12 .................................................................................................................................. 20
   Part 2, clause 13 .................................................................................................................................. 24
   Part 2, clause 18 .................................................................................................................................. 26
   Part 3, clause 33 .................................................................................................................................. 36

8 Conclusions ................................................................................................................................... 36

Appendix 1 Stakeholders contacted, submissions received and public hearings ......................... 37

Appendix 2 Fundamental Legislative Principles............................................................................. 39

Appendix 3 Costs Analysis of Various Models of Termination of a Tenancy for FDV..................... 40

Appendix 4 Supplementary Notice Paper No 67 Issue No. 2 .......................................................... 43

Appendix 5 Certified Family Violence Report Draft Form .............................................................. 46
EXECUTIVE SUMMARY

1. The Legislative Council referred the Residential Tenancies Legislation Amendment (Family Violence) Bill 2018 (Bill) to the Standing Committee on Legislation with the power to inquire into policy.


3. The policy of the Bill is to save lives. Consistent with this policy, the Bill enables a tenant experiencing family violence to choose whether to leave their premises without penalty. This is achieved by giving the lessor a seven-day notice of termination accompanied by prescribed judicial evidence or a family violence report completed by a prescribed professional. Alternatively, the person may choose to remain in the premises and apply to a court to have the co-tenant perpetrator’s name removed from the residential tenancy agreement. These two options are empowering for those tenants experiencing family violence.

4. The Committee supports the policy and the legislative expression of it.

5. The Bill importantly provides a tenant with the right to make necessary alterations for securing the premises against entry by a perpetrator of family violence.

6. The Bill provides guidance on the application of the general law of contract on residential tenancy agreements when family violence occurs.

7. The Committee has noted concerns about the potential for the family violence report form accompanying a notice of termination to be misused and welcomes the Government’s proposed five year review of Divisions in the two enactments.

8. The Committee considered the variety of professional and occupational persons who can complete a family violence report, noting the further prescription of persons in future regulations.

9. The Committee made three findings, four statutory form amendments and seven narrative form amendments.

Findings and recommendations

Findings and recommendations are grouped as they appear in the text at the page number indicated:

**FINDING 1**

There is an inequity in application fees to the Magistrates Court and the State Administrative Tribunal for tenants experiencing family violence seeking to resolve disputes.

**RECOMMENDATION 1**

The Minister for Commerce and the Attorney General consult in order to develop a plan to address the inequity in application fees to the Magistrates Court and the State Administrative Tribunal for tenants experiencing family violence seeking to resolve disputes.
The Committee supports the amendments in Supplementary Notice Paper No. 67, Issue 2 - 3/18, 5/29 and 6/31 proposing a review of Division 2A in the Residential Tenancies Act 1987 and; Divisions 4A and 3A in the Residential Parks (Long-stay Tenants) Act 2006 and recommends the review include the implementation of the developed plan.

**FINDING 2**

The reason advanced for leaving the commencement of the Residential Tenancies Legislation Amendment (Family Violence) Bill 2018 to the Executive is justified.

**RECOMMENDATION 2**

When considering the Bill in Committee of the Whole, the Minister representing the Minister for Commerce explain the significance of the adjective ‘fundamental’ in clause 5, proposed section 17B(5)(a) at line 24 on page 4.

**RECOMMENDATION 3**

The Committee supports the amendments in Supplementary Notice Paper No. 67, Issue 2 - 3/18, 5/29 and 6/31 proposing a review of Division 2A in the Residential Tenancies Act 1987 and; Divisions 4A and 3A in the Residential Parks (Long-stay Tenants) Act 2006. The Committee recommends that proposed section 17B(5)(b) be included in the review for its impact upon the ordinary right of lessors to recover debts owed by tenants.

**RECOMMENDATION 4**

Any review of the Residential Tenancies Act 1987 and the Residential Parks (Long-stay Tenants) Act 2006 include consideration of family violence provisions in lessor protection insurance policies. The review is to include insurer compliance with the Insurance Council of Australia’s Code of Practice.

**RECOMMENDATION 5**

Clause 6, Part 2, proposed section 27C(4A) be amended as follows:

Page 5, line 24 — To delete “person” and insert:

lessor

Page 5, line 26 — To delete “person — “ and insert:

lessor —

**FINDING 3**

There is merit in developing an infringement notice for the $5 000 penalty in clause 10, proposed section 45(3), given its harshness on the tenant experiencing family violence.
RECOMMENDATION 6  Page 20
Clause 10, Part 2, proposed section 45(3) be amended for consistency with other penalty descriptions.
This may be effected in the following manner:
Page 8, line 27 — To delete the line and insert:
Penalty for this subsection: a fine of $5 000.

RECOMMENDATION 7  Page 23
When considering the Bill in Committee of the Whole, the Minister representing the Minister for Commerce explain why proposed section 47(6)(a) at lines 3 to 6 on page 11 is required.

RECOMMENDATION 8  Page 24
Proposed section 47(6)(b) be deleted.
This may be effected in the following manner.
Page 11, lines 3 to 7 — To delete the lines and insert:
(6) Subsection (4) does not apply to premises entered into the Register as defined in the *Heritage of Western Australia Act 1990* section 3(1).

RECOMMENDATION 9  Page 27
When considering the Bill in Committee of the Whole, the Minister representing the Minister for Commerce explain whether the definition of 'tenancy period' in clause 4(1) on page 3, lines 10 to 13 requires an updated, completed family violence report to support a termination notice.

RECOMMENDATION 10  Page 36
The review proposed in Supplementary Notice Paper No. 67, Issue 2 - 3/18 include the impact of proposed section 71AD(2) and (4) upon the contractual right to certainty; and the imposition of proposed contractual obligations upon non-perpetrator lessors and co-tenants.

RECOMMENDATION 11  Page 36
Clause 33, Part 3, proposed Schedule 1 clause 12(9) be amended.
This may be effected in the following manner:
Page 32, line 24 — To delete the line and insert:
Penalty for this subclause: a fine of $5 000.
1 Referral and procedure

1.1 On 17 October 2018 the Legislative Council referred the Residential Tenancies Legislation Amendment (Family Violence) Bill 2018 (Bill) to the Standing Committee on Legislation (Committee). The motion of referral states:

(1) that Order of the Day 21, Residential Tenancies Legislation Amendment (Family Violence) Bill 2018, be discharged and referred to the Standing Committee on Legislation for consideration and report by no later than Thursday, 22 November 2018; and

(2) the Committee has the power to inquire into and report on the policy of the Bill.¹

1.2 Pursuant to Standing Order 163, Hon Rick Mazza MLC substituted for Hon Colin de Grussa MLC for the duration of the Inquiry. The President reported the substitution to the House on 30 October 2018.

1.3 The Committee called for submissions from those stakeholders listed in Appendix 1 and advertised the inquiry in The West Australian receiving ten submissions. Media statements were released for the Inquiry and hearings.

1.4 Public hearings were held with the Real Estate Institute of Western Australia (REIWA) and the Department of Mines, Industry Regulation and Safety (DMIRS). Notice of the hearings was advertised and the hearings were broadcast. The Committee extends its appreciation to those who made submissions and appeared at hearings.

1.5 The Committee acknowledges the contribution of Ms Patricia Blake, Senior Policy Officer, Legislation and Policy, DMIRS, Consumer Protection Division for her comprehensive advice.

2 Committee approach to the inquiry

2.1 As with previous inquiries, the Committee’s method for scrutinising the Bill included an assessment as to whether its provisions are consistent with Fundamental Legislative Principles (FLPs). Sixteen FLPs are set out in Appendix 2.

2.2 FLPs are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law.² They fall under two broad headings:

* Does the Bill have sufficient regard to the rights and liberties of individuals? (FLPs 1-11).
* Does the Bill have sufficient regard to the institution of Parliament? (FLPs 12-16).

2.3 The Committee has routinely used FLPs as a convenient and informal framework for scrutinising proposed legislation since 2004. They are not enshrined in Western Australian law, and for some bills, many FLPs do not apply. The question the Committee asks is not whether there is strict compliance with FLPs, but whether a bill has sufficient regard to them.

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¹ Hon Sue Ellery MLC, Leader of the House, Western Australia, Legislative Council, Parliamentary Debates (Hansard), 17 October 2018, p 7128.

² The FLPs are based on principles set out in Queensland’s Legislative Standards Act 1992, though other Parliaments often rely on similar principles.
3 Purpose of the Bill

3.1 The Second Reading Speech neatly condenses the purpose of the Bill as allowing a victim of family violence who is a tenant, to choose to:

(1) leave their premises without penalty by issuing the lessor or park operator with a notice of termination; or

(2) if the victim wants to remain in the premises, they can apply to the court to have the perpetrator’s name removed from the tenancy agreement.5

4 What is family violence?

4.1 The Bill defines ‘family violence’ as the meaning given in section 5A(1) of the Restraining Orders Act 1997. That is:

(a) violence or 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.4

4.2 According to DMIRS, a person experiencing family violence is likely to be a woman from an Aboriginal, migrant or refugee background but beyond that, family violence ‘does not discriminate by income, by education, by geography. Everyone is potentially at risk’. 5

5 Policy

Government policy on family violence

5.1 Government policy on family violence is stated as a ‘holistic multi-faceted approach to break the culture of violence in our families and communities’.5 Part of this policy is the reforming of tenancy laws to ‘support, not penalise victims and removing barriers to support people to leave abusive relationships’.7

5.2 Family violence reform and service provision is governed by the Western Australia Family and Domestic Violence Prevention Strategy to 2022. Focusing on early intervention, victim safety and perpetrator accountability, the Strategy continues the ‘shared, integrated service response’ strategy of the earlier, WA Strategic Plan for Family and Domestic Violence 2009 – 2013.

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3 Hon Alannah MacTiernan MLC, Minister for Regional Development, Western Australia, Legislative Council, Parliamentary Debates (Hansard), pp 4133a-4a.

4 The Restraining Orders Act 1997 s 3(1) defines a ‘child’ as meaning a person under 18 years of age. Section 10B(1)(g) recognises that a child can be a perpetrator of family violence.

5 Patricia Blake, Senior Policy Officer, Legislation and Policy, DMIRS, Consumer Protection Division, Transcript of evidence, 23 October 2018, p 6.


The policy of the Bill

5.3 The policy of the Bill is revealed in both the Second Reading Speech and Explanatory Memorandum. In the Second Reading Speech, the policy is to save lives. As Minister MacTiernan said when introducing the Bill to the Legislative Council:

The Bill seeks to remove some of the burdens that have long been experienced by victims of family violence to empower them to make choices that may ultimately save lives.8

5.4 In the Explanatory Memorandum, the policy is stated as seeking:

To prevent, or reduce to the greatest extent possible, the consequences of family violence while seeking to ensure perpetrators of family violence accept responsibility for their behaviour and the effect it has on others.9

5.5 There are cogent reasons for the Bill being ‘unashamedly victim focused’10 as the following statistical information reveals.

From DMIRS

- Western Australia has the highest rate of family and domestic violence in Australia.
- This year alone Western Australia has averaged one domestic homicide per fortnight.11
- Police data in 2015–16 revealed 27 domestic homicides in Western Australia.
- In 2016, 64 per cent of assaults reported to WA Police were related to family violence.
- Annual data collected by the Australian Institute of Health and Welfare reveals that in 2016–17, 24 626 Western Australians sought assistance from specialist homelessness services. Relevantly, 10 868, or 44 per cent, identified as needing homelessness services because they were experiencing family and domestic violence.
- The incidence of family violence is increasing.12

From the Minister for Prevention of Family and Domestic Violence

- The rate of reporting has steadily increased and is likely to keep increasing as awareness is raised.13
- Police respond to an incident of family and domestic violence every 10 minutes.14

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8  Hon Alannah MacTiernan MLC, Minister for Regional Development, Western Australia, Legislative Council, Parliamentary Debates (Hansard), pp 4133a-4a.
10  Hon Alannah MacTiernan MLC, Minister for Regional Development, Western Australia, Legislative Council, Parliamentary Debates (Hansard), pp 4133a-4a.
11  Patricia Blake, Senior Policy Officer, Legislation and Policy, DMIRS, Consumer Protection Division Transcript of evidence, 23 October 2018, p 1 and at page 8 said: ‘In the community it is well known that when victims of family violence go to leave, their risk of further violence and domestic homicide escalates phenomenally. If a perpetrator is served with a court notice because a victim tenant is trying to terminate their tenancy, their risk at that point in time is through the roof.’
12  ibid.
13  Submission 2 from Hon Simone McGurk MLA, Minister for Prevention of Family and Domestic Violence received 31 October 2018, p 2.
14  ibid.
• For Aboriginal women, as many as one in two experience violence and abuse in an intimate or family relationship.\textsuperscript{15}

\textbf{From others}

• In 2016-17 WA Police attended around 50 000 family and domestic violence incidents with more than 4 500 calls received by Western Australian domestic violence helplines.\textsuperscript{16}

• In its 2018 Annual Report, the Western Australian Police Force recorded a 50 percent increase in family violence incident reports over the eight year period from 2009-10 to 2016-17. Aboriginal communities are over represented.\textsuperscript{17}

• Of the 90 family and domestic violence fatality reviews finalised between 1 July 2012 and 30 June 2018, there were 29 Aboriginal deaths representing 32 per cent of all deaths. Of these, 23 fatalities occurred in regional or remote areas, of which 19 were intimate partner fatalities.\textsuperscript{18}

• Aboriginal people are overrepresented as victims of family violence by a factor of ten.\textsuperscript{19}

• Aboriginal women are 45 times more likely to be victims of family violence than their non-Aboriginal counterparts and more likely to access emergency accommodation or a refuge as a result of intimate partner violence.\textsuperscript{20}

5.6 The number of persons living in residential tenancy properties and experiencing family violence is unknown ‘because it is just not a statistic that is gathered anywhere’.\textsuperscript{21} What we do know is that family violence is the leading cause of homelessness.\textsuperscript{22}

\textbf{The relevance of statistics}

5.7 The Committee is mindful of the following comment by Rosie Batty, 2015 Australian of the Year about the relevance of statistics. Ms Batty said:

\begin{quote}
These women are not just statistics. They are mums, sisters, granddaughters, aunts and friends. Their deaths are tragic and impact everyone. These were women who contributed to their communities, and their families. They had every right to be safe, loved and have a future.\textsuperscript{23}
\end{quote}

5.8 The policy of the Bill is to enable and therefore empower those tenants locked into fixed-term agreements to leave their tenancies early. Current options are termination under the undue hardship provisions in section 74 of the \textit{Residential Tenancies Act 1987} or negotiating a resolution between all parties to the tenancy agreement. Neither option

\textsuperscript{15} Submission 2 from Hon Simone McGurk MLA, Minister for Prevention of Family and Domestic Violence received 31 October 2018, p 2.

\textsuperscript{16} Submission 5 from the WA Council of Social Service, 31 October 2018, p 1.

\textsuperscript{17} Western Australia Police Force, Annual Report 2018, Perth, 9 October 2018, p 27.

\textsuperscript{18} Ombudsman Western Australia, Annual Report 2017-18, report prepared by Chris Field, Ombudsman, Perth, 9 October 2018, p 144.


\textsuperscript{20} ibid.

\textsuperscript{21} Patricia Blake, Senior Policy Officer, Legislation and Policy, DMIRS, Consumer Protection Division \textit{Transcript of evidence}, 23 October 2018, p 6.

\textsuperscript{22} Submission 8 from Tenancy WA, 1 November 2018, p 5.

\textsuperscript{23} ABC news online, 25 November 2015, viewed 5 November 2018, \url{https://www.abc.net.au/news/2015-11-25/these-women-had-a-right-to-be-safe/6728826}. 
considers the urgent circumstances of a tenant applying for termination. Tenancy WA provided the following case study that demonstrates urgency:

Our client is a young CALD (culturally and linguistically diverse) mother. She and her ex-partner were joint tenants for a private tenancy.

The client fled the premises due to domestic violence and obtained a Violence Restraining Order against her ex-partner. The domestic violence included serious assaults including deprivation of liberty, assault in a moving vehicle, and pushing her out of the moving vehicle. However, the client continued to pay the full rent on the premises, fearful of further violence if she stopped.

The client applied for termination of the tenancy under hardship provisions, and raised domestic violence, but the application was dismissed as the Court did not seem to take this into account.

Tenancy WA assisted the client to make a second hardship termination application, and prepared affidavit evidence of the history of the matter, and the matter was settled with termination orders made by consent with the lessor. This took over 3 months, and 4 Court appearances.

During this period the client lived with 9 other adults in a 3 bedroom house rented by her mother, as she was unable to afford her own tenancy until the joint tenancy was terminated. Our client didn’t want to go into rent arrears as she did not want to be blacklisted, and risk not being able to rent in future.24

5.9 The Albany Community Legal Centre gave the following case study:

The tenancy was in joint names. The perpetrator co-tenant remained in the premises. The lessor agreed to release the tenant but the co-tenant perpetrator would not agree. The tenant remained liable for the rent and any damage until the tenancy ended.25

5.10 As these above case studies show, currently (unless a lessor agrees to early release), the tenant is liable to pay rent until the end of the agreement or until the premises can be relet. DMIRS said ‘experience in conciliating between tenants and landlords, as well as industry experience, tells us that there are many occasions when landlords do not agree to release a tenant’.26

Policy features in the Bill

5.11 The Committee identified six policy features having either a deleterious or ameliorative outcome.

Ameliorative outcomes

5.11.1 Statutory recognition of a human rights framework for housing a person experiencing family violence. The Scales Community Legal Centre argued that adequate housing is a fundamental human right under international law but the current operation of the Residential Tenancies Act 1987 is unable to recognise the rights of persons experiencing family violence, resulting in 'cumulative and multifaceted damage'.27

24 Submission 8 from Tenancy WA, 1 November 2018, p 4.
27 Submission 3 from Scales Community Legal Centre, 31 October 2018, p 3.
5.11.2 The potential for the costs of family violence to the Western Australian economy to reduce. KPMG has estimated $2.82 billion per annum including costs associated with loss of productivity in the workplace and $302 million for services demand.\(^{28}\) Nationally, the cost is $21.7 billion per year and rising.\(^{29}\) These national amounts compare against:

- 2002-2003 when the cost was estimated to be in excess of $8 billion.\(^{30}\)
- 2008-2009 when estimated at $13.6 billion with the caveat that if no action was undertaken to address the problem then, the cost would be $15.6 billion in 2021-2022.\(^{31}\) That latter amount estimated ten years ago has now been overtaken.

Deleterious outcomes

5.11.3 The potential for perpetrators to become homeless or discriminated against because of a conviction on a charge relating to family violence. However, this is mitigated by express provisions against: (a) discrimination and (b) inclusion on a residential tenancy database for family violence.

5.11.4 The potential for manipulation and misuse. Industry’s main concern is sitting tenants may use family violence as a way out of a lease in the absence of family violence, for example, the breakdown of a relationship. REIWA indicated the five year review proposed on the supplementary notice paper will be an opportunity for industry to monitor and ensure misuse is ‘limited and rare’.\(^{32}\)

5.11.5 Denying lessors the financial security of fixed term tenancies when bond data reveals that the average length of a tenancy in Western Australia is two years.\(^{33}\) This low-volume movement of tenants is particularly attractive to those lessors needing regular, long term rent to sustain mortgages. Further, lessors have no right to compensation for termination. However, Shelter WA argue that the Bill ‘will go some way to protect the assets of landlords who rent their homes’.\(^{34}\)

5.11.6 Financial loss for the lessor:

1. The lessor will experience a temporary financial disadvantage in the loss of half the bond until it is replaced by the remaining co-tenant.

2. Loss resulting from a potential change to insurance arrangements. Insurance is discussed at paragraphs 7.32 to 7.35.

3. Lessor court costs. DMIRS conducted a cost analysis of three scenarios for terminating a tenancy arising out of family violence, estimating that under a

\(^{28}\) Submission 2 from Hon Simone McGurk MLA, Minister for Prevention of Family and Domestic Violence, received 31 October 2018, p 3.

\(^{29}\) Submission 1 from DMIRS, 30 October 2018, p 2.


\(^{32}\) Damian Collins, President, Real Estate Institute of Western Australia, Transcript of evidence, 23 October 2018, p 6.

\(^{33}\) Patricia Blake, Senior Policy Officer, Legislation and Policy, DMIRS, Consumer Protection Division Transcript of evidence, 23 October, 2018, p 30.

\(^{34}\) Submission 4 from Shelter WA, 31 October 2018, p 1.
seven-day termination notice, the lessor’s loss would be $2 100 in a sole tenancy and $1 400 in a joint tenancy where the co-tenant(s) elect not to remain.\textsuperscript{35} DMIRS estimated a greater loss for a lessor if the premises are abandoned—$4 200, but substantially higher at $8 550 if termination is by court order.\textsuperscript{36} The Committee noted that the DMIRS calculations in Appendix 3, whilst claiming to be ‘worst case scenarios’ were based on an average re-letting periods.

(4) Loss resulting from earlier than anticipated costs such as re-letting fees and advertising, which will vary according to circumstances, the impact of which has not been investigated or quantified.

\textit{Conclusions on the policy of the Bill}

5.12 As products of their time, the \textit{Residential Tenancies Act 1987} and the \textit{Residential Parks (Long-stay Tenants) Act 2006} are structurally biased against persons experiencing family violence. Structural bias is the discriminatory impact of laws, policies and practices (rather than an individual’s biased attitudes).\textsuperscript{37}

5.13 Structural bias can be gradual, imperceptible and normalised as ‘the way things are done’ until new policy emerges challenging that position. Such is the case with the Bill. It manifests a human rights approach to family violence in tenancy law and explains the Minister’s comment that the Bill is unashamedly victim focused.

5.14 The amendments to the \textit{Residential Tenancies Act 1987} and the \textit{Residential Parks (Long-stay Tenants) Act 2006} are consistent with the policy of making safe those tenants experiencing family violence. In this respect, the provisions for terminating a fixed tenancy agreement because of family violence are efficient for tenants. While some financial loss remains for the lessor, the Committee received evidence that these losses may be reduced (see paragraph 5.11.6(3)). However, there was an inadequate period of time for the Committee to establish whether the information provided by DMIRS was endorsed by property owners. The Property Owners Association of WA, Landlord’s Advisory Service, Park Home Owners Association of Western Australia and the Caravan Industry Association of Western Australia (Inc.) were invited to make a submission. No submissions were received.

5.15 The Committee supports the policy of the Bill.

\textbf{6 Background of the Bill}

6.1 The Bill has its genesis in a Western Australian Law Reform Commission Report in 2014 titled: \textit{Enhancing Law Concerning Family and Domestic Violence}. The report made recommendation 33—that the (then) Department of Commerce:

\begin{quote}
Undertake a review of the interaction of the Residential Tenancies Act 1987 (WA) and family and domestic violence protections orders to consider whether any reforms are necessary or appropriate to accommodate the circumstances of
\end{quote}

\textsuperscript{35} Department of Mines, Industry Regulation and Safety, Consumer Protection Division, \textit{Costs analysis of various models of termination of a tenancy for FDV} spreadsheet is based on recent statistics from the Magistrates Court in mid-October 2018 regarding the average length of time to first mention and then the number of days till first hearing. See Appendix 3.

\textsuperscript{36} ibid.

6.2 The Bill is divided into three Parts.
• Part 1 contains the short title and commencement clause.
• Part 3 makes 12 amendments to the Residential Parks (Long-stay Tenants) Act 2006.

Supplementary Notice Paper Number 67 Issue No. 2

6.3 The Committee notes that Supplementary Notice Paper Number 67 Issue No. 2 includes a proposal to review Division 2A of the Residential Tenancies Act 1987 and Divisions 4A & 3A of the Residential Parks (Long-stay Tenants) Act 2006 on the fifth anniversary after commencement. The Supplementary Notice Paper is attached at Appendix 4.

6.4 The amendments to each of the above Acts are thematically identical and mirrored. However, the amendments to the Residential Parks (Long-stay Tenants) Act 2006 only apply to on-site rentals where a tenant is renting the building and the site. Essentially tenants in parks are ‘like-for-like’ with residential tenants under the Residential Tenancies Act 1987 and will enjoy the same protections.

6.5 There are some differences within the Residential Parks (Long-stay Tenants) Act 2006. That enactment has an appeal mechanism to the State Administrative Tribunal (SAT) for breaches of agreements or other disputes. Under the Residential Tenancies Act 1987, it is the Commissioner for Consumer Protection or the DMIRS who assists in resolving disputes and if unresolved, the Magistrates Court. There is a cost difference in an application. Long-stay park tenants attending SAT pay $115.50 (concession holder $33.45) and residential tenants pay $68.25 or if financially disadvantaged $19.70 in a Magistrates Court.

6.6 The Committee noted the substantial difference in application fees and is concerned that a tenant experiencing family violence is subjected to a higher fee simply because the person applies under one enactment rather than the other. The response from DMIRS to the identification of this difference was:

The fees for residential tenancies matters in the Magistrates Court are prescribed in the Residential Tenancies Regulations 1989. The Department therefore has control over these fees and has always maintained them at as low a cost as possible to ensure that parties are not financially prohibited from accessing dispute resolution through the courts.

The true cost to the Magistrates Court for residential tenancy matters is subsidised from the Rental Accommodation Account (which holds all tenant bonds) pursuant to the RTA [Residential Tenancies Act 1987].

Fees for applications to the State Administrative Tribunal are prescribed in the State Administrative Tribunal Regulations 2004. The Department is not

40 ibid, p 5.
41 Patricia Blake, Senior Policy Officer, Legislation and Policy, DMIRS, Consumer Protection Division, Answer to question on notice A2 asked at hearing held 23 October 2018, dated 1 November 2018, p 1.
responsible for the administration of this legislation and therefore has no control over the fees that are set for SAT applications.\textsuperscript{42}

6.7 The Committee is of the view that although the above information explains the application fee differential, it does not resolve the inequity. The Committee draws this matter to the attention of the House in the following finding and recommendation.

**FINDING 1**
There is an inequity in application fees to the Magistrates Court and the State Administrative Tribunal for tenants experiencing family violence seeking to resolve disputes.

**RECOMMENDATION 1**
The Minister for Commerce and the Attorney General consult in order to develop a plan to address the inequity in application fees to the Magistrates Court and the State Administrative Tribunal for tenants experiencing family violence seeking to resolve disputes.

The Committee supports the amendments in Supplementary Notice Paper No. 67, Issue 2 - 3/18, 5/29 and 6/31 proposing a review of Division 2A in the *Residential Tenancies Act 1987* and; Divisions 4A and 3A in the *Residential Parks (Long-stay Tenants) Act 2006* and recommends the review include the implementation of the developed plan.

7 **Scrutiny of selected clauses in the Bill**

7.1 As stated at paragraphs 2.1 to 2.3, the Committee’s practice is to scrutinise clauses against FLPs where relevant. This affects clauses 2(b), 5, 12 and 18.

**Part 1, clause 2**

7.2 Clause 2 contains the standard, short title and commencement provisions. The operative provisions are intended to commence by way of proclamation. Clause 2 states:

**Commencement**

This Act comes into operation as follows –

(a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;

(b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

7.3 Both provisions rely on Executive action.

7.4 Clause 2(b) raises FLP 12. It asks the question: *Does the Bill have sufficient regard to the institution of Parliament by allowing the delegation of legislative power only in appropriate cases and to appropriate persons?*

7.5 Clause 2(b) is routinely found in bills. It has the capacity to impinge on the Parliament’s sovereignty because the commencement dates will be controlled by the Executive. Absent in the proposed subsection is anything that requires proclamation within a prescribed time frame. Conceivably, a proclamation may never be made and the will of the Parliament, in

\textsuperscript{42} Patricia Blake, Senior Policy Officer, Legislation and Policy, DMIRS, Consumer Protection Division, Email, 7 November 2018.
passing the Bill would be frustrated. The Parliament should be responsible for determining when laws come into operation, not the Executive.

7.6 On this occasion the Committee is satisfied that DMIRS has given ‘sufficient regard’ to the delegation of legislative power to the Executive and is appropriate. The proclamation device in clause 2(b) is primarily needed for the termination notice form on which the legislative scheme depends for reporting family violence. The termination notice must first be approved by the Commissioner for Consumer Protection. The Commissioner will not have power to approve the termination notice form until and unless the Bill is passed.43

FINDING 2
The reason advanced for leaving the commencement of the Residential Tenancies Legislation Amendment (Family Violence) Bill 2018 to the Executive is justified.

Part 2, clause 5

7.7 Clause 5 inserts proposed section 17B with six subsections prescribing how a court must determine the rights and liabilities of tenants affected by the termination of their interests in a tenancy on the ground of family violence.

Clause 5 and proposed section 17B(3)

7.8 Clause 5 proposes section 17B(3). It states:

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

(3) Without limiting subsection (2), a determination or order under that provision may apportion the disposal of a security bond to the lessor and each tenant or former tenant as appropriate having regard to subsection (4).

7.9 The Committee noted that although proposed section 17B(3) enables the order to include the disposal of the security bond to the lessor, proposed section 17B(1) restricts applications to a tenant or a former tenant, not a lessor.

7.10 The Committee queried how proposed section 17B(3) will work in practice given that the lessor is not expressly prescribed as a party to the proceedings, though Schedule 1, subclause 8(1) dealing with bond disposal, refers to both a ‘lessor or tenant’ making an application.

7.11 DMIRS clarified with Parliamentary Counsel that the application is made by the tenant or former tenant but all parties to the tenancy agreement including the lessor will be parties to the application. The lessor has been excluded in proposed section 17B(3) for consistency with the drafting style in other parts of both the Residential Tenancies Act 1987 and the Residential Parks (Long-stay Tenants) Act 2006. DMIRS said:

The lessor is automatically a party to the proceedings. If the amendments were to list the potential parties to proceedings, the same would have to be done throughout the Act in order to avoid unintended consequences in the interpretation by the courts of those other clauses.44

43 Patricia Blake, Senior Policy Officer, Legislation and Policy, DMIRS, Consumer Protection Division Transcript of evidence, 23 October 2018, p 34.

44 Patricia Blake, Senior Policy Officer, Legislation and Policy, DMIRS, Consumer Protection Division, Answer to question on notice A5 asked at hearing held 23 October 2018 dated 1 November 2018, p 2.
The Committee is reassured by this response.

**Clause 5 and proposed section 17B(4)**

Clause 5 proposes section 17B(4). It states:

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

(4) Despite any law to the contrary, each tenant under a residential tenancy agreement has an equal interest in the security bond in respect of the agreement unless the court in a particular case determines otherwise under this section.

The Chief Magistrate requested this amendment which provides as the default position, that each tenant has an equal interest in the security bond, unless the court determines otherwise.

The Committee took issue with the prefacing words: ‘Despite any law to the contrary’. DMIRS explained that Schedule 1, clause 8 deals with bond disposal but is absent any details on apportionment. All that is required are signatures and the bond is released to all tenants jointly. Those former tenants then work out themselves how the bond is to be divided.

The Committee queried whether the prefacing words could be deleted and a reference to Schedule 1, clause 8 inserted instead. DMIRS argued that there may be common law around who actually contributed what amount to the bond or even contractual agreements between the tenants. The Parliamentary Counsel’s Office said:

Proposed new section 17B(4) starts with ‘Despite any law to the contrary’ because there is a considerable body of case law that might be applied to various provisions in this Act to suggest that interest in security bonds might be variable, the extent of the parties’ interest is always a matter of fact for the court to decide.

The opening words indicate that s.17B(4) is not subject to any provisions (or case interpreting a provision).

Section 17B(4) is designed to be read down – listing specific provisions would not be sufficient as it is a risk that one might be omitted accidentally from that list.

The Committee noted:

- the absence of a leading case within what the Parliamentary Counsel’s Office described as a ‘considerable body of case law’
- that the prefacing words were inserted out of an abundance of caution—to avoid any suggestion from common law that there should be anything but an equal interest in the security bonds.

The Committee in noting the absence of a leading case within the considerable body of case law is satisfied with this response because of the Magistrates Courts’ or State Administrative Tribunal’s discretion in proposed section 17B(4).

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45 The Parliamentary Counsel’s Office said: ‘When I spoke of a “considerable body of law”, I was speaking of contract law in general. Under the principles of contract law, tenancies can be tenancies in common (in which interests can be unequal, according to the contractual terms) or joint tenancies (in which joint and several obligations and interests are created). It all depends on the terms of the contract. I wanted to ensure that interests in the security bond were equal in any event (in accordance with the drafting instructions)’. Patricia Blake, Senior Policy Officer, Legislation and Policy, DMIRS, Consumer Protection Division, Email, 7 November 2018.

46 Patricia Blake, Senior Policy Officer, Legislation and Policy, DMIRS, Consumer Protection Division, Answer to question on notice A6 asked at hearing held 23 October 2018, dated 1 November 2018, p 2.
Clause 5 and proposed section 17B(5)(a)

7.19 Clause 5 proposes section 17B(5)(a). It states:

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

(5) In making a determination or order under subsection (2), the court must have regard to all of the following principles—

(a) that family violence is a fundamental violation of human rights and is unacceptable in any form;

7.20 This principle is not found in the ‘objects of the Act’ section 10GA of the Restraining Orders Act 1997. The principle has its genesis in recommendation 7-1 from the Australian Law Reform Commission’s final report: Family Violence—A National Legal Response. That recommendation states:

State and Territory family violence legislation should contain guiding principles, which should include express reference to a human rights framework, drawing upon applicable international conventions.47

7.21 Another source for the principle is Preamble (b) of the Family Violence Protection Act 2008 (Vic). However, the principle is not found in any other Australian legislation and is not mandated in those particular words in the Australian Law Reform Commission’s recommendation 7-1.

7.22 Noting the absence of the term ‘fundamental’ in both the Restraining Orders Act 1997 and the Australian Law Reform Commission’s final report, the Committee makes the following recommendation.

RECOMMENDATION 2

When considering the Bill in Committee of the Whole, the Minister representing the Minister for Commerce explain the significance of the adjective ‘fundamental’ in clause 5, proposed section 17B(5)(a) at line 24 on page 4.

Clause 5 and proposed section 17B(5)(b)

7.23 Clause 5 proposes section 17B(5)(b). It states:

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

(5) In making a determination or order under subsection (2), the court must have regard to all of the following principles—

(b) the need to prevent further victimisation of a person who has experienced family violence through the unjust application of the principle of joint and several liability or the principle of vicarious liability;

7.24 Proposed section 17B(5)(b) requires a Magistrate, when making a determination or order about rights and liabilities after a tenancy is terminated, to have regard to the injustice of applying the joint and several liability principle or the principle of vicarious liability.

What is joint and several liability?

7.25 Joint and several liability commonly arises in circumstances where two or more parties are party to an agreement or all parties promise to do the same thing. They may be jointly and severally liable if a contentious issue arises.

7.26 This type of liability arises in circumstances where two or more parties sign a contract such as a tenancy agreement. If the principle is applied, a plaintiff lessor may recover the cost of making good any physical damage to the premises arising out of family violence from both or either of the co-tenants regardless of their individual share of the liability.

7.27 DMIRS explained how the ‘unjust’ joint and several liability principle would work to, in effect, re-assign the debt.

If the court accepts ... and finds that the victim is not liable, then the landlord would pursue the perpetrator for the debt. If they are not a tenant, it would be through normal civil proceedings or their insurance.48

7.28 Re-assigning debt raises FLP 7. It asks the question: Does the Bill have sufficient regard to the rights and liberties of individuals by imposing obligations retrospectively?

7.29 Although the Bill does not abrogate the ‘joint and several liability’ principle or the vicarious liability principle, it requires the judiciary to ‘have regard to’ these two principles and the injustice of applying them when making a determination or order about liabilities.

7.30 If an order or determination is made against the perpetrator tenant, proposed section 17B(5)(b) effectively shifts responsibility for pursuing the debt arising from damage or loss caused by family violence in current tenancy agreements onto lessors and their insurers. This did not exist before and may affect lessors’ insurance premiums.

7.31 The Committee is of the view that:

• shifting responsibility is an additional financial burden on lessors
• arguably, proposed section 17B(5)(b) does not give sufficient regard to the rights of lessors.

RECOMMENDATION 3

The Committee supports the amendments in Supplementary Notice Paper No. 67, Issue 2 - 3/18, 5/29 and 6/31 proposing a review of Division 2A in the Residential Tenancies Act 1987 and; Divisions 4A and 3A in the Residential Parks (Long-stay Tenants) Act 2006. The Committee recommends that proposed section 17B(5)(b) be included in the review for its impact upon the ordinary right of lessors to recover debts owed by tenants.

Lessor protection insurance policies

7.32 The Committee contacted the Insurance Council of Australia (ICA) to ascertain industry’s response to the absence of family violence exclusion or inclusion in lessor protection insurance policies. Some policies currently cover ‘malicious damage’ meaning damage caused by a tenant or a guest of the tenant.

7.33 The Committee noted that on 26 June 2018, the ICA published its final report on developing a new Code of Practice for Insurers. The Chief Executive Officer said:

This review was launched in 2017 at the request of the ICA Board. As it progressed, its focus widened to address the growing awareness of complex social issues facing consumers experiencing vulnerability when dealing with insurance, including in the areas of mental health, financial hardship and family violence.49

7.34 It was explained that the matter of family violence and insurance is a live issue for the ICA and is being considered as part of the Code of Practice review. It is also being looked at separately with legal experts and other stakeholders to address the complex legal issues involved.50 The final report states:

5.3. New Requirements on Family Violence

ICA recommendation 4

The Code should be amended to include a requirement for insurers to have a family violence policy. The Code should be accompanied by family violence guidance, attached at Appendix 1, to provide insurers with guidance on developing their own family violence policies.

ICA recommendation 5

The ICA proposes to continue to work with members, family violence experts, FOS and legal expert Dr Ian Enright to address the complex legal issues raised in situations of family violence.51

7.35 The ICA indicated work has not yet commenced on the new Code. Once it is completed, ICA expects Member insurers to have developed a family violence policy in their policy documents within six months of the publication of the new Code.

RECOMMENDATION 4

Any review of the Residential Tenancies Act 1987 and the Residential Parks (Long-stay Tenants) Act 2006 include consideration of family violence provisions in lessor protection insurance policies. The review is to include insurer compliance with the Insurance Council of Australia’s Code of Practice.

What is vicarious liability?

7.36 Vicarious liability in a residential tenancy context is how a tenant ‘stands in the shoes’ of another person to assume responsibility for that person’s actions, such as damaging premises. DMIRS explained the injustice of vicarious liability as follows:

Often you can have somebody come to the premises, but you do not give them consent to damage the premises.

Sometimes in the case of family violence, it appears that you have invited people into the premises but usually that can be a risk mitigation rather than a genuine


50 Didier Silarsah, Senior Policy Advisor, Consumer Outcomes Insurance Council of Australia, Email, 16 November 2018.

consent. From the standpoint of stakeholders that made submissions to us, that was a point that was raised quite strongly by some of the stakeholders.  

7.37 The Committee agrees with WA Council of Social Service that the assignment of debt provisions are ‘crucial for reducing financial hardship for victims when leaving a tenancy’.  

Victimisation

7.38 If the Bill is passed, the term ‘victimisation’ in proposed sections 17B(5)(b) and 74C(5)(b) will appear as isolated oddities in respectively, the Residential Tenancies Act 1987 and the Residential Parks (Long-stay Tenants) Act 2006.  

7.39 The Committee understands the 17B(5)(b) principle and other principles in proposed section 17B are similar to those found in section 10B(1) of the Restraining Orders Act 1997 but the outcome is that a highly emotive term associated with the criminal law, is introduced into the civil law of contract. Further, the Residential Tenancies Act 1987 and the Residential Parks (Long-stay Tenants) Act 2006 reveal that if the Bill is passed, the term ‘victimisation’ will appear only once in each enactment. The term appears misplaced.

7.40 More importantly, the term is passive and disempowering to those experiencing family violence. Being a ‘victim’ or subject to ‘victimisation’ implies weakness, helplessness and pity in relation to both preventing the violence and leaving abusive relationships. Such interpretations ignore the reality that some people resist, flee and live with violence every day.

7.41 Within the academic literature characterising victims of family violence, it has been noted that the ‘victim’ identity perpetuates harm and negatively impacts a woman’s sense of empowerment. A study in 2007 found that:

Many female victims are unable or unwilling to conform to dominant narratives of victimisation which suggests that these established narratives do not actually reflect the realities of this lived experience.

7.42 The Committee noted that in the 2015 Victorian Royal Commission into Family Violence police court transcripts used the term ‘affected family member’ (AFM), not ‘victim’. However, where it was unclear who the primary aggressor was, police nominated the AFM on the basis of which party appeared to be the most fearful and in most need of protection.

7.43 Looking for alternatives to the term ‘victimisation’, the Committee considered ‘traumatising’ or ‘re-traumatising’, borrowing from section 10B(1)(j) of the Restraining Orders Act 1997. The term ‘re-traumatising’ is also found in the 2014 Law Reform Commission of Western Australia report that was the genesis for the Bill.

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52 Patricia Blake, Senior Policy Officer, Legislation and Policy, DMIRS, Consumer Protection Division Transcript of evidence, 23 October, 2018, p 15.


54 The Bill, clauses 5 and 31.


58 In respect of proceedings under that enactment.

The Committee draws to the attention of the House the use of the term ‘victimisation’ and invites consideration of its appropriateness.

**Clause 5 and proposed section 17B(5)(c)**

Clause 5 proposes section 17B(5)(c). It states:

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

(5) In making a determination or order under subsection (2), the court must have regard to all of the following principles.

(c) the need to maximise the safety of persons who have experienced family violence by reducing any financial burden arising from the family violence;

The Committee considered whether proposed section 17B(5)(c) conflated safety with financial burden reduction given that they are thematically dissimilar. DMIRS explained that the intent is for persons to have ‘financial freedom to move forward into more safe accommodation’ and remains of the view that the current drafting is appropriate.

The provisions relate to the court’s decision to assign liability for damage and debt, and it is this financial burden that can impede a person’s safety in the future if not appropriately apportioned.

The Committee is satisfied with this response.

**Clause 5 and proposed section 17B(5)(e)**

Clause 5 proposes section 17B(5)(e). It states:

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

(5) In making a determination or order under subsection (2), the court must have regard to all of the following principles—

(e) the need to protect the wellbeing of children by preventing them from being subjected or exposed to further family violence;

The Committee noted that proposed section 17B(5)(e) essentially replicates section 10A(c) of the Restraining Orders Act 1997 with the addition of one extra word—‘further’ family violence.

The Commissioner for Children and Young People publishes guidelines to assist agencies assessing draft legislation from the perspective of children and young peoples’ well-being with the intent of producing laws that better meet their needs and interests. DMIRS said they are:

aware of the guidelines and took them into consideration in drafting. This is demonstrated in the drafting of proposed section 71AE(4) and (5) of the RTA and proposed section 74B(4) and (5) of the RPLT Act, where the court is instructed to take into account the best interests of any child ordinarily resident in the premises.

60 Patricia Blake, Senior Policy Officer, Legislation and Policy, DMIRS, Consumer Protection Division Transcript of evidence, 23 October, 2018, p 19.

61 Patricia Blake, Senior Policy Officer, Legislation and Policy, DMIRS, Consumer Protection Division, Answer to question on notice A9 asked at hearing held 23 October 2018, dated 1 November 2018, p 4.

and further that this be the court’s paramount consideration. This drafting was informed by the Commission’s guidelines.

Further, the inclusion of reference to a tenant’s “dependant” throughout the Amendment Bill (e.g. proposed section 71AB(1) of the RTA [Residential Tenancies Act 1987] and proposed section 45A(1) of the RPLT Act [Residential Parks (Long-stay Tenants) Act 2006]) is a reflection of the Department’s incorporation of the Commissioner’s guidelines to ensure that the legislative provisions would also apply where a child or young person was the victim of family violence and their needs were not being overlooked simply because they could not be a named tenant on the residential tenancy agreement by virtue of their age.63

7.51 In a submission to the Committee, the Commissioner for Children and Young People indicated that he ‘strongly supports the Bill which aims to assist, empower and unencumber victims of family violence’. The Commissioner emphasised that when safety and stability of accommodation are prioritised, this in turn promotes and supports the right of children to be safe. Commissioner Pettit said:

Maintaining the security of a child’s home where it is safe to do so also minimises the potential disruption to the child’s education, peer friendships, and support of adults in their local community.64

Part 2, clause 6

Clause 6 and proposed section 27C(4A)

7.52 Clause 6 proposes to insert section 27C(4A) regarding property condition reports at the start and end of a tenancy.

7.53 The Committee noted that other sections in Part IV of the Residential Tenancies Act 1987 repeatedly use the term ‘lessor’. However, proposed section 27C(4A) uses the term ‘person’ in lines 24 and 26. The Committee queried the use of the term ‘person’ when for drafting consistency with other current sections in Part IV, the term ‘lessor’ is used.

7.54 The Parliamentary Counsel advised that this was most likely a drafting oversight, reflective of many provisions in which the term ‘person’ is used. However, ‘while it is not consistent in exact terminology it is completely effective in legal terms. It can be changed by amendment in committee if necessary’.65

7.55 The Committee is of the view that an amendment is necessary and makes the following recommendation:

RECOMMENDATION 5

Clause 6, Part 2, proposed section 27C(4A) be amended as follows:

Page 5, line 24 — To delete “person” and insert:

lessor

Page 5, line 26 — To delete “person — “ and insert:

lessor —

63 Patricia Blake, Senior Policy Officer, Legislation and Policy, DMIRS, Consumer Protection Division, Email, 7 November 2018.


65 Patricia Blake, Senior Policy Officer, Legislation and Policy, DMIRS, Consumer Protection Division, Answer to question on notice A13 asked at hearing held 23 October 2018, dated 1 November 2018, p 5.
**Part 2, clause 10**

**Clause 10 and proposed section 45(3)**

7.56 Clause 10 proposes section 45(3). Section 45 is titled ‘Securing premises’. Proposed 45(3) states:

(3) A tenant who breaches a term referred to in subsection 2(b) [fails to give the lessor a copy of the key] without reasonable excuse, in addition to any civil liability that the tenant might incur, commits an offence.

Penalty for this subsection: $5 000.

7.57 The amendments to section 45 are to alter or add any lock or ‘other means of securing the premises’ with the lessor to be given a copy of the key. The clause does not require the lock to be the same type as that insitu but regulation 12B of the *Residential Tenancies Regulations 1989* mandates:

- a deadlock or key lockable security screen door to the main door
- if not the main door, a dead lock or patio bolt lock or key lockable security screen door.

7.58 The Committee queried whether changing the lock may void an insurance policy. REIWA said the ‘reality is an insurance company does not void your policy because you have got some other different lock. Practically, the department had told us that they will be putting out fact sheets for tenants in strata properties, and that will help’.66

7.59 The Committee explored what might constitute ‘any civil liability’ the tenant may incur. ‘Civil liability’ means being responsible for actions and practices that could damage others, but are not criminal. The Parliamentary Counsel’s Office said:

The reference to ‘civil liability’ has been included principally to address any remedies that may apply under contract law. In certain circumstances there is also the possibility that the actions or inactions of the tenant may give rise to a claim in tort, for example negligence.67

7.60 The Committee is satisfied with this answer.

**The $5 000 penalty**

7.61 The Committee is of the view that the penalty is harsh especially given that the most common demographic of a person experiencing family violence is female, Aboriginal, migrant, refugee or a social housing tenant. This is despite the fact that pursuant to section 9 of the *Sentencing Act 1995*, the $5 000 fine is the maximum possible penalty.

7.62 DMIRS explained that the $5 000 fine is the minimum penalty that currently exists within the *Residential Tenancies Act 1987* for all offences. However, there is an:

Intention to prescribe this as a prescribed penalty that could be dealt with by an infringement notice. That would either be set at 10 or 20 per cent of that amount as an infringement notice if the person was to pay it that way.68

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67 Patricia Blake, Senior Policy Officer, Legislation and Policy, DMIRS, Consumer Protection Division, Answer to question on notice A10 asked at hearing held 23 October 2018, dated 1 November 2018, p 4.
The intention to create an infringement notice framework was news to the Committee as the following exchange reveals:

Hon NICK GOIRAN: Clause 10, so just on this about the prescribed penalty, is that set out in the explanatory memorandum, the intention to create a prescribed penalty?

Ms Blake: No, because that is something that our property industry’s directorate has recently—when we have been talking about regulations, our property industry’s directorate, who would be responsible for enforcing or taking action in these instances, have pointed that that would be one that would be ideally suited to being dealt with by way of a prescribed penalty.

Hon NICK GOIRAN: I always get troubled by these regulations. Parliament would otherwise—if we had not had the benefit of this hearing, we would know nothing about that.

Ms Blake: Sure. Yes, except that —

Hon NICK GOIRAN: We could just pass the bill unamended, thinking it is going to be a maximum $5 000, and then lo and behold buried in the regulation at some later stage is a 10 per cent penalty.

Ms Blake: It is 10 per cent of that amount, so $5 000 is still the maximum amount. It could be $5 000, $10 000 or $20 000. A lot of legislation deals with prescribed penalties as infringement notices because it is just a far more efficient way of dealing with offences where there is no need to prove intent. It is a very simple offence to establish—either the key was given or it was not—so administratively and through the courts it saves a lot of time. It is a much more efficient way. Where the prescribed penalties sit is in the regulations. The tenancy Act already has a number of prescribed penalties.69

The Committee makes the following finding:

FINDING 3
There is merit in developing an infringement notice for the $5 000 penalty in clause 10, proposed section 45(3), given its harshness on the tenant experiencing family violence.

Clause 10 and a minor drafting error in proposed section 45(3)

The Committee noted a minor error on page 8 of the Bill regarding the penalty for proposed section 45(3). Line 27 states ‘Penalty for this subsection: $5 000.’ Consistent with other penalty references, it should state: ‘Penalty for this subsection: a fine of $5 000.’

The Parliamentary Counsel’s Office acknowledged that this is a drafting oversight and the missing words ‘should be inserted in committee’.70 The Committee makes the following recommendation:

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69 Hon Nick Goiran MLC, Deputy Chairman and Patricia Blake, Senior Policy Officer, Legislation and Policy, DMIRS, Consumer Protection Division, Transcript of evidence, 23 October 2018, p 20.

70 Patricia Blake, Senior Policy Officer, Legislation and Policy, DMIRS, Consumer Protection Division, Answer to question on notice A14 asked at hearing held 23 October 2018, dated 1 November 2018, p 6.
**RECOMMENDATION 6**

Clause 10, Part 2, proposed section 45(3) be amended for consistency with other penalty descriptions.

This may be effected in the following manner:

Page 8, line 27 — To delete the line and insert:

Penalty for this subsection: a fine of $5 000.

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**Part 2, clause 12**

7.67 Clause 12 proposes three new subsections to section 47 titled: *Right of tenant to affix and remove fixtures etc.* by permitting prescribed alterations for securing the premises, thus preventing entry. The costs for a qualified tradesperson to undertake the alterations are to be borne by the remaining tenant. At the end of the tenancy, the premises must be restored to original condition if the lessor so requires.

7.68 Clause 12 proposes section 47(4). Section 47 is titled ‘Right of tenant to affix and remove fixtures etc’. Proposed section 47(4) states:

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

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

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

7.69 The rationale of this proposed amendment is to support persons experiencing family violence to safely stay in their home and thus remain connected to their community.

7.70 REIWA was interested in the development of this clause given that property managers are not always able to easily contact their property owners to obtain consent for tenants to make emergency, protective changes to the premises. REIWA was eventually satisfied that ‘as long as the tenant has to make good at the end, which they do, we are okay with that’.71

7.71 REIWA also took comfort in the knowledge that renovations, alterations or additions would be prescribed in regulations and they would be consulted in the process. However, for the Committee, this raised again FLP 12. It asks the question: *Does the Bill have sufficient regard to the institution of Parliament* by ‘allowing the delegation of legislative power only in appropriate cases and to appropriate persons’? The following exchange highlights FLP 12:

**Mr Pozzi:** Consumer Protection will liaise with REIWA and relevant stakeholders in relation to the development of those regulations. So until the bill passes then the

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71 Damian Collins, President, Real Estate Institute of Western Australia, *Transcript of evidence*, 23 October, 2018, p 12.
regulations would be developed, and in that particular aspect it will be the department that will consult with us in relation to the preparation.

Hon NICK GOIRAN: Yes, I understand that, and I can understand that it gives confidence to REIWA, but as a lawmaker I am not about to subcontract that task out to REIWA. I would want to know what is going to be in those regulations before the chamber agrees to it. So you have not been provided with a draft list or anything like that?

Mr Pozzi: No.72

7.72 DMIRS helpfully provided a list of seven security upgrades it proposes to prescribe in regulations and does not object to them being prescribed in the Bill. DMIRS said:

The Bill was initially drafted to prescribe the security upgrades to allow for further stakeholder consultation to occur on this specific issue.

There is no real reason why they couldn’t be included within the drafting of the Act, however it would be prudent to maintain the ability to prescribe other security upgrades.

As I explained in Committee in response to the type of premises this might not apply to, the ability to prescribe matters allows for a timely response to issues that emerge through the implementation of the legislation that are causing difficulty or unnecessary barriers for stakeholders.

The ability to prescribe matters like security upgrades means that we can respond to emerging products on the markets, or even to changes in perpetrator behaviour, in a timely fashion and therefore “future proof” the legislation rather than waiting for amendments to be made through Parliament, which can take years.73

7.73 The security upgrades are:

- security alarms
- CCTV cameras
- window locks, screens and/or shutters
- security screens on the doors
- exterior lights
- changes to external gate locks (excluding gates for common areas in strata properties or residential parks)
- pruning of shrubs and trees abutting the agreed premises.74

7.74 The Committee is of the view that the security upgrades listed above will give the tenant experiencing family violence a significant measure of protection. However, the Committee is divided as to whether security upgrades should be prescribed in the Bill or in regulations

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72 Hon Nick Goiran MLC, Deputy Chairman and Neville Pozzi, Chief Executive Officer, Real Estate Institute of Western Australia, Transcript of evidence, 23 October 2018, p 12.

73 Patricia Blake, Senior Policy Officer, Legislation and Policy, DMIRS, Consumer Protection Division, Email, 7 November 2018.

74 Patricia Blake, Senior Policy Officer, Legislation and Policy, DMIRS, Consumer Protection Division, Answer to question on notice A11 asked at hearing held 23 October 2018, dated 1 November 2018, p 5.
pursuant to section 88 of the Residential Tenancies Act 1987, the Governor’s general, ‘necessary or convenient’ regulation making power.\textsuperscript{75}

7.75 A majority of the Committee is of the view that proposed section 47(4) should stand as printed.

7.76 A minority of the Committee comprising Hon Rick Mazza MLC and Hon Nick Goiran MLC is of the view that regard ought to be had for FLP 7.\textsuperscript{76} The provision empowering tenants to make security upgrades without the consent of the lessor adversely affects the property rights of lessors retrospectively. Accordingly any prescription should be in the Bill and not delegated to the Executive to be made and amended from time to time by regulation.

**Clause 12 and proposed section 47(6)(a)**

7.77 Clause 12 proposes section 47(6). Section 47 is titled ‘Right of tenant to affix and remove fixtures etc.’ Proposed section 47(6) states:

\begin{quote}
(6) Subsection (4) [making alterations] does not apply to —
\begin{itemize}
  \item (a) premises entered into the Register as defined in the *Heritage of Western Australia Act 1990* section 3(1);
  \item (b) any other prescribed premises.
\end{itemize}
\end{quote}

7.78 REIWA minimised the risk of proposed new amendment 47(6)(a) as the following exchange reveals:

\begin{quote}
**Hon RICK MAZZA:** As I understand it, the alterations cannot be made if the property is heritage listed. So to make it good, obviously heritage-listed properties do not trust the tenant to make good for repairs on a heritage property as opposed to a non-heritage property. So if you are a tenant, a victim of family violence in a heritage-listed property, you do not have the same protection.

**Mr Collins:** That would be correct, based on what you said. However, the number of heritage homes that would be rented to residential tenants would be—I think on the total state register there are 400 heritage properties, and that is not all just residential, so we are talking about a very small number of properties. Again, how many of them would be actually residential tenants, I would not know—you might want to ask the Heritage Council—but I would imagine it would be very, very small.\textsuperscript{77}
\end{quote}

7.79 The Heritage Council advised there are 1 360 registered ‘places’ in Western Australia but their database does not particularise tenure, for example, that a place is a private residential home or strata, let alone a tenanted, residential premises. The Council’s website states:

Entry in the State Register does not mean a place cannot be changed to meet contemporary needs or adapted for new use.\textsuperscript{78}

\textsuperscript{75} The equivalent provision in clause 35, Part 3 of the Bill in relation to the Residential Parks (Long-stay Tenants) Act 2006 is section 95(1).

\textsuperscript{76} It asks the question: Does the Bill have sufficient regard to the rights and liberties of individuals by imposing obligations retrospectively?

\textsuperscript{77} Hon Rick Mazza MLC, Member and Damian Collins, President, Real Estate Institute of Western Australia, *Transcript of evidence*, 23 October 2018, p 13.

7.80 Changes require an owner, tenant or manager to propose development of a heritage place through a development referral. However, the Heritage Council will not allow any prescribed alterations that disturb the fabric of a premises.

7.81 The number of tenanted, heritage listed residential premises is unknown. The Committee is of the view that the exclusion of heritage listed premises from protective subsection (4) means a tenant experiencing family violence may be at greater risk. A tenant’s only recourse is proposed section 45(2). It provides that a tenant ‘may alter or add any lock or other means of securing the residential premises’.

7.82 The Committee makes the following recommendation:

**RECOMMENDATION 7**

When considering the Bill in Committee of the Whole, the Minister representing the Minister for Commerce explain why proposed section 47(6)(a) at lines 3 to 6 on page 11 is required.

**Clause 12 and proposed section 47(6)(b)**

7.83 Clause 12 proposes section 47(6). Section 47 is titled ‘Right of tenant to affix and remove fixtures etc’. Proposed 47(6) states:

(6) Subsection (4) [making alterations] does not apply to—

(a) premises entered into the Register as defined in the *Heritage of Western Australia Act 1990* section 3(1);

(b) any other prescribed premises.

7.84 Proposed section 47(6)(b) permits regulations to prescribe premises other than premises entered onto the heritage register. DMIRS advised that the Housing Authority requested prescribing the Authority given that adding security upgrades may disturb asbestos.

7.85 Again this raises FLP 12. It asks the question: *Does the Bill have sufficient regard to the institution of Parliament by allowing the delegation of legislative power only in appropriate cases and to appropriate persons?* The following exchange highlights FLP 12:

**Ms Blake:** The Housing Authority has asked us to prescribe premises where the adding of the security upgrades would disturb asbestos.

**Hon NICK GOIRAN:** Why do we not say that at 47(6)(b) rather than “any other prescribed premises”?

**Ms Blake:** Because at that point in time when we were drafting the legislation, we had not had that conversation with Housing. It futureproofs the legislation so that if we find that it is becoming problematic in certain circumstances, then we can deal with that through regulation in the future. But it is not intended at this point in time to deal with that in that way.

**Hon NICK GOIRAN:** So it would not cause violent offence to the department if the committee were to recommend that 47(6)(b) be amended to set out exactly the prescribed premises that you intend?

**Ms Blake:** The asbestos? But it would make it difficult in the future. If landlords were coming to us and saying this is problematic when tenants—I cannot conceive of circumstances off the top of my head, but it is conceivable that particular
landlords might come to us and say, "In this circumstance it is causing enormous difficulty." It would then mean an amendment to the act, which takes a very long time, rather than a regulatory amendment, which is a very quick response to a problem. That is why we use that clause there.

Hon NICK GOIRAN: The Legislative Council generally does not like giving such wide scope unless it is absolutely necessary.

Ms Blake: I appreciate that.

Hon NICK GOIRAN: It sounds like it is not.79

7.86 The Committee is of the view that it is inappropriate to exempt from compliance a key policy component of any bill by regulation. The Committee therefore makes the following recommendation:

**RECOMMENDATION 8**

Proposed section 47(6)(b) be deleted.

This may be effected in the following manner.

Page 11, lines 3 to 7 — To delete the lines and insert:

(6) Subsection (4) does not apply to premises entered into the Register as defined in the Heritage of Western Australia Act 1990 section 3(1).

**Part 2, clause 13**

**Clause 13 and proposed section 56A**

7.87 Clause 13 states that after section 56 insert:

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

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

(a) has been or might be subjected to or exposed to family violence; or

(b) has been convicted of a charge relating to family violence.

Penalty: a fine of $5 000.

7.88 Proposed section 56A prohibits discrimination against persons with a family violence history or the potential for it when applying for a tenancy. It is also protective of the perpetrator by proposing in section 56A(b) that a person must not refuse to grant a tenancy on the ground that the person has been convicted of a charge relating to family violence. This ensures the perpetrator is not left homeless. If a perpetrator only damages property in the course of committing violence, the name can be entered in a residential tenancy database.

79 Hon Nick Goiran MLC, Deputy Chairman and Patricia Blake, Senior Policy Officer, Legislation and Policy, DMIRS, Consumer Protection Division, Transcript of evidence, 23 October 2018, p 24.
Clause 13 and proposed section 56A(b)

7.89 Proposed section 56A(b) crystallises when the motivating factor for refusing to grant a tenancy is the applicant’s conviction on a charge relating to family violence. DMIRS explained that there are many reasons why a lessor might refuse a tenancy particularly when there are multiple applicants. However, this clause is targeting a particular scenario—the lessor who refuses a person as a tenant solely on the basis of a conviction and gives that as the reason.

7.90 At first glance, the Committee had a degree of understanding for the lessor:

Hon SIMON O’BRIEN: I am just trying to work out why we would have such a provision. If I had a landlord as a constituent of mine who was dealing with a prospective tenant who has been convicted of a charge of wilful damage to property in relation to a family violence order—they went around and smashed every window in the place to try and terrify the then co-tenant—at face value I would be inclined to be on the landlord’s side.

Ms Blake: What we know is that if perpetrators are housed in accommodation, they are far more likely to engage in behaviour modification programs, which improves the safety of the victim, and they are also far easier to monitor by the police.80

7.91 The above exchange reveals a social policy imperative. Government does not want the fact that a person is or has been a perpetrator of family violence ‘to be the sole reason why they are not housed’.81

7.92 The Committee queried what constitutes a ‘charge relating to family violence’ given its ambiguity and the admission by DMIRS that ‘part of the issue with the criminal law is we do not have a lot of specific charges of family violence offences, but we would have family violence assaults or breach of restraining orders’.82

7.93 There is no ‘crime’ of family violence in The Criminal Code. However, criminal offences occur in a family violence situation.83 These are:

7.93.1 Offences against the person where the relationship between the parties is a family relationship. Examples are assault, grievous bodily harm, aggravated stalking, sexual assault and making threats about a person’s physical safety. These charges are placed on the list that goes before the Magistrates Court criminal division.

7.93.2 Offences against property where (again) the relationship between the parties is a family relationship. Examples are damage, burglary and stealing. These charges are also placed on the list that goes before the Magistrates Court criminal division.

7.93.3 Breaches of judicial process such as breaching a restraining order. A restraining order is a civil order between two parties but becomes a criminal charge if breached. Such a breach triggers a family violence appearance before the Magistrates Court, criminal division.

7.94 The Parliamentary Counsel’s Office advised DMIRS:

80 Hon Simon O’Brien MLC, Member and Patricia Blake, Senior Policy Officer, Legislation and Policy, DMIRS, Consumer Protection Division, Transcript of evidence, 23 October 2018, p 26.
81 ibid; p 27.
82 ibid; p 26.
The reference is deliberately broad so as to capture acts of family violence that have been sufficient to be the subject of a charge of a criminal offence.

Damages to premises resulting from family violence would not necessarily be a charge ‘relating to family violence’. For example, if a man smashed his partner’s furniture and was charged with criminal damage, there might be no reference in the proceedings to family violence. If however the context made it clear that the charge was part of a pattern of family violence (resulting in FVROs [Family Violence Restraining Orders] etc) then it would. This is a matter of fact that will be up to the courts to determine.

There is no way of making it clearer without removing the courts’ discretion or, alternatively, making the provision so narrow that it only relates to specific offences that do not necessarily sum up the experience of family violence (eg breaching an FVRO).84

7.95 The Committee notes this answer.

Part 2, clause 18

Clause 18 proposes a lengthy new Division 2A titled: Special provisions about terminating tenant’s interest on grounds of family violence. The clause enables a tenant to give the lessor a notice of termination. The grounds are that the tenant or their dependants is likely to be subjected to or exposed to family violence during the tenancy period.

Clause 18 and proposed section 71AB

Proposed section 71AB prescribes for:

- the notice of termination on family violence grounds
- the process for obtaining independent third party evidence verifying family violence for the purposes of terminating a tenancy agreement.

Proposed section 71AB states:

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

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

(a) a DVO;85

(b) a Family Court injunction or an application for a Family Court injunction;

(c) a copy of a prosecution notice or indictment containing a charge relating to violence against the tenant or a court record of a conviction of the charge;

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84 Patricia Blake, Senior Policy Officer, Legislation and Policy, DMIRS, Consumer Protection Division, Answer to question on notice A12 asked at hearing held 23 October 2018, dated 1 November 2018, p 5.

85 ‘DVO’ has the meaning given under the Domestic Violence Orders (National Recognition) Act 2017 section 4(1). That section states a DVO means a local DVO, an interstate DVO or foreign order. A ‘local DVO’ means a Family Violence Restraining Order as defined in the Restraining Orders Act 1997 section 3(1). That is, made under that Act imposing restraints of the kind referred to in section 10G.
(d) a report of family violence, in a form approved by the Commissioner, completed by a person who has worked with the tenant and is 1 of the following —

(i) a person registered under the Health Practitioner Regulation National Law (Western Australia) in the medical profession;

(ii) a person registered under the Health Practitioner Regulation National Law (Western Australia) in the psychology profession;

(iii) a social worker as defined in the Mental Health Act 2014 section 4;

(iv) a police officer;

(v) a person in charge of a women’s refuge;

(vi) a prescribed person or class of persons.

7.99 Proposed subsections 71AB(2)(a), (b) and (c) listed above may be described as ‘judicial’ evidence and (d) ‘non-judicial’ evidence. DMIRS said:

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).86

7.100 During the consultation phase, REIWA emphasised the need for professionals, such as doctors and social workers to complete the family violence report on the basis ‘they are professional and therefore have a code of conduct’.87

The meaning of ‘the tenancy period’

7.101 Clause 4(1) of the Bill provides the following definition of ‘tenancy period’:

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

7.102 The Committee considered the definition of tenancy period and how it would be applied. In particular whether the tenancy period includes the period of a lease extension or renewal. A further related question is whether family violence reports have an expiry date. The Committee puts these questions to the Minister in the following recommendation:

**RECOMMENDATION 9**

When considering the Bill in Committee of the Whole, the Minister representing the Minister for Commerce explain whether the definition of ‘tenancy period’ in clause 4(1) on page 3, lines 10 to 13 requires an updated, completed family violence report to support a termination notice.

The meaning of ‘worked with the tenant’

7.103 Proposed section (2)(d) requires that only a person who has ‘worked with the tenant’ can complete the family violence report. The phrase ‘worked with the tenant’ is primarily the language of therapists such as social workers, psychologists or a person in charge of a refuge. In contrast, medical practitioners ‘treat’ patients and police officers ‘serve’.

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86 Submission 1 from DMIRS, 30 October 2018, p 9.

87 Neville Pozzi, Chief Executive Officer, Real Estate Institute of Western Australia, Transcript of evidence, 23 October 2018, p 4.
7.104 The phrase is not defined in the Bill and drafted in the past tense, it may be interpreted as a series of ongoing professional or occupational therapeutic interventions over a period of time by one of the persons on the list. If that is its intended meaning, it will not capture a tenant disclosing their experience of family violence for the first time after a prolonged experience of violence. This is relevant given that the Australian Bureau of Statistics’ Personal Safety Survey in 2012 collected information about a person’s help-seeking behaviours. That research found:

An estimated 190,100 women (80% of the 237,100 women who had experienced current partner violence) had never contacted the police about the violence by their current partner. [Original emphasis]88

7.105 However, the Common Risk Management Framework that those completing the form are expected to use states that:

Screening for family and domestic violence is not a discrete, one-time event. It is an active process that may be undertaken at any time where indicators of family and domestic violence are present or become apparent.

Indicators of family and domestic violence may not always be obvious to a service provider at initial presentation or intake, and may only become apparent at a second or third presentation.89

7.106 The Western Australia Police Force provided their interpretation of the phrase:

Only a police officer attending an incident, involved in the investigation or a member of a Family Violence Team who has knowledge of the relationship/family violence, would be in a position to complete the prescribed form.90

7.107 Parliamentary Counsel advised DMIRS that the phrase as drafted is broad enough to capture a ‘one-off’ appointment with a person on the list. DMIRS is similarly of the view that ‘there are definitely circumstances where a one-off appointment/assessment is sufficient and warranted; hence the broader interpretation of the term’.91

7.108 DMIRS further explained that:

The phrase “worked with the tenant” was decided in the workshop that Consumer Protection held with stakeholder agencies on 1 March 2018 to review the draft Bill. It was stakeholders at the meeting who requested that this wording/qualifier be inserted into the Bill.

I note the suggestion of the phrase ‘with knowledge of’.

This wording would, in my mind, be problematic. A person can have knowledge of something in a variety of ways, for example, by being told by a third party about events. It does not necessarily require that a professional relationship between the tenant and the prescribed professional exists. NSW, in its recently adopted legislation, uses the phrase “has consulted”.

88 Replicated from the Ombudsman Western Australia, Annual Report 2016-17, report prepared by Chris Field, Ombudsman, Perth, 14 September 2017, p 114.


90 Gary Dreibergs APM, Deputy Commissioner (Operations), Letter, 9 November 2018, p 1.

91 Patricia Blake, Senior Policy Officer, Legislation and Policy, DMIRS, Consumer Protection Division, Email, 2 November 2018.
If the issue is to ensure that there is an ongoing or some sort of pre-existing relationship between the tenant and the prescribed professional before a Family Violence Report is signed in order to prevent a risk of “doctor shopping”, there is difficulty in drafting this without causing unintended consequences. For example, if one looks at a person who presents at the RPH trauma unit or the Sexual Assault Resource Centre having suffered a serious family violence assault, requiring there to be a pre-existing relationship between the professional and the tenant would likely exclude these services from being able to sign the form despite having very clear evidence that family violence has occurred, because these are not the type of services one would expect an individual to have an ongoing or pre-existing relationship with.

Importantly, it is up to the prescribed professional, in their professional judgement, to decide whether or not to complete the form. If a prescribed professional does not feel that they have sufficient knowledge of the tenant’s circumstances, then they are entitled to choose not to sign the form.92

7.109 The Committee notes this explanation.

The family violence report form

7.110 Proposed section 71AB(2)(d) interested REIWA. This subsection requires a document reporting family violence must be in a prescribed, family violence report form approved by the Commissioner for Consumer Protection and completed by various professional and occupational persons who have ‘worked with’ the tenant. The form is provided to the lessor as evidence accompanying a notice of termination.

7.111 During the consultation phase of the Bill, REIWA took issue with the prescribed form and was in discussions with Government over the potential for its misuse.93 REIWA said:

The Canadian situation, where they use a particular form, has been adjusted and amended. I think we are quite happy with where that has landed now in relation to those people who can sign off, saying this person is subject to domestic violence.94

7.112 DMIRS provided an updated draft (see Appendix 5) modelled on three Canadian provinces’ forms. The draft form requires a tenant declaration that states:

I declare the information about family and domestic violence I have provided to the authorised professionals ... 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.95

7.113 The draft form also requires:

- an authorised professional to sign a declaration only after assessing the tenant and the tenant’s circumstances
- the authorised professional to make a determination based upon accepted standards of their profession, relevant knowledge and professional judgment.

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92 Patricia Blake, Senior Policy Officer, Legislation and Policy, DMIRS, Consumer Protection Division, Email, 14 November 2018.

93 Tabled Paper 1580, Legislative Assembly, 22 August 2018, p 1.

94 Neville Pozzi, Chief Executive Officer, Real Estate Institute of Western Australia, Transcript of evidence, 23 October 2018, p 3.

95 Draft Family Violence Report, Guidance notes for persons completing this form, p 1.
The Committee observed that the draft form uses the phrase ‘family and domestic violence’ in the declaration but the language in both enactments is ‘family violence’. The Committee alerts DMIRS to this anomaly for the next iteration of the form.

Subsequent to the drafting of the Bill, DMIRS workshops considered other occupational groups and professions for nomination or exclusion on the judicial list. Those excluded were nurses (on the basis of mandatory reporting) and ‘quite a firm opposition to ‘solicitors or lawyers.’ REIWA was against lawyers because ‘they cover a broad breadth of advice in relation to a whole range of things and we did not believe that that was appropriate.’

DMIRS explained the opposition to lawyers as follows.

The primary issue is that solicitors work in very diverse fields and not all lawyers will have an awareness of FDV [family domestic violence]. For example, a commercial lawyer or a mergers and acquisitions lawyer is unlikely to have an understanding of FDV or be able to determine if it is occurring.

For this reason, the Consumer Advisory Council recommended that we consider prescribing accredited Family Dispute Resolution practitioners, because part of the accreditation process includes the practitioner having been assessed as competent in units that involve screening and assessing families for family violence and child abuse. It is important to note, however, that a Family Dispute Resolution Practitioner does not need to be a solicitor; they can be a qualified mediator.

A further complication is that ‘should a lessor appeal the notice in court, if the solicitor who signed the form is also representing the tenant in those proceedings (lawyers are permitted in certain circumstances), then it is possible that the lawyer would have to cross examine themselves as a witness and this would understandably be a conflict of interest.’

DMIRS workshops nominated:

- child protection workers employed by the Department for Child Protection
- family law practitioners.

**Family Law Practitioners Association of Western Australia**

The Committee contacted the Family Law Practitioners Association of Western Australia (Association) for its views on whether its members should be able to complete a family violence report form. The Association said there would be problems with its inclusion because not all practitioners are members of the Association. However, although there are no statistics of the number of practitioners working in the field of family law, anecdotally, the majority are in the Association.

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96 The only occasion the term ‘domestic’ is used in either enactment is in the definition of ‘DVO’, that is, ‘DVO has the meaning given under the Domestic Violence Orders (National recognition) Act 2017 section 4(1).
97 Patricia Blake, Senior Policy Officer, Legislation and Policy, DMIRS, Consumer Protection Division Transcript of evidence, 23 October 2018, p 27.
98 Neville Pozzi, Chief Executive Officer, Real Estate Institute of Western Australia Transcript of evidence, 23 October 2018, p 4.
99 Patricia Blake, Senior Policy Officer, Legislation and Policy, DMIRS, Consumer Protection Division, Email, 2 November 2018.
100 ibid.
101 Submission 1 from DMIRS, 30 October 2018, p 7 states that it is proposed the prescribed class of persons will include a child protection worker. A child protection worker designated under the Children and Community Services Act 2014 is in the draft family violence report form (see Appendix 4).
The Association is receptive to being prescribed in regulations as a ‘class’ but suggested widening it to encompass ‘any person who is a legal practitioner within the meaning of the Legal Profession Act 2008’. This would then capture those practitioners who are not members of the Association.\(^{102}\)

The Committee is of the view that the Family Law Practitioners Association entity should not be expressly prescribed for the reasons given above.

**Anglicare WA**

Anglicare requested inclusion of ‘a person who is in charge of a men’s behaviour change program’ on the list of persons who can complete a family violence report. Anglicare argued for consideration of the co-tenant perpetrator who chooses to leave but then takes steps towards assuming responsibility and safety for the family violence tenant and dependants.\(^ {103}\)

The Committee is not persuaded by Anglicare’s argument.

**Clause 18 and proposed section 71AB(2)(d)(iv)**

This proposed section expressly authorises police officers to complete a family violence report. The Committee explored how this provision might operate in practice, particularly if there are sufficient safeguards in the Incident Management System database to prevent a person from ‘station shopping’ to have a family violence report form completed.

Deputy Commissioner Dreibergs APM, said the Western Australian Police Force would use its own internal policy and guidelines for completing the form. However, as stated at paragraph 7.106 the phrase ‘who has worked with the tenant’ means the provision would be interpreted by WA Police as applying to only:

- a police officer attending an incident and involved in the investigation; or
- a member of a Family Violence Team with knowledge of the relationship or family violence.\(^ {104}\)

A police incident report would be required to ensure the veracity or need for the form to be completed, but if not, a report by the tenant would be taken and an investigation commenced. This is to ensure police comply with section 62A of the Restraining Orders Act 1997 and thereby mitigate police certifying a tenant’s vexatious report.\(^ {105}\) Police admit to the potential for delay in completing the form while they conduct an investigation.\(^ {106}\)

Police also stated that the way the provision is drafted means ‘some evidence of the existing tenancy arrangements will be required to be produced by the tenant, along with the potential/nominated perpetrator’s details’.\(^ {107}\) This too could cause delay in completing the form.

Logistically the form will be scanned and attached to the individual person profile of the tenant on the police Incident Management System database but if an officer declines to sign,

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\(^{102}\) William Sloan, President, Family Law Practitioners Association of Western Australia, Letter, 2 November 2018, p 1.

\(^{103}\) Submission 6 from Anglicare WA, 31 October 2018, p 2.

\(^{104}\) Gary Dreibergs APM, Deputy Commissioner (Operations), Letter, 9 November 2018, p 1.

\(^{105}\) That section states: ‘A police officer is to investigate whether family violence is being, or has been committed, or whether family violence is likely to be committed, if the police officer reasonably suspects that a person is committing, or has committed, family violence which — (a) is a criminal offence; or (b) has put the safety of a person at risk.

\(^{106}\) Gary Dreibergs APM, Deputy Commissioner (Operations), Letter, 9 November 2018, p 1.

\(^{107}\) ibid; p 2.
that too will be recorded in the last investigation file relating to the relationship. Police made clear that its policy position is that:

Only a police officer who has worked with the tenant or an officer from the Family Violence Teams will be able to declare the prescribed form, this will negate the potential for shopping around.\(^\text{108}\)

7.129 The Committee is satisfied with this response.

**Clause 18 and proposed section 71AB(2)(d)(vi)**

7.130 Proposed section 71AB(2)(d)(vi) expressly authorises a ‘prescribed person or class of persons’ to complete a family violence report. This subsection again raises FLP 12. It asks the question: *Does the Bill have sufficient regard to the institution of Parliament* by ‘allowing the delegation of legislative power only in appropriate cases and to appropriate persons’? The following exchange reveals Executive confidence in the proposed new subsection and highlights FLP 12.

**The CHAIR:** Can I ask you to clarify why you took nurses off the list? Was it to do with their role as mandatory reporters?

**Ms Blake:** That was what was requested of us, yes, not by nurses but by other stakeholders. In terms of that workshop, I cannot remember, but there were a few people within that workshop that work in that health framework that said that nurses should not be on that list.

**The CHAIR:** That was related to their role as mandatory reporters.

**Ms Blake:** As I understood it from that meeting, yes.

**The CHAIR:** You have got other mandatory reporters on that list, have you not?

**Ms Blake:** Yes, but as I understood it, what we were told in that workshop environment is that there is a “don’t ask, don’t tell” framework within that sector. We have not spoken to nurses directly on that, so that might be a group we could add in under this prescribed list.

**Hon NICK GOIRAN:** Or not, if the Council removes that prescribing provision.\(^\text{109}\)

7.131 On this occasion a majority of the Committee is satisfied that DMIRS has given ‘sufficient regard’ to the delegation of legislative power to the Executive and is appropriate in all the circumstances.

7.132 A minority of the Committee comprising Hon Rick Mazza MLC and Hon Nick Goiran MLC is of the view that regard ought to be had for FLP 7.\(^\text{110}\) The provisions in the Bill empower a tenant to unilaterally terminate an agreement without the consent of the lessor and without oversight from a judicial officer. This adversely affects the contractual rights of the lessor retrospectively. In addition it imposes new statutory obligations upon the lessor for the giving of notices to other co-tenants. The legislative safeguard is said to be the professionalism of prescribed individuals empowered to sign a family violence report. Accordingly any prescription of such individuals should be in the Bill and not

\(^{108}\) Gary Dreibergs APM, Deputy Commissioner (Operations), Letter, 9 November 2018, p 2.

\(^{109}\) Hon Dr Sally Talbot MLC, Chair, Hon Nick Goiran MLC, Deputy Chairman and Patricia Blake, Senior Policy Officer, Legislation and Policy, DMIRS, Consumer Protection Division, *Transcript of evidence*, 23 October 2018, pp 27-28.

\(^{110}\) It asks the question: Does the Bill have sufficient regard to the rights and liberties of individuals by imposing obligations retrospectively?
delegated to the Executive to be made and amended from time to time by regulation. The same considerations apply to Part 3, clause 29 in respect of proposed section 45A(2)(d)(vi) amending the Residential Parks (Long-stay Tenants) Act 2006.

**Clause 18 and the omission of Aboriginal persons from the list in proposed section 71AB(2)(d)**

7.133 Given the demographic of a person experiencing family violence, it is surprising that no persons in charge of Aboriginal legal or welfare sector organisations, particularly in regional Western Australia have been expressly included in the list of those who can complete the family violence report form, though they were consulted during the development of the Bill.

7.134 The omission from the list raises FLP 10. It asks *Does the Bill have sufficient regard to the rights and liberties of individuals and in particular, have sufficient regard to Aboriginal tradition and Island custom?* This omission may be contrasted with that of the Government of British Columbia, (one of three Canadian provinces on which the family violence report form was modelled), which lists the following employees who can sign the form:

(i) an aboriginal organisation responsible for duties as a family support worker, executive director, aboriginal court worker, aboriginal justice worker; or

(ii) a first nation or the Metis Nation British Columbia who is responsible for providing support or services in respect of children, families, justice, housing or health,

7.135 The Committee noted the Human Rights Commission's following depiction of Aboriginal women experiencing family violence:

In understanding Aboriginal world views in relation to Family Violence, it has to be understood that an Aboriginal woman cannot be considered in isolation, or even as part of a nuclear family, but as a member of a wider kinship group or community that has traditionally exercised responsibility for her wellbeing as she exercises her rights within the group.111

Strategies for addressing family violence in Indigenous communities need to acknowledge that a consequence of this is that an Indigenous woman 'may be unable or unwilling to fragment their identity by leaving the community, kin, family or partners' as a solution to the violence.112

7.136 In November 2016 the Ombudsman tabled his own motion *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities* report.113 The Ombudsman said synthesising the research literature reveals the following consistent themes amongst Aboriginal women experiencing family violence:

- a reluctance to report because of fear of police, the perpetrator and perpetrator’s kin
- fear of payback by the offender’s family if he is jailed

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112 ibid.

• concerns the offender might become a death in custody
• a cultural resistance to become involved with the non-indigenous justice system, particularly a system viewed as an instrument of dispossession
• a degree of normalisation of violence in some families
• a degree of fatalism about change
• the impact of lateral violence which makes victims subject to intimidation and community denunciation for reporting offenders
• fears that their children will be removed if seen as part of an abusive household
• lack of transport on rural and remote communities
• a general lack of culturally secure services.

7.137 These comments and themes were observed again in both the 2016-17 and 2017-18 Ombudsman Annual Reports.

7.138 Ideally, in order to give sufficient regard to Aboriginal traditions about family violence, persons in charge of Aboriginal legal or welfare organisations should be able to complete the form. Not to do so suggests insufficient regard has been given to those unique features of Aboriginal family violence on women described at paragraphs 7.135 and 7.138.

7.139 These features are best understood by caseworkers themselves in Aboriginal legal, health and welfare organisations, particularly in regional and remote areas where fatalities from family violence are statistically higher. The Committee draws the House’s attention to the point that persons in charge of such organisations should be listed where they are highly visible as occurs in Canada, not relegated to prescription in regulations under 71AB(2)(d)(vi).

7.140 Organisations could include persons in charge of an Aboriginal health care worker or Aboriginal health practitioner at the Derbal Yerrigan Health Service Inc. Other organisations include the Aboriginal Legal Service for both its legal and other support services, Djinda Services, and Aboriginal Family Law Services. However, the Committee acknowledges that it is difficult to prescribe with any certainty at this time, which particular organisations should be included. Some mitigation is achieved by:

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115 Derbal-Yerrigan Health Service Inc is the longest standing Aboriginal community controlled health organisation in Western Australia and one of the oldest across Australia.
116 The Aboriginal Legal Service has a head office in Perth and offices in 14 country locations.
117 Djinda Services is a specialist legal support service for Aboriginal and Torres Strait Islander peoples that have experienced or are at risk of family and domestic violence or sexual assault. It provides legal advice and representation in the Perth metropolitan area in the areas of: violence restraining orders; assisting victims—survivors of family violence and sexual assault; child protection; criminal injuries compensation where it relates to family violence; and family law including child support.
118 The Aboriginal Family Law Services was incorporated in February 2010 under the Commonwealth Attorney General’s Department and the national, Family Violence Prevention Legal Service. It has six offices in Broome, Carnarvon, Geraldton, Kalgoorlie, Kununurra and Port Hedland.
• The evidence that Aboriginal women are more likely to access a refuge.119 There, the family violence report form may be completed by a ‘person in charge of a women’s refuge’ pursuant to proposed section 71AB(2)(d)(v).

• DMIRS advising that the broad range of professionals in the list in 71AB(2)(d) would appear in a number of Aboriginal specific agencies and the Aboriginal Legal Service supported the inclusion of Aboriginal family support workers.

7.141 DMIRS also consulted with the Department of Communities, as many of these services are funded through that Department:

The Department of Communities recommended that we extend this to all Family Support Services, as this will capture Aboriginal Family Support workers but will also capture other groups of family support workers who provide the intensive “in-home” support services for at risk families.120

7.142 If the Legislative Council agrees, DMIRS plans to prescribe ‘intensive family support services funded by the Department of Communities’ in regulations pursuant to proposed section 71AB(2)(d)(vi). This would capture Aboriginal family support workers.

Conclusion

7.143 The Committee suggests that with respect to FLP 10, the Bill could more specifically respect the principle if an amendment to the list in proposed section 71AB(2d) was made to include a person in charge of an Aboriginal legal, health or welfare organisation. The Committee draws this matter to the attention of the House.

Clause 18 and proposed section 71AD

7.144 Proposed sections 71AD(2) and (4) state

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

(2) A lessor must give a copy of a notice received by the lessor under section 71AB(1) to each co-tenant under the residential tenancy agreement within 7 days after receiving the notice.

(4) The co-tenant may, not less than 7 days after receiving the copy of the notice, give notice of termination of the co-tenant’s interest in the residential tenancy agreement.

7.145 The Committee considered whether the proposed section will impose unfair obligations that do not currently exist, on non-perpetrator lessors and co-tenants and recommends that this be assessed during the proposed five year statutory review.

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120 Patricia Blake, Senior Policy Officer, Legislation and Policy, DMIRS, Consumer Protection Division, Email, 2 November 2018.
RECOMMENDATION 10

The review proposed in Supplementary Notice Paper No. 67, Issue 2 - 3/18 include the impact of proposed section 71AD(2) and (4) upon the contractual right to certainty; and the imposition of proposed contractual obligations upon non-perpetrator lessors and co-tenants.

Part 3, clause 33

7.146 The Committee noted at clause 33 on page 32 of the Bill, line 24 a minor drafting error in the penalty in clause 12, subclause 9.

7.147 It states: Penalty for this subclause: $5 000 but consistent with other penalty references in Schedule 1, it should state: Penalty for this subclause: a fine of $5 000. DMIRS said the Parliamentary Counsel’s Office acknowledged that this is a drafting oversight and the missing words ‘should be inserted in committee’.121 The Committee is satisfied with this acknowledgment and makes the following recommendation:

RECOMMENDATION 11

Clause 33, Part 3, proposed Schedule 1 clause 12(9) be amended.

This may be effected in the following manner:

Page 32, line 24 — To delete the line and insert:

Penalty for this subclause: a fine of $5 000.

8 Conclusions

8.1 The Committee supports the policy of the Bill.

8.2 The Committee is satisfied that the Bill reflects the policy intent that persons experiencing family violence will be able to quickly terminate their tenancies by giving a seven day notice or have a court determine their rights and liabilities.

8.3 The Committee recommends the Bill be passed subject to the recommendations it has made.

Hon Dr Sally Talbot MLC
Chair

121 Patricia Blake, Senior Policy Officer, Legislation and Policy, DMIRS, Consumer Protection Division, Answer to question on notice A15 asked at hearing held 23 October 2018, dated 1 November 2018, p 6.
## APPENDIX 1

Stakeholders contacted, submissions received and public hearings

**STAKEHOLDERS INVITED TO MAKE A SUBMISSION**

<table>
<thead>
<tr>
<th>Number</th>
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<tbody>
<tr>
<td>1</td>
<td>Tenancy WA</td>
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<tr>
<td>2</td>
<td>The Aboriginal Legal Service of WA</td>
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<td>3</td>
<td>Youth Legal Service</td>
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<td>4</td>
<td>The Law Society of WA</td>
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<td>The Criminal Lawyers Association</td>
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<td>The Women’s Law Centre</td>
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<td>10</td>
<td>St Vincent de Paul Society (WA)</td>
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<td>11</td>
<td>The Attorney General, Hon J R Quigley MLA</td>
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<td>12</td>
<td>The Minister for Child Protection; Women’s Interests; Prevention of Family and Domestic Violence; Community Services, Hon Simone McGurk MLA</td>
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<td>Landlord’s Advisory Service</td>
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<td>Property Owners Association of WA</td>
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<td>The Strata Community Association WA</td>
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<td>16</td>
<td>Park Home Owners Association of WA Inc.</td>
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<td>17</td>
<td>Caravan Industry Association Western Australia (Inc)</td>
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<td>18</td>
<td>Victims of Crime Commissioner</td>
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<td>19</td>
<td>Commissioner for Children and Young People</td>
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<td>20</td>
<td>Western Australia Police Force</td>
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<td>21</td>
<td>Real Estate Institute of Western Australia</td>
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**SUBMISSIONS RECEIVED**

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<tr>
<td>1</td>
<td>Department of Mines, Industry Regulation and Safety</td>
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<tr>
<td>2</td>
<td>The Minister for Child Protection; Women’s Interests; Prevention of Family and Domestic Violence; Community Services, Hon Simone McGurk MLA</td>
</tr>
<tr>
<td>3</td>
<td>Scales Community Legal Centre</td>
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<tr>
<td>4</td>
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<td>WA Council of Social Service</td>
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<td>Albany Community Legal Centre</td>
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<td>Commissioner for Victims of Crime</td>
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<td>Commissioner Children and Young People</td>
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**PUBLIC HEARINGS HELD**

<table>
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<tr>
<th>Date</th>
<th>Participants</th>
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</table>
| 23 October 2018   | Real Estate Institute of Western Australia  
|                   | Damian Collins, President  
|                   | Neville Pozzi, Chief Executive Officer  
|                   | Department of Mines, Industry Regulation and Safety, Consumer Protection Division, Legislation and Policy  
|                   | Penny Lipscombe, Director  
|                   | Patricia Blake, Senior Policy Officer  
|                   | Tom Filov, Manager |
APPENDIX 2

Fundamental Legislative Principles

Does the Bill have sufficient regard to the rights and liberties of individuals?

1. Are rights, freedoms or obligations, dependent on administrative power only if sufficiently defined and subject to appropriate review?
2. Is the Bill consistent with principles of natural justice?
3. Does the Bill allow the delegation of administrative power only in appropriate cases and to appropriate persons?
4. Does the Bill reverse the onus of proof in criminal proceedings without adequate justification?
5. Does the Bill confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer?
6. Does the Bill provide appropriate protection against self-incrimination?
7. Does the Bill adversely affect rights and liberties, or impose obligations, retrospectively?
8. Does the Bill confer immunity from proceeding or prosecution without adequate justification?
9. Does the Bill provide for the compulsory acquisition of property only with fair compensation?
10. Does the Bill have sufficient regard to Aboriginal tradition and Island custom?
11. Is the Bill unambiguous and drafted in a sufficiently clear and precise way?

Does the Bill have sufficient regard to the institution of Parliament?

12. Does the Bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?
13. Does the Bill sufficiently subject the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Council?
14. Does the Bill allow or authorise the amendment of an Act only by another Act?
15. Does the Bill affect parliamentary privilege in any manner?
16. In relation to uniform legislation where the interaction between state and federal powers is concerned: Does the scheme provide for the conduct of Commonwealth and State reviews and, if so, are they tabled in State Parliament?
APPENDIX 3

Costs Analysis of Various Models of Termination of a Tenancy for FDV

**Termination of Tenancy Agreement by Notice**
(as proposed in the Amendment Bill)

1. Tenant issues notice of termination - period of notice is seven days
2. Lessor issues copy of notice to co-tenants who have seven days to notify lessor of their intentions
3. Co-tenant(s) give 21 days notice of termination
4. 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
Appendix 3     Costs Analysis of Various Models of Termination of a Tenancy for FDV

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

- Tenant abandons premises - ceases paying rent
- Lessor forms a reasonable view that premises are abandoned
  (reasonable view requires non-payment of rent and at least one other
  criteria - approx 28 days non-payment of rent)
- Lessor issues notice to inspect and secure premises (24 hours notice
  period)
- Lessor may issue tenant with a notice that lessor is terminating the
  agreement because the tenant has abandoned the premises (seven days
  notice)

Lessor certain of availability to re-let after day 37

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 has expired.
- 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 reasonable view that premises is abandoned 4 x $350 = $1400
Loss of rent during notice period 1 x $350 = $350
Loss of rent while vacant: 7 weeks x $350= $2450

Total estimated cost to lessor in lost rent $4200
Termination by Court Order only

Tenant applies to court for an order terminating their interest in the tenancy agreement

Matter is heard by Registrar at first mention (average of 36 days in Perth Court)

If matter is not settled by conciliation with the Registrar, matter set down for hearing at next available date (average of 76 days in Perth)

Lessor certain of availability to re-let after day 112

KEY POINTS

- Although lessor is entitled to receive rent from tenant throughout process, the consequence of this is that a victim of FDV 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).
When in committee on the Residential Tenancies Legislation Amendment (Family Violence) Bill 2018:

Clause 10

1/10 Minister for Regional Development representing the Minister for Commerce and Industrial Relations — To move:

Page 8, line 21 — To insert after “lessor”:

in writing

Clause 18

2/18 Minister for Regional Development representing the Minister for Commerce and Industrial Relations — To move:

Page 17, line 13 — To delete “not less than” and insert:

within
Minister for Regional Development representing the Minister for Commerce and Industrial Relations — To move:

Page 19, after line 10 — To insert:

71AF. Review of Division

(1) The Minister must carry out a review of the operation and effectiveness of this Division as soon as is practicable after the 5th anniversary of the day on which this section comes into operation.

(2) The Minister must prepare a report based on the review and, as soon as is practicable after the report is prepared, cause it to be laid before each House of Parliament.

Clause 29

4/29 Minister for Regional Development representing the Minister for Commerce and Industrial Relations — To move:

Page 26, line 4 — To delete “not less than” and insert:

within

5/29 Minister for Regional Development representing the Minister for Commerce and Industrial Relations — To move:

Page 26, after line 10 — To insert:

45C. Review of Division

(1) The Minister must carry out a review of the operation and effectiveness of this Division as soon as is practicable after the 5th anniversary of the day on which this section comes into operation.

(2) The Minister must prepare a report based on the review and, as soon as is practicable after the report is prepared, cause it to be laid before each House of Parliament.
Clause 31
Minister for Regional Development representing the Minister for Commerce and Industrial Relations — To move:
Page 31, after line 6 — To insert:

74D. Review of Division

(1) The Minister must carry out a review of the operation and effectiveness of this Division as soon as is practicable after the 5th anniversary of the day on which this section comes into operation.

(2) The Minister must prepare a report based on the review and, as soon as is practicable after the report is prepared, cause it to be laid before each House of Parliament.

Clause 33
Minister for Regional Development representing the Minister for Commerce and Industrial Relations — To move:
Page 32, line 18 — To insert after “park operator”:

in writing

Clause 36
Minister for Regional Development representing the Minister for Commerce and Industrial Relations — To move:
Page 35, after line 8 — To insert:

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

Certified Family Violence Report Draft Form

Certified Family Violence Report


Section 1 – Tenant Information

<table>
<thead>
<tr>
<th>First Name</th>
<th>Other Name/s</th>
<th>Surname/Family Name</th>
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<table>
<thead>
<tr>
<th>Telephone Number</th>
<th>Email Address</th>
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Section 2 – Tenant Declaration

I declare the information about family and domestic violence I have provided to the Certified 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 – Certified Professional Information

<table>
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<tr>
<th>Name of Authorised Professional</th>
<th>Agency Name or Stamp (if applicable)</th>
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<th>Postcode</th>
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Section 4 - Certified Professional Declaration

By signing below, I declare I am authorised to complete this form (see reverse of form).

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.

Name                      Date  Signature

A certified 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.
Appendix 5     Certified Family Violence Report Draft Form

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 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 prescribed 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;

What does family violence look like?

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 can commit 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 a fine of up to $5 000 applies for failure to comply with this obligation.
Standing Committee on Legislation

Date first appointed:
17 August 2005

Terms of Reference:
The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

'4. Legislation Committee

4.1 A Legislation Committee is established.
4.2 The Committee consists of 5 Members.
4.3 The functions of the Committee are to consider and report on any Bill referred by the Council.
4.4 Unless otherwise ordered, any amendment recommended by the Committee must be consistent with the policy of the Bill.'