



A BALANCED ACT 2

**Submission to the Second Stage of the
Statutory Review of the
Residential Tenancies Act 1987 (WA)**

December 2002

Prepared by Karel Eringa

Introduction

Shelter WA is a community organisation that promotes affordable, accessible, appropriate and secure housing for people on low incomes. It has operated since 1979 as a peak housing body for community and welfare groups and low income housing consumers.

Shelter WA's submission to the April Discussion Paper, *A Balanced Act*, identified that the Review provides an opportunity to rectify some of the over-emphasis on landlords' rights that occurs in the 1987 Act. Shelter WA notes that the Stamfords Advisors Consultants Final Report on the Statutory Review of the Residential Tenancies Act 1987 (WA) (the Final Report) provides full or partial solutions to many of the key imbalances identified in *A Balanced Act*.

If fully implemented, the recommendations of the Final Report will therefore improve the balance of the Residential Tenancies Act, which will be to the general benefit of actual and potential owners and tenants. In particular, Shelter WA strongly supports the recommendations to:

- extend the Act's coverage to boarders and lodgers,
- establish a Residential Tenancies Tribunal,
- remove the exemptions of certain institutions from certain provisions of the Act,
- abolish contracting out of obligations provided for by the Act, and
- abolish letting fees

As stated in *A Balanced Act*, Shelter WA believes that residential tenancy legislation should protect tenants as much as landlords. Since 1987 there have been significant structural changes in the way West Australians live, changing the legislative requirements of both tenants and landlords. In particular, renting has become a permanent tenure rather than a transitional stage to home ownership. The current Review provides an opportunity to incorporate these changes and to redress the balance between the needs of landlords and tenants in the Act.

It is therefore disappointing that the Final Report is unable to find an acceptable balance in a number of areas. Key examples include the recommendations to:

- retain no cause evictions,
- not provide for limits to rent increases,
- not address the lack of procedural fairness in a number of instances,
- not remove the exemptions of certain institutions from certain provisions of the Act, and
- not prescribe minimum housing standards.

Nevertheless, Shelter WA broadly supports many of the recommendations made in the Final Report. Due to limitations of time and resources, this submission only addresses those recommendations of the Final Report that Shelter WA either strongly supports, strongly opposes, or feels were based on inadequate reasoning. Where no comment is made on a particular recommendation, this may be interpreted as Shelter WA not opposing the recommendation.

Finally, the submission also draws on a community forum co-hosted by Shelter WA and the Tenants Advice Service (TAS) on Thursday 30 October 2002. A Report of this forum has been attached to this submission.

4. FRAMEWORK AND OBJECTIVES

4.2 Residential Tenancies Law in Western Australia

4.2.3 Objectives of the Act

Recommendation 1 *That the current legislative structure and objectives of the Act be retained.*

Shelter WA supports this recommendation. However, Shelter WA believes that the Act needs to have a Preamble section containing some of the background discussion contained in section 4.1 of the Final Report. In particular, such a Preamble should contain the purpose of the Act, the discussion regarding the status of tenancy law in Australia and the discussion regarding the relevance of the international agreements to which Australia is a signatory on the Act as it applies in Western Australia.

Shelter WA recommends:

- 1. That a Preamble be included in the Act stating the purpose of the Act, the status of tenancy law in Australia and the relevance of international agreements to which Australia is a signatory.**

6. APPLICATION OF THE ACT

6.2 Issues Concerning Application of the Act

6.2.1 Boarders and Lodgers

Recommendation 2 *That the exemption of boarders and lodgers from the Act be removed.*

Shelter WA strongly supports the recommendation of the Final Report to remove the exemption of boarders and lodgers from the Act. As stated in *A Balanced Act*, Shelter WA's April Submission to the Review, "the boarding and lodging house sector houses some of the most marginalised people in the community, in effect providing a housing option of last resort for very disadvantaged people on low incomes in inner city areas. These people are particularly vulnerable to exploitation, substandard living conditions and inadequate accommodation. The misfit between the actual role provided by boarding and lodging houses and the amount of regulation available exacerbates the poor conditions [in some boarding and lodging houses]."

Recommendation 3 *That the Act contain a definition of "boarder and lodger".*

Shelter WA agrees that the Act should contain a definition of "boarder and lodger". While further consultation is required, Shelter WA supports TAS's recommendation that the characteristics of the definition should include those established in common law:

- They rent only part of the premises
- They share common facilities with others
- They may receive services such as meals or washing.
- They are subject to "house rules"
- The owner retains a right of entry.

Recommendation 4 That the Act take into account the particular nature of a boarding/lodging arrangement by incorporating the list of variations for boarding houses contained in the Commonwealth Minimum Legislative Standards.

Recommendation 5 That tenancies where the boarder or lodger is living in the principal place of residence of the owner continue to be exempt from the Act, provided that the number of boarders or lodges living in the premises does not exceed two.

Recommendation 6 That DOCEP conduct further research and consultation to obtain the views of relevant stakeholders regarding the proposed inclusion of boarders and lodgers in the Act, and endeavour to ensure that the proposed provisions for (and definition of) boarders and lodgers adequately take into account any concerns raised.

Shelter WA strongly supports Recommendation 6, regarding the need for further research into and consultation about the proposed inclusion of boarders and lodgers under the Act. In particular, Shelter WA is concerned that the inclusion of boarders and lodgers under the Act should be designed to:

- prevent any further decline in the number of boarding and lodging houses in Perth,¹
- allow sufficient flexibility to guarantee the safety of all residents, and
- maintain up front costs at a low level, for instance by specifying a maximum bond of one rather than four weeks' rent.

Shelter WA recommends:

- 2. That consultations with all relevant stakeholders be conducted regarding the issue of including boarders and lodgers in the Act. The consultation process should extend for a period of at least six months, and be designed to establish an appropriate balance between the rights of vulnerable boarders and lodgers and the needs of boarding house managers. The consultations should include discussion regarding:**
 - a) the most appropriate definition of “boarder and lodger”,**
 - b) whether or not the variations for boarding houses contained in the Commonwealth Minimum Legislative Standards are appropriate, and**
 - c) the question regarding the maximum number of boarders and lodgers living in the principal place of residence of the owner before the Act applies.**

6.2.2 Educational Institutions

Recommendation 7 That the current exemption of educational institutions from the Act be retained, but qualified to exclude accommodation that is not considered to be a college or ‘hall of residence’.

As stated in *A Balanced Act*, housing is a basic human need and human right. Shelter WA believes that the Act should protect tenants regardless of whether their principal place of residence happens to be a house, unit, room in a lodging house, hotel room, caravan park home or student flat. In general terms, Shelter WA believes

¹ As highlighted in our April Submission, in 1955 there were 531 boarding houses in the Perth City Council area, compared to 55 in 1996.

that the exemptions currently provided under the Act to educational institutions are unreasonable and recommends that these exemptions be removed from the Act.

Shelter WA therefore strongly supports the Final Report's recommendation to remove the current exemption of accommodation provided by educational institutions from the Act, where it is not college or hall of residence style accommodation.

In addition, Shelter WA agrees with the Final Report that the nature of the tenure of college and hall of residence style accommodation is substantially different from standard tenancy arrangements. Nevertheless, Shelter WA strongly believes that the current regulation of such arrangements is inadequate. Since the nature of college and hall of residence style accommodation is very similar to boarding and lodging houses, Shelter WA proposes that such accommodation be covered by the proposed new regulations for boarders and lodgers.

Shelter WA recommends:

- 3. That the current exemption of educational institutions from the Act be removed, and that:**
 - a) accommodation that is considered to be a college or 'hall of residence' be treated the same as for boarders and lodgers, and**
 - b) accommodation that is not considered to be a college or 'hall of residence' be treated the same as for standard tenancies.**

6.2.3 Residents of Accommodation Intended for Holiday Use

Recommendation 8 *That the current exemptions of:*

- *agreements that are entered into for the purpose of a holiday; and*
- *any part of a hotel or motel, be retained.*

Shelter WA agrees with the Final Report that hotels and motels are less likely to be accommodation of last resort and that the majority of hotel and motel residents are short-term residents. Shelter WA also agrees with the view that removing the exemption of hotels and motels under the Act may cause managers to become reluctant to accept longer term residents.

However, as argued in *A Balanced Act*, current evidence suggests that in some cases hotels and motels can be the principal place of residence of a group of highly vulnerable tenants, particularly in areas where no boarding and lodging style accommodation exists, such as country areas. With the declining amount of boarding and lodging house accommodation in the State, hotels and motels are becoming more important as accommodation of last resort in these places.

Shelter WA recommends:

- 4. That the exemption of hotels and motels from the Act be removed, and that long term residents (more than, say, 60 days) of hotels and motels be treated the same as for boarders and lodgers.**

6.2.5 Public and Community Housing

- Recommendation 12* That the Regulations be amended to remove Homeswest's exemption from the restrictions of varying rent.
- Recommendation 13* That the Act be amended to provide an appropriate definition of "rental subsidy".
- Recommendation 14* That the Act be amended to state that an increase in the amount payable by a tenant as a result of the cancellation or reduction of a rental subsidy does not constitute a rent increase, and is therefore not restricted by section 30 of the Act.
- Recommendation 15* That the Regulations be amended to remove Homeswest's exemption from section 33 of the Act, which requires owners to issue receipts for rent.
- Recommendation 85* That the Act be amended to exempt tenancy agreements where rent is calculated as a percentage of a tenant's income from the restriction on the frequency of rent increases, and the requirement to give 30 days notice prior to such an increase.

Shelter WA supports the removal of Homeswest's exemptions from Section 29 (bond lodgement requirements), Section 30 (rent increases) and Section 33 (duty to provide receipts). As argued in *A Balanced Act*, all three exemptions are either unnecessary or obsolete. With regard to the definition of "rental subsidy", Shelter WA proposes an amended version of the definitions recommended by CHCWA.

Shelter WA recommends:

5. That the following be inserted into the definitions of the Act:

- "Rent rebate means an amount waived or remitted by a Social Housing Provider", and
- "A 'Social Housing Provider' means
 - a) the State Housing Commission, or
 - b) a not-for-profit corporate body that provides affordable rental accommodation, where rents charged are tied to the tenants capacity to pay."²

While Recommendation 14 will allow social housing providers to vary the amount of rental subsidies, Shelter WA strongly feels that tenants should be given some notice of reductions in the amount of the rental subsidy. Many social housing tenants are amongst the most disadvantaged people in society and need time to adjust to even small increases in their net rent. Shelter WA therefore supports the Tenants Advice Service's recommendation of giving at least 30 days notice regarding reductions in rental subsidies.

Shelter WA recommends:

- #### **6. That section 30 of the Act be amended to specify that not less than 30 days notice in writing must be given specifying the amount of the subsidy reduction, the revised rent payable, and the day the revised rent becomes payable.**

² CHCWA's definition refers only to community housing providers and seems to exclude public housing (provided by the State Housing Commission).

Finally, as discussed below, Shelter WA opposes Recommendation 85. However, if this Recommendation is implemented, it should be made clear that it does not extend to social housing providers. The background discussion in section 10.5.1 makes it clear that this recommendation refers only to commercial arrangements, and this should be reflected in the wording of the recommendation.

Shelter WA recommends:

- 7. That, if implemented, Recommendation 85 of the Final Report be amended to clarify that the exemption from the 30 days notice periods does not apply to social housing providers.**

7. TENANCY ORIGINATION

7.1 Standard Tenancy Agreements

Recommendation 18 That the Act continue to imply standard terms and conditions into every tenancy agreement, and not be amended to prescribe a standard written tenancy agreement.

As argued in *A Balanced Act*, Shelter WA believes that a prescribed written tenancy agreement would be beneficial to both tenants and landlords. In particular, it would allow parties to determine readily if and how a specific contract deviates from the standard agreement. This is of particular importance to certain vulnerable groups of tenants, such as those with low English literacy skills and first time renters in WA. Contrary to the discussion in the Final Report, the ability to add additional terms does increase rather than decrease the concerns about lack of disclosure.

Shelter WA recommends:

- 8. That the Act prescribe a standard written tenancy agreement written in plain English.**

7.1.1 Optional/Additional Terms

Recommendation 20 That parties continue to be able to negotiate additional terms that do not conflict with the provisions of the Act.

Shelter WA shares TAS's concern that given the power imbalance between the parties to a tenancy agreement, some applicants may in effect have no choice other than to accept additional terms. Moreover, Recommendation 20 does nothing to limit the areas in which additional terms may be created. For example, some social housing providers may include an additional term requiring a tenant to participate in counselling sessions provided through the landlord, resulting in a conflict between the support and provider role, and possible eviction of a vulnerable tenant.

At the same time, Shelter WA does recognise the need for additional clauses in some circumstances. One option would be for the Act to prescribe a limited number of optional terms, but this would limit flexibility, and therefore possibly defeat the purpose of allowing additional terms. Shelter WA endorses CHCWA's proposal that landlords be obliged to seek Court approval for any additional terms as a workable compromise.

Shelter WA recommends:

- 9. That a process be developed whereby special clauses can be endorsed through a Departmental, or judicial process, which involves relevant stakeholders or their representatives. Once endorsed special clauses be inserted into the Regulations.**

7.2 Property Condition Report

Recommendation 24 That a sample property condition report be produced as a non-prescribed form, and DOCEP encourage parties to make use of this form (or an alternative document) to prepare and complete property condition reports at the commencement and conclusion of a tenancy.

Recommendation 25 That the Act be amended to state that a request by a tenant that a property condition report be completed should not be unreasonably withheld by the owner (or agent).

Recommendation 26 *That, where a property condition [report] is prepared and completed, the Act require that:*

- *three copies of the property condition report be completed (before the commencement and/or at the conclusion of a tenancy);*
- *where the report is completed before the commencement of a tenancy, two copies of the property condition report be given to the tenant prior to or at the time of the tenant occupying the premises;*
- *where the report is completed before commencement of a tenancy, the tenant sign and indicate (where relevant) that they agree or disagree with all or any part of the property condition report, and return the property condition report to the owner within seven days; and*
- *where the tenant fails to return the property condition report within the specified timeframe, it is assumed that the tenant accepts the property condition report in its entirety.*

Shelter WA opposes Recommendation 24. Shelter WA agrees with the Final Report that completing Property Condition Reports at the beginning and end of tenancies may be difficult where an agreement is made orally. However, the vast majority of tenancy agreements are made in writing. The few exceptions are not of sufficient significance to override the benefits of compulsory Property Condition Reports.

Shelter WA shares TAS's concerns about the process outlined in Recommendation 26. This process may disadvantage tenants, since at the commencement of a tenancy the tenant and other occupants are in the midst of a period of great upheaval. In addition, in some regional areas communications may be slower than in the metropolitan area. In these instances, seven days will not be sufficient time to adequately observe and record the condition of the property.

Shelter WA recommends:

- 10. That Property Condition Reports at the beginning and end of the tenancy be made compulsory, and that a prescribed Property Condition Report be included in the Act or the Regulations.**
- 11. That the owner or agent be obliged to provide the tenant with a signed copy of the Property Condition Report within a period of 14 days.**

Should the Review not enact either of these recommendations, Shelter WA supports Recommendation 25. However, in this case Shelter WA believes that DOCEP should undertake community education to ensure that all tenants are aware of their right to request a Property Condition Report at the beginning and end of their tenancy.

7.4 Contracting Out

Recommendation 28 *That the Act be amended to remove the ability for parties to contract out of the sections of the Act currently stated in section 82(3).*

Abolishing the ability to contract out of sections of the Act was one of the key recommendations in *A Balanced Act*. It was also strongly supported at community forums in April and October, and by TAS. Shelter WA therefore strongly supports the recommendation to remove the ability for parties to contract out of certain sections of the Act.

7.6 Tenant's Change in Employment

Recommendation 32 That the current provisions in the Act that prohibit a tenant from falsely stating to the owner their place of occupation, and requiring a tenant to inform the owner of any change in their place of occupation, be retained.

Recommendation 33 That the Act not be amended to require a tenant to inform an owner (or agent) of a change in their employment.

Shelter WA supports Recommendation 33 but opposes Recommendation 32. As argued in *A Balanced Act*, informing an owner of a change in employment raises privacy issues for the tenant, without any great apparent benefit for the owner. From Recommendation 33 and the background discussion the Final Report appears to share this concern. However, the requirement in Recommendation 32 to inform the owner of a change of place of employment will in many instances undermine the intention of Recommendation 33, since tenants are likely to change employers when they change employment.

Nevertheless, Shelter WA agrees with the Final Report in that it would be beneficial for owners to have an "ongoing contact in the event that a tenant vacates the premises without providing a forwarding address". However, the same can be achieved by a requirement for the tenant to provide the owner with an alternative means of contacting them, as per Recommendation 70 of the Final Report. This would protect the tenant's privacy whilst meeting the owner's requirement for an alternative means of contacting the tenant.

Shelter WA recommends:

- 12. That the requirement for the tenant to notify the owner of change of work address be replaced with a requirement for a tenant to provide the owner with an alternative means of contacting them, and a requirement that the alternative contact details are kept up to date for the duration of the tenancy.**

8. FEES AND CHARGES OTHER THAN RENT AND BONDS

8.4 Application/Option Fees

Recommendation 42 That the current provision for option fees (section 27 of the Act) be amended to require an owner/agent who is holding an option fee (or fees) to disclose to a prospective tenant the number of option fees they are holding, before accepting an option fee from the prospective tenant.

Shelter WA strongly opposes Recommendation 42. As argued in *A Balanced Act*, option fees represent a financial barrier to housing for low income tenants. In addition, option fees limit tenants' housing choices where they cannot afford to pay more than one option fee. At the same time there are no regulations as to how many option fees owners can hold, putting tenants at a disadvantage relative to owners.

Shelter WA shares TAS's concern that the requirement for owners to disclose the number of options fees held is unrealistic and impossible to police. Instead, a limit on the number of option fees to be held by the owner would constitute a reasonable solution that would redress this balance. For tenants, this would minimise the number of option fees they are likely to pay in their search for accommodation, and therefore the costs of changing accommodation. At the same time, owners would be compensated for lost rent should the tenant not act on their option.

Shelter WA recommends:

- 13. That the Act specify that an owner can charge only one option fee for a property at any given time.**

8.5 Utilities Fees

Recommendation 45 That the Act be amended to require that, where any action or non-action of a tenant results in the disconnection of a service, the tenant is responsible for any fee charged for the reconnection of this service.

Shelter WA opposes this recommendation. Shelter WA shares TAS's view that section 15 already provides landlords with an avenue of claim for compensation for loss associated with any breach of agreement. Recommendation 45 would therefore create a situation where the tenant is always liable no matter what the situation. Shelter WA also shares TAS's view that it seems inequitable, if Recommendation 118 of the Final Report is accepted, that a landlord is not required to disclose the level of amenity prior to entering the agreement while a tenant can be held responsible to maintain the amenity, regardless of whether or not the tenant requires the amenity.

8.6 Letting and Reletting Fees

Recommendation 48 That the Act be amended to prohibit agents from charging a letting fee to tenants.

Abolishing letting fees was one of the key recommendations in *A Balanced Act*, Shelter WA's April Submission to the Review. It was also strongly supported at community forums in April and October, by TAS, by the State Homelessness Taskforce and by the 1997 Economic Impact Assessment study on letting fees by Murdoch University. Shelter WA therefore strongly supports Recommendation 48.

8.7 Reletting Fees

Recommendation 49 That the prohibition on an agent charging a fee in connection with the renewal, extension or continuation of a tenancy where, upon the expiry of the term, a further right of occupancy is granted to the same tenant, be retained.

Recommendation 50 That the Act not be amended to allow an owner to charge a fee to cover costs they incur as a result of a tenant terminating a fixed term agreement without grounds prior to the end of the fixed term.

Shelter WA strongly supports Recommendations 49 and 50. As argued in *A Balanced Act*, the actual loss to the owner should be verified and compensation determined accordingly as per section 15 of the Act. Reletting fees may constitute fees over and above these costs.

Recommendation 51 That the Act not be amended to specifically require evidence of actual loss in a claim for compensation for loss or injury caused by breach of the agreement.

Shelter WA strongly opposes Recommendation 51. Shelter WA does not agree with the Final Report that such a requirement is unjustified because other parts of section 15 do not specify evidentiary requirements. As TAS points out, Section 15(2)(c) is the only subsection which refers to “loss”. All other parts of section 15(2) (excepting 15(2)(e) which refers to ancillary or incidental orders) are related to either restraint or performance, with the evidentiary basis residing in the terms of the agreement.

Shelter WA recommends:

- 14. That Section 15 be amended to specifically require justification for any claim of compensation for loss, as a matter of due process.**

9. ISSUES RELATING TO BONDS

9.1 A Central Bond Administrator

Recommendation 52 That the Act be amended to require all bond monies to be lodged with a centralised bond administrator (including bond monies collected from Homeswest tenants).

Shelter WA strongly supports Recommendation 52. As argued in *A Balanced Act*, establishing a compulsory centralised bond authority would have advantages to both landlords and tenants, including:

- clarity regarding where bonds are lodged, thus allowing landlords and tenants to become familiar with a single process and enabling both parties to check easily whether bond monies were lodged fairly and equitably.
- increased ability to improve receipting and documentation requirements.
- increased ability to collect data for research into housing trends.

9.2.4 Unlimited Bond Where the Owner Residing in the Premises at Least Three Months Prior

Recommendation 60 That section 29(2)(b) of the Act, which allows an owner to charge a bond of any amount if the premises were the owner's principal place of residence for three months prior, be removed.

Shelter WA strongly supports Recommendation 60, because it removes one financial barrier to accessing appropriate accommodation. Furthermore, Shelter WA agrees with the Final Report that “a tenant should not be subject to a more onerous bond requirement due to the fact that the premises used to be the owner’s place of residence.”

9.3 Bond Instalments

Recommendation 61 That the Act be amended to allow payment of the bond amount in instalments, where the owner is an organisation/individual that receives financial or other assistance from the State to supply rented accommodation.

Shelter WA strongly supports Recommendation 61. As argued in *A Balanced Act*, this would enable community housing providers in particular to reduce the barrier to access to housing to low income tenants represented by the current requirement to pay the full bond amount up front. However, the recommendation does not the issue of how bond instalments should be held until the full amount is paid. Shelter WA repeats the recommendations from *A Balanced Act*, supporting CHCWA’s recommendations in this respect.

Shelter WA recommends:

- 15. That bond monies be remitted to the Bond Administrator no less than 14 days after the full amount has been collected. If the full amount is not collected and the tenancy ends, the bond amount collected should be remitted to the Bond Administrator within 14 days, unless the bond can be returned to the tenant without dispute.**

Recommendation 62 That the Department of Housing and Works investigate its granting of loans to tenants for payment of bonds to ensure that all persons who are required to pay their bond amount upfront, but would experience hardship in doing so, are adequately covered by this loans scheme.

Shelter WA strongly supports Recommendation 62, because it removes a barrier to accessing appropriate accommodation.

9.10 Bond Recovery

Recommendation 70 That the Act be amended to:

- *improve the ability of the owner to contact the tenant after the tenant has vacated the premises, by reforming the requirements of the tenant to disclose alternate contact details; and*
- *require an applicant to a bond disposal application to ensure that they have endeavoured to obtain and provide on the application form an appropriate address for service of notice to the respondent.*

Shelter WA strongly supports Recommendation 70. In addition, Shelter WA believes that this amendment would negate the necessity for tenants to inform owners of a change in their place of employment (see Shelter WA Recommendation 12).

9.10.1 Fair Wear and Tear

Recommendation 72 That the Act be amended to provide greater clarity of the definition of “fair wear and tear”.

Shelter WA strongly supports Recommendation 72. As argued in our April Submission, *A Balanced Act*, the fact that the Act does not state that tenants are not liable for any damage caused by fair wear and tear has caused a large number of disputes between landlords and tenants.

While fair wear and tear is notoriously difficult to define, Shelter WA believes that any definition of the concept should make reference to the day to day use of the premises by the tenant as well as the ordinary operation of natural forces such as wind, rain and sun. Shelter WA therefore supports TAS’s proposed definition.

Shelter WA recommends:

16. That the following be inserted into Section 38 of the Act:

Section 38(1)(d) shall not be held responsible for fair wear and tear to the premises caused by:

- **The ordinary operation of natural forces (such as wind, rain and sunlight)**
- **The ordinary day to day use of the premises by the tenant.**

9.11 An Owner’s Bond?

Recommendation 75 That the Act not be amended to include provision for an owners’ bond.

Shelter WA is disappointed with Recommendation 75. As argued in *A Balanced Act*, low income tenants can face great hardship in paying for emergency repairs where landlords are unavailable to make such repairs. This situation could be redressed if

owner's bond monies were available. An owner's bond would also redress the current inequity where tenants pay bond but landlords have no such requirement. It would also allow for a sister fund to the Rental Accommodation Fund to be established, providing services to landlords.

In general terms, Shelter WA does not believe that an owner's bond would be a significant barrier for owners to make their properties available for the private rental market. While it is recognised that an owner's bond might be problematic for some landlords, such as Homeswest and community housing providers, solutions to these problems may be identified through consultations.

Shelter WA recommends:

17. That an owner's bond be established, and that consultations be undertaken to identify and resolve any problems that social housing providers might face.

Recommendation 76 That DOCEP investigate methods of ensuring that a owner's financial obligations under the Act (such as the payment of utilities and the conduct of necessary repairs) are met.

Should the Review decide against establishing an owner's bond, Shelter WA supports Recommendation 76. However, Shelter WA believes that the proposed consultations are unlikely to reveal any means of ensuring that owners meet their financial obligations that are as effective as an owner's bond.

10. ISSUES RELATING TO RENT

10.2 Amount of Rent Increases

Recommendation 79 That the Act not be amended to prescribe a maximum allowable rent increase, either directly (by way of a stated maximum percentage increase) or indirectly (by link to the CPI or other index).

10.3 Challenging 'Excessive' Rent

Recommendation 80 That the grounds, stated in section 32(2) of the Act, for making an application for an order that rent is excessive be expanded, to allow a tenant to make application for an order on the ground that, since the tenancy was entered into, renewed or extended, rent has increased excessively.

Shelter WA opposes Recommendation 79 but welcomes Recommendation 80. As stated in *A Balanced Act*, Shelter WA believes that the current provisions regarding rent increases in the Act are inadequate as they fail to ensure that rent increases are fair. Shelter WA also believes that a maximum allowable rent increase linked to CPI would be the clearest way of limiting unfair rent increases.

Broadening the grounds of section 32(2) of the Act to allow tenants to make application for an order on the grounds of an excessive increase in rent goes some way towards resolving the problem. However, Shelter WA agrees with TAS that this would only be effective if the restriction on applications under this section were further broadened to cover increases other than those whose purpose is to force termination. Shelter WA understands that there are no such restrictions in other Australian States.

Shelter WA recommends:

- 18. That section 32 be amended to remove restriction on the grounds for application for an order in relation to both the level and increases in the level of rent, regardless of the purpose of such increases.**

Recommendation 81 That the current power of a Magistrate to backdate an order that rent is excessive to the date of application be retained, and the Act not be amended to allow a Magistrate to backdate such an order to the date upon which the increase the subject of the application took effect.

Shelter WA strongly opposes Recommendation 81. As argued in *A Balanced Act*, there is no apparent reason why the Court, after having regard to the justice and merits of the facts presented, should be restricted in backdating any reduction from such date as it sees fit. The discussion in the Final Report makes extensive reference to hardship to the landlord, but does not consider hardship to the tenant a factor because, it argues, "the tenant is immediately aware of the change in situation and is not prevented from making immediate application to the court".

In general, Shelter WA finds the ethics of advocating litigation as a first recourse questionable at best. In particular, in the case of certain groups of disadvantaged tenants, it is unrealistic to expect them to take immediate court action; yet these are the tenants that are most likely to be faced with excessive rent increases. Finally, the Final Report's emphasis on immediate litigation in this section:

- directly contradicts several other instances where the Final Report advocates alternative dispute resolution methods,
- undermines the goodwill of many tenants, who spend considerable time attempting to negotiate a resolution rather than resort immediately to Court action, and
- in no way takes into account the effect of an increased number of cases on the court's resources.

Shelter WA therefore repeats that the Court, having regard to the justice and merits of the facts, should not be restricted from backdating the order if it is appropriate in the circumstances to do so.

Shelter WA recommends:

- 19. That the Act be amended to allow a Magistrate to backdate an order that rent is excessive to the date upon which the increase the subject of the application took effect.**

10.5 Notice Period

10.5.1 Tenancies Where Rent is Calculated as a Percentage of Income

Recommendation 85 That the Act be amended to exempt tenancy agreements where rent is calculated as a percentage of a tenant's income from the restriction on the frequency of rent increases, and the requirement to give 30 days notice prior to such an increase.

Shelter WA opposes Recommendation 85. Shelter WA shares TAS's view that in all cases, tenants should be provided with notice of a rent increase. An adequate period of notice is particularly important where a rent increase is not an incremental one. 30 days notice is reasonable and appropriate for rent increases in tenancies where the rent level is linked to the tenant's income.

10.6 Varying Rent at the Commencement of a New Tenancy

Recommendation 86 That the Act be amended to make adequate provision for varying rent at the commencement of a new tenancy that follows the conclusion of a previous tenancy.

Shelter WA strongly supports Recommendation 86 because this recommendation closes a potential loophole for unscrupulous landlords to terminate a tenancy and start a new one in order to be able to increase the frequency of rent increases.

11. ACCESS, INSPECTIONS AND QUIET ENJOYMENT

11.1 Tenant's Right to Quiet Enjoyment

Recommendation 89 That the Act be amended to impose a penalty for breach of a tenant's right to quiet enjoyment.

Shelter WA strongly supports Recommendation 89. Tenants currently have little recourse for action on breaches of their right to quiet enjoyment, and this recommendation will rectify this.

However, Shelter WA shares TAS's view that in its current form the Act is very limited in its definition of what constitutes the tenant's entitlement to quiet enjoyment of the premises. Therefore, unreasonable actions by the landlord against the tenant, which are linked to the tenant's employment, are currently beyond the scope of the Act. In some situations it can be difficult for tenants to establish that their quiet enjoyment has been breached, eg. do constant intimidatory letters represent a breach of the right to quiet enjoyment?

Shelter WA recommends:

- 20. That section 44 be strengthened by rewording clause 44(1)(b) to include harassment and threats, and removing the phrase "in the use by the tenant of the premises."**

11.1.1 Privacy

Recommendation 90 That DOCEP investigate further the effect of the recent amendments to the Privacy Act 1988 (Cth) on the operation of tenant databases. This investigation should determine the adequacy of the recent amendments to the Privacy Act 1988 (Cth) in protecting the privacy of tenants, and make recommendation regarding any appropriate amendments to the Residential Tenancies Act in order to address any shortcomings identified.

In broad terms, Shelter WA supports Recommendation 90, and shares the view of the Final Report that further investigation by DOCEP regarding the effect of the recent amendments to the Privacy Act 1988 (Cth) on the operation of tenant databases would be of benefit. However, Shelter WA is concerned that this legislation may not adequately cover tenant databases. For instance, the National Association of Tenant Organisations has identified that the new Commonwealth provisions may not apply to those tenants who are already listed on a database.

Shelter WA shares TAS's concerns about the increased use of tenant databases. Whilst there is no onus on owners to ensure that the information contained on these databases is correct, being listed on such a database can have drastic consequences on the ability for tenants to find housing.

Shelter WA believes that tenant databases should be regulated, and that this should not be subject to the question of whether or not the recent amendments to the Privacy Act will cover their operation. Shelter WA therefore strongly supports TAS's recommendations regarding regulation of tenant databases.

Shelter WA recommends:

21. That a new sub clause 44(1)(d) be introduced to the Act:

- **Prohibiting database listing without reasonable excuse**
- **Requiring the landlord to ensure any information provided to database services is correct**
- **Requiring that the landlord notify the tenant of any listing**
- **Providing that the tenant may seek orders under section 15 of the Act to remove their name from a database or correct wrong information on a database.**
- **Providing for compensation by tenants who suffer a loss as a result of an unjustified database listing.**

11.2 Owner's Rights of Access

11.2.1 Negotiation of An Appropriate Time for Entry

Recommendation 91 That the Act be amended to state that, where an owner is required under the Act to give notice to the tenant before entering the premises, the owner is required to make a reasonable attempt to negotiate an appropriate time of entry to the premises, and to take into account the circumstances of the tenant in this regard.

Shelter WA strongly supports Recommendation 91, as it does not place unreasonable demands on owners but potentially greatly benefits tenants. As argued in *A Balanced Act*, it is important for tenants to be present during inspections in order to avoid any potential for misunderstanding or subsequent disagreements.

11.2.3 Entry and Inspection at the Time of Collecting Rent

Recommendation 93 That the Act be amended to remove the owner's current right to inspect premises while collecting rent.

Shelter WA strongly supports Recommendation 93. As argued in our April Submission, *A Balanced Act*, there is no reason why tenants who have their rent collected by the owner should have their quiet enjoyment of the premises infringed upon by being subjected to more frequent inspections than other tenants.

11.2.5 Time of Inspection

Recommendation 95 That the Act be amended to require that an owner, at the time of giving a tenant notice of their intention to access the premises, specify a one-hour timeframe within which the owner will enter the premises.

Shelter WA strongly supports Recommendation 95, as it does not place unreasonable demands on owners but potentially greatly benefits tenants. As argued in *A Balanced Act*, the current wording often requires tenants who wish to be present for inspections to miss a half or full day's work in order to ensure they are present for a half hour inspection.

11.2.6 Length of Stay on Premises After Entry

Recommendation 96 That the Act be amended to state that any person exercising a right of entry to a premises under the Act:

- *must do so in a reasonable manner; and*
- *must not stay or permit others to stay on the rented premises longer than is necessary to achieve the purpose of the entry without the tenant's consent.*

Shelter WA strongly supports Recommendation 95, as it confirms tenants' right to quiet enjoyment of the premises. Shelter WA agrees with the Final Report that this provision complies with best practice in the area.

11.2.9 Definition of "Reasonable Notice"

Recommendation 99 That the Act be amended to state that, without limiting the generality of the requirement in the Act to give "reasonable notice" in certain instances, an owner may not enter the premises without giving not less than 72 hours notice, except where entry is in the case of emergency or with the prior consent of the tenant.

Shelter WA supports Recommendation 99, but notes that the wording of the proposed amendment is confusing and overly complicated due to the excessive use of double negatives.

12. FITNESS OF PREMISES, MAINTENANCE AND REPAIRS

12.1 Property/Building Standards

Recommendation 100 That the Act not be amended to include a list of minimum standards relating to the quality of premises or management of tenancies.

Shelter WA strongly opposes Recommendation 100. As argued in *A Balanced Act*, Shelter WA strongly supports codification of specific minimum standards regarding both tenancy management and the physical condition of rental properties. Whilst Shelter WA agrees with the Final Report that certain other legislation provides for some aspects of the physical condition, health and safety of buildings, these provisions are scattered across many different Acts, by-laws and codes of practice.

In addition, as with Recommendation 81 above, Shelter WA finds the ethics of advocating litigation as a first recourse questionable. In the case of certain groups of disadvantaged tenants, it is unrealistic to expect them to take immediate court action; yet these tenants are the most likely to be living in sub-standard accommodation.

A comprehensive list of minimum standards relating to the physical quality and management of tenancies would provide greater clarity regarding the rights and obligations of owners and tenants. Arguably, this would go some way towards preventing litigation, thus saving valuable court resources. Shelter WA is aware that implementing such standards may present difficulties for some owners, potentially causing a further decline in affordable rental housing in WA.

Shelter WA recommends:

- 22. That minimum standards relating to the quality of premises and management of tenancies be prescribed as part of the Act, and**
- that further community consultation on the development of minimum standards is undertaken,**
 - that these minimum standards come into effect immediately for new rental properties, and**
 - that minimum standards for existing rental properties be implemented after a period of grace of, say, one year.**

12.3 Locks and Security

Recommendation 103 That the Act not be amended to include a definition of “reasonably secure”.

Recommendation 104 That the Act not be amended to require that the court consider particular factors regarding a tenancy when determining what is considered “reasonably secure” for that premises.

Recommendation 105 That the current requirement in the Act for an owner to provide and maintain such locks or other devices as are necessary to ensure that the premises are reasonably secure be retained without amendment.

Shelter WA strongly supports Recommendation 105, and the premise that responsibility for locks and security should be with the owner. However, Shelter WA strongly opposes Recommendations 103 and 104. Without a definition of “reasonably secure” or the ability for a court to consider particular factors when determining what is “reasonably secure”, this responsibility becomes to a large degree meaningless.

Shelter WA agrees with the Final Report that prescribed minimum standards regarding locks and security could result in costs to owners. However, Shelter WA

notes that the cost to owners of upgrading locks and security to a reasonable level would be tax deductible. However, the impact of substandard security can be great on a tenant (eg. inability to obtain contents insurance), and an appropriate definition would be of great benefit to them.

Shelter WA recommends:

23. That consultations regarding an appropriate definition of “reasonable security” be conducted with tenants and owners, and consider:

- **the likely impact of proposed definitions on owners’ costs, and**
- **ways of minimising the impact of such on owners, for example a phased implementation of any new requirements.**

12.4 Altering the Premises

Recommendation 107 That the Act be amended to require, as a term of every tenancy agreement, that a tenant not affix any fixture or make any renovation or addition to the premises, except with the written consent of the owner (or otherwise as the agreement may provide).

Whilst Recommendation 107 provides greater clarity regarding the tenant’s right to reside in a dwelling and the owner’s right to not have their property damaged, Shelter WA is concerned that the requirement to obtain written approval may be unpractical with regard to small fixtures. For instance, verbal consent should be sufficient if a tenant wants to hang a picture or photograph on the wall. In addition, the requirement for consent to be in writing may be problematic in the case of oral contracts, and contradicts the spirit of the Final Report’s recommendation to retain such contracts.

Shelter WA recommends:

24. That the owner’s consent for affixing any fixtures or making renovations or additions to the premises may be given either in writing or verbally.

12.7 Standard of Available Amenities

Recommendation 118 That the Act not be amended to specifically require an owner, before entering into an agreement, to disclose to a prospective tenant, in a standard form or otherwise, the standard of available amenities of a premises.

Shelter WA is opposed to Recommendation 118. Shelter WA shares TAS’s view that landlords have a duty of disclosure to potential tenants. In many cases it is not practicable for a tenant to ascertain that amenities such as stoves, airconditioning, smoke alarms, telephone lines, etc are in full working order before they are actually living in the premises.

In addition, less scrupulous owners may purposely or otherwise lead prospective tenants to believe, wrongly, that items such as floor coverings or window treatments are part of the premises. Shelter WA’s view is that disclosure regarding the state of amenities should be part of the minimum tenancy management standards discussed above (see Shelter WA Recommendation 22).

Shelter WA recommends:

25. That the owner’s duty of disclosure regarding the standard of the available amenities be prescribed in the Act, and (if applicable) be included in codified minimum standards on residential tenancies.

13. TERMINATION

13.1 Termination Without Ground

Recommendation 119 That the current provisions in the Act allowing parties to terminate a tenancy agreement without stating any ground be retained.

Shelter WA strongly opposes Recommendation 119. As argued in *A Balanced Act* and apparently accepted in the background discussion to this recommendation in the Final Report, housing is a basic human need and human right. Shelter WA agrees with the Final Report that the rationale of the provision for no cause evictions is to resolve the inherent conflict between the owner's right to reclaim possession of the property, and the tenant's right to housing.

However, Shelter WA believes that since the tenant's rights are at the level of basic human necessity, whereas the owner's rights are at the level of a material (property) rights, in general the tenant's rights should prevail; at the very least, the tenant should have the right to be heard, and the Court should consider 'all the circumstances (see Shelter WA Recommendation 30). Shelter WA believes that Section 64 should be regarded as a relic from the time when renting was regarded as a transitional tenure, rather than the long term tenure it has become.

Moreover, Shelter WA considers debatable the Final Report statement that Section 64 increases the "ability for an owner to regain possession of the premises without fear that this reason would be challenged by the tenant". In fact, the Act already contains a range of provisions that allow owners to terminate a tenancy for a variety of reasons, while complying with due process. In many cases there could be no reason for the owner to fear a challenge from the tenant under many of these reasons, eg. termination due to sale of the dwelling under section 63.

In effect, Section 64 denies the Court the opportunity to assess whether the circumstances warrant termination, as is the case under other provisions that deal with eviction. This means that Section 64 fails to give due weight to the often severe consequences of eviction for tenants. The only qualification to the operation of Section 64 applies if the tenant is able to prove retaliatory termination.

Shelter WA recommends:

26. That no cause evictions (Section 64) be abolished.

As discussed in *A Balanced Act*, the only case where further regulation is need regarding terminations is that of Housing Cooperatives, which require their tenants to be members of the Cooperative. While this issue is not addressed in the Final Report, Shelter WA understands that many Housing Cooperatives issue eviction notices under Section 64 because of uncertainty as to the legislative status of Section 62(1). This section allows an owner to "give notice of termination of an agreement to the tenant upon the ground that the tenant has breached a term of the agreement and the breach has not been remedied." However, it is unclear whether Housing Cooperatives can terminate the agreement under this section if a tenant's membership of the Cooperative ceases, since remedying such a breach is not always possible.

Shelter WA recommends:

27. That Section 62(1) be amended to specifically allow Housing Cooperatives to terminate tenancy agreements where tenants cease to be a member of the Cooperative, and that the minimum period of notice for such terminations be as for no cause evictions.

Recommendation 120 That the current 60 day notice period required for 'no ground' termination be retained.

Shelter WA disagrees with the Final Report that 60 days is a sufficient period of notice. For many tenants, 60 days is not a reasonable time frame to make the often unexpected but necessary practical and financial arrangements for alternative housing. As argued in *A Balanced Act*, Shelter WA believes that in this case, allowance should be made for a Court to consider all circumstances of the case, and the impact should be ameliorated with a longer time frame.

While the exact period of notice can be debated, Shelter WA believes that the impact of a no cause eviction increases with the length of time a tenant has resided in a dwelling. This principle is explicitly recognised in countries such as Germany, where the length of the notice period increases with the length of the tenancy. Shelter WA proposes a sliding scale of notice for no cause evictions, with a minimum notice period of 60 days and a maximum of 180 days after 5 years of residence.

Shelter WA recommends:

28. That if a no cause eviction clause is retained in the Act, the minimum period of notice be amended to relate to the duration of the tenancy, as follows:

- **Less than 1 year: 60 days notice**
- **1 to 5 years: 15 additional days notice for every six months of residence**
- **5 years and over: 180 days notice**

13.1.1 Vacating Whilst on Receipt of 'No Ground' Termination Notice

Recommendation 121 That the difference between the notice periods required to be given by owners and tenants for termination without ground be retained.

Recommendation 122 That the ability for a tenant to give notice of termination without ground whilst on receipt of similar notice from an owner be retained.

Shelter WA fully supports Recommendations 121 and 122. Both recommendations recognise that there should be a difference between the notice periods for tenants and owners, given the relative inconvenience of termination to each of the parties. If tenants were required to remain in the tenancy they could be required to pay rent on two dwellings until the end of the statutory notice period. Such a requirement could push some disadvantaged tenants into homelessness.

13.1.2 Challenging 'No Ground' Termination

Recommendation 123 That section 15 of the Act, which allows a party to make application to a court for relief, be amended to make clear that a tenant, upon receipt of a notice of termination, is able to apply to a court for an order against such termination, on the ground that the owner was partly or wholly motivated by the fact that the tenant had complained to a public authority or taken steps to enforce their rights as a tenant.

As discussed above, one of Shelter WA's main concerns with Section 64 is the lack of procedural fairness. Shelter WA supports Recommendation 123 because it increases procedural fairness, but notes its fundamental objection to Section 64 and calls for further extension of the tenants' right to challenge no ground terminations.

Recommendation 124 That the Act not be amended to require a court to consider, in the case where a 'no ground' termination notice has been given, "all the circumstances" such as to justify termination.

Shelter WA is strongly opposed to Recommendation 124. As argued above, one of Shelter WA's main concerns with Section 64 is the lack of procedural fairness, which is a fundamental tenet of our legal system. It should be noted that this fundamental tenet is upheld in all the other sections regarding termination.

Shelter WA supports TAS's view that tenants should be provided with greater protection by extending section 71(2) to include an additional clause 71(2)(c) which incorporates the provisions of section 64(2)(c) of the NSW Act which states that "the Tribunal shall, on application by the landlord under this section, make an order terminating the agreement if it is satisfied ... that, having considered all of the circumstances of the case, it is appropriate to do so".

Finally, whether no cause evictions are retained or not, a single amendment could be made to the Act to ensure that procedural fairness is upheld in all cases of termination.

Shelter WA recommends:

29. That, if no cause evictions are retained, the Act be amended to require a court to consider, in the case where a 'no ground' termination notice has been given, "all the circumstances" such as to justify termination.

30. That sections 71(2) and 72(2) be extended to provide that in all cases of termination the Court shall:

- **Give consideration to whether the correct notices have been served correctly**
- **Give consideration to all the circumstances of both parties**
- **Give consideration to the issue of retaliation**
- **Give consideration to the relative hardship to both parties if the tenancy was terminated or was not terminated.**

13.4 Expiration of Fixed Term Tenancies

Recommendation 127 That the Act be amended to allow:

- *require that unless either party gives adequate notice (as prescribed) that they intend not to continue the tenancy, a fixed-term tenancy at its conclusion rolls over into a periodic tenancy, on the same terms as the original agreement; and*
- *prescribe adequate notice of intention not to continue a tenancy following the conclusion of a fixed-term tenancy as 30 days notice for owners and 21 days notice for tenants.*

Shelter WA supports Recommendation 127 as it provides clarity regarding what happens at the end of a fixed term tenancy. This will reduce the number of unpleasant surprises at the end of such tenancies for both owners and tenants, thus, arguably, reducing the number of tenancies dispute.

13.5 Termination on Ground of Hardship

Recommendation 129 That the Act be amended to allow:

- *a tenant to make application to a court for termination of an agreement (either periodic or fixed term) on the ground that the tenant would suffer undue hardship if they were required to terminate the agreement under any other provision of the Act; and*
- *the court to make an order regarding the compensation of the owner for any loss caused as a result of the above termination.*

Shelter WA strongly supports Recommendation 129 as it reduces to some extent the current imbalance in the Act between the rights of tenants and owners. Currently, owners can apply to the Court to terminate a tenancy agreement on the grounds of undue hardship, but there is no such provision for hardship to tenants. This can mean victims of Domestic Violence are trapped in unsafe tenancies; or have to leave a property for which they can be held responsible, in the hands of the perpetrator and at risk of damage and/or accumulating rent arrears.

13.7 Abandonment

Recommendation 132 That the Act be amended to allow an owner to give notice of termination of an agreement where the owner has reasonable grounds for thinking that the tenant has abandoned the premises.

Recommendation 133 That the Act be amended to provide guidance as to what constitutes 'reasonable grounds' for thinking that a tenant has abandoned the premises.

Shelter WA strongly supports Recommendation 133 as it goes some way towards clarifying how an owner can determine if a property has been abandoned. In addition, Shelter WA supports Recommendation 132, but argues that the notice should be "reasonable". With respect to 'reasonable grounds' for the owner to presume abandonment, Shelter WA repeats the recommendation from *A Balanced Act*.

Shelter WA recommends:

31. That, if an owner suspects that a tenant has abandoned the premises, they be required owners to apply for a Court decision on whether their belief that the premises are abandoned is justified. Provisions should include whether the owner has made reasonable use of information available to them to investigate the whereabouts of the tenant. Such investigation should include (but not be restricted to):

- **The status of the rental account**
- **Whether utilities are still connected**
- **Whether the tenant's goods remain on the premises**
- **The steps the owner has taken to contact the tenant**
- **Whether the owner has contacted the tenant's next of kin**
- **Whether the owner has contacted the tenant's employer**
- **Whether there has been a history of absence from the premises (for example for employment purposes or medical treatment)**
- **Whether there is evidence of uncollected mail, newspapers or other material.**
- **Any other relevant matter as determined by the Court.**

Recommendation 134 That the Act be amended to make adequate provision for documents left on a premises after the termination of an agreement (in the case of abandonment or otherwise).

Shelter WA strongly supports Recommendation 134 as it provides some guidance to owners regarding what to do with abandoned goods after the termination of an agreement. However, Shelter WA believes the provision should be extended to include all personal effects instead of only documents. In addition, Shelter WA believes that the Act should clarify that the term “documents” includes items such as photographs.

Shelter WA recommends:

32. That the Act be amended to make adequate provision for any documents, *photographs and other personal effects* left on a premises after the termination of an agreement (in the case of abandonment or otherwise).

13.8 Eviction

Recommendation 135 That the current requirement to obtain a court order before entering a premises with the intention of recovering possession of the premises (or part thereof) be retained.

Shelter WA strongly supports Recommendation 135 as it ensures that procedural fairness with regard to recovering possession of the premises.

14. TENANCY DISPUTES

14.3 A Residential Tenancies Tribunal

Recommendation 140 That the current dispute resolution process be transferred to an independent residential tenancies tribunal, or to the proposed State Administrative Tribunal.

Recommendation 141 That DOCEP further research and consult to:

- *develop detailed recommendations regarding the organisational structure, operations and membership of the tribunal; and*
- *address any concerns arising from the additional consultation process, including the ability for a tribunal to adequately service regional areas of the State.*

Shelter WA strongly supports Recommendations 140 and 141. The establishment of an independent Residential Tenancies Tribunal was one of the key issues identified in Shelter WA's April Submission, and was also strongly endorsed in community forums held in April and October. Shelter WA agrees with the Final Report that there are a number of issues regarding the proposed Tribunal that are yet to be resolved, including regional areas and organisational structure. Shelter WA agrees with the Final Report that further research and consultation is the most appropriate way to resolve these issues.

Recommendation 142 That the Act be amended to require that reasons for decisions of the tribunal (or the court, if the current process is retained) be provided in cases that the tribunal (or the court) considers to be of legal or social significance.

Shelter WA strongly endorses Recommendation 142 and agrees with TAS that it will go a long way towards addressing a number of areas where the Act uses qualitative terms such as 'reasonable' (notice, security, repair, etc), 'nuisance', 'fair' (wear and tear) and 'all the circumstances'.

15. CARAVAN PARK AND PARK HOME TENANCIES

15.1 Current Legislative Provision for Caravan Park and Park Home Tenancies

Recommendation 148 That the Act be amended to provide a separate Part in the Act for caravan park and park home tenancies.

Recommendation 149 That, prior to the inclusion of separate provision for caravan park and park home tenancies in the Residential Tenancies Act, the inconsistencies between the Residential Tenancies Act and the Caravan Parks and Camping Grounds Act 1995 be reconciled.

15.2 Tenancy Origination

Recommendation 150 That the Act be amended to make provision for two types of caravan park tenancy agreement:

- *residential site agreement; and*
- *moveable dwelling agreement.*

Shelter WA strongly supports Recommendation 148. As argued in our April Submission, Shelter WA believes that the Act currently does not make adequate provision for caravan park home residents, whether they rent or own their home as well as the site it is located on. A separate section would address the issues that are particular to caravan park and park home tenancies.

Such a separate section would need to address a number of issues, including possible inconsistencies between the Residential Tenancies Act and the Caravan Parks and Camping Grounds Act 1995, and the inherent differences between the two types of caravan park tenancies. Shelter WA therefore supports Recommendations 149 and 150.

15.7 Termination

Recommendation 169 That the Act be amended to require that a caravan park owner wishing to give notice of termination of a residential site agreement without stating any ground:

- *give notice of not less than 120 days; and*
- *pay any costs as ordered by a court (or tribunal) relating to relocation of the dwelling (or any other costs the court or tribunal considers appropriate).*

As discussed above, Shelter WA strongly opposes no cause evictions, on the grounds that since the tenant's rights are at the level of basic human necessity, whereas the owner's rights are at the level of a material (property) rights, these conflicts should be resolved in favour of the tenant. However, Shelter WA agrees with the Final Report that a longer notice period than for standard residential tenancies is warranted. In view of the difficulties caravan park home owners have in moving their property, and for the sake of consistency within the Act, Shelter WA believes that this period should be 180 days rather than the proposed 120 days.

Shelter WA recommends:

33. That no cause evictions for caravan park home owners and tenants be abolished

34. That, if no cause evictions for caravan park home owners and tenants are retained, the notice period be increased to 180 days.

16. COMPENSATION AND PENALTY PROVISIONS

Recommendation 173 That section 15(4) of the Act be amended to require the court, upon application with respect to the breach of an agreement, to take into account all previous breaches of the agreement by the owner and the tenant.

Shelter WA strongly supports Recommendation 173 as it will increase equity and fairness with regard to resolving disputes.

16.1 Award for Non-Economic Loss

Recommendation 174 That section 15(2)(c) of the Act be amended to clearly state that a court may not make an order of compensation for non-economic loss.

Shelter WA strongly opposes Recommendation 174 as it will further shift the balance of the Act away from the tenant. As argued in the Final Report, “the effect of a breach by the owner is arguably more likely to incur non-economic loss upon the tenant than a breach by the tenant is upon the owner”. This is because the owner usually holds the property for investment reasons, whereas it is the tenant’s home.

Shelter WA disputes the statement in the Final Report that “a provision permitting compensation for non-economic loss would greatly increase the number of disputes between parties and the number of applications made to the court”. Shelter WA maintains that only a very small proportion of cases regarding residential tenancies are brought by tenants, and it is difficult to see how this proportion could suddenly increase.

On the other hand, allowing compensation for non-economic loss would redress a current imbalance in the Act, whereby an owner can terminate an agreement for a range of breaches by the tenant (thus overriding the tenant’s right to housing), while breaches by the owner only have minor financial consequences that are seldom, if ever, enforced.

The Final Report also suggests that the Court is ill equipped to adjudicate on claims for non-economic loss, and would have difficulty in determining appropriate compensation. Shelter WA disputes that this is the case, and understands that Local Courts currently often adjudicate on a range of cases that involve compensation for non-economic loss, although these are not cases related to residential tenancies. Finally, any remaining problems are likely to be solved if a Residential Tenancies Tribunal is established.

Shelter WA recommends:

- 35. That the Act clarify that a party to a tenancy agreement can seek compensation for non-economic loss.**

17. A NEW LEGISLATIVE REGIME

Recommendation 178 That the Act be reworded in plain English.

Shelter WA strongly supports Recommendation 178 and agrees with the Final Report that this would be of great benefit to the majority of owners and tenants who do not have a legal background.

OTHER ISSUES

Application Forms

Shelter WA is concerned about the wording and use of application forms for private rental accommodation. This issue is not addressed in the Final Report, but the level of evidence required regarding proof of identity and prior accommodation in the forms effectively exclude some vulnerable groups, including recent migrants, women exiting supported accommodation, young people and any person without a private rental history. Many application forms also require agreement by the applicant to be checked on a tenant database (see below) and to be listed if at some future point in time they breach a tenancy agreement.

Shelter WA strongly supports the Tenants Advice Service (TAS)'s recommendation that DOCEP undertake consultation on the issue of application forms and that the Act prescribe and limit the information required in application forms.

Finally, Shelter WA notes that the November meeting of the Rental Sector Standing Committee (RSSC), a standing committee of the Housing Advisory Committee to the Minister for Housing, strongly endorsed a recommendation to this effect.

Shelter WA recommends:

- 36. That DOCEP undertake consultation on the issue of application forms and that the Act prescribe and limit the information required in application forms.**

ATTACHMENT

**Shelter WA and Tenants Advice Service
Community Forum: Review of the RTA – A Tenant Perspective
Thursday 30 October 2002
Report**

OUTCOMES FROM THE SHELTER WA / TAS FORUM ON THE REVIEW OF THE RESIDENTIAL TENANCIES ACT 30 October 2002

Background

After limited consultation with tenants and tenant representatives, the Stamford Report on the Review of the Residential Tenancies Act ultimately made a significant number of recommendations that would impact both positively and negatively on tenants. The Government has made it clear that at this point none of the recommendations tabled in the report have been accepted. Stakeholders have until 12 December 2002 to make submissions. No further consultations will be conducted by the Department for Consumer and Employment Protection until after 12 December 2002.

In order to facilitate community concerns being heard, the Tenants Advice Service (TAS) and Shelter WA jointly held a Community forum on 30 October 2002 on the Review. 20 priority issues were identified for discussion, which are set out in brief below (numbered according to the recommendation of the Stamfords' report). The response of forum participants to the recommendations are in italics.

Priority Issues

Recommendation 3 **That the Act contain a definition of “boarder and lodger”.**

It was agreed that boarders and lodgers should be afforded protection under the Act and that this may best be addressed with a separate section, and that conditions for boarders and lodgers should be in accordance with minimum Commonwealth standards

Recommendation 12 **That the Regulations be amended to remove Homeswest’s exemption from the restrictions of varying rent.**

Recommendation 13 **That the Act be amended to provide an appropriate definition of “rental subsidy”.**

Recommendation 14 **That the Act be amended to state that an increase in the amount payable by a tenant as a result of the cancellation or reduction of a rental subsidy does not constitute a rent increase, and is therefore not restricted by section 30 of the Act.**

Recommendation 15 **That the Regulations be amended to remove Homeswest’s exemption from section 33 of the Act, which requires owners to issue receipts for rent.**

These recommendations, which would remove the DHW exemption in relation to varying rent without notice, were supported except for Rec.14, where participants supported the need for a reasonable notice period to be included in the Act in relation to rent rebates changes that would not be retrospective .

Recommendation 18 **That the Act continue to imply standard terms and conditions into every tenancy agreement, and not be amended to prescribe a standard written tenancy agreement.**

Recommendation 20 **That parties continue to be able to negotiate additional terms that do not conflict with the provisions of the Act.**

Agreement that there should be no terms in addition to a standard lease, except in the case of supported accommodation services which should be able to apply for additional terms in their tenancy agreements to meet program imperatives.

Recommendation 28 **That the Act be amended to remove the ability for parties to contract out of the sections of the Act currently stated in section 82(3).**

Participants supported this recommendation which would greatly improve the protection of rental housing consumers.

Recommendation 42 **That the current provision for option fees (section 27(2)(a) of the Act) be amended to require an owner/agent who is holding an option fee (or fees) to disclose to a prospective tenant the number of option fees they are holding, before accepting an option fee from the prospective tenant.**

Under this recommendation, tenants searching for accommodation may still have to pay several option fees (amounting to hundreds of dollars), without any certainty of recovery unless a tenancy is entered into. This illogical recommendation was not supported as it provides no service to potential tenants and leaves too much responsibility in the hands of real estate agents.

Recommendation 45 **That the Act be amended to require that, where any action or non-action of a tenant results in the disconnection of a service, the tenant is responsible for any fee charged for the reconnection of this service.**

Participants urged that a distinction be made between a phone connection fee that should be the tenant's responsibility, and phone line fee, that should be the landlord's responsibility. It was noted that currently landlords have the ability to recover a loss under section 15 of the Act.

Recommendation 48 **That the Act be amended to prohibit agents from charging a letting fee to tenants.**

Participants reiterated a call to abolish letting fees.

Recommendation 51 **That the Act not be amended to specifically require evidence of actual loss in a claim for compensation for loss or injury caused by breach of the agreement.**

It was agreed that in claims for loss, evidence should be required and section 15 should be amended to ensure that the court gives consideration to the facts and merit of the claim. It was also suggested that Section 19.1b of the RTA be reworded to require magistrates to inspect evidence of claimed loss [i.e. change “may inspect” to “shall inspect”].

Recommendation 52 **That the Act be amended to require all bond monies to be lodged with a centralised bond administrator (including bond monies collected from Homeswest tenants).**

Participants strongly supported this recommendation

Recommendation 68 **That the Act be amended to remove the ability of the Treasurer to direct surplus income from the Rental Accommodation Fund to public housing.**

Participants supported this recommendation, suggesting that it be referred to the Social Policy Cabinet Sub-Committee.

Recommendation 71 **That, following the implementation of Recommendation 70, the Act be amended to allow a Magistrate (or Clerk) to make an order on any liquidated amount as well as on any pecuniary damages up to the amount of \$500.**

Opposed on the grounds that allowing the owner to be awarded a liquidated amount and pecuniary damages in relation to bond recovery could lead to injustice. It also appears to conflict with section 57 RTA which prohibits penalties and liquidated damages.

Recommendation 79 **That the Act not be amended to prescribe a maximum allowable rent increase, either directly (by way of a stated maximum percentage increase) or indirectly (by link to the CPI or other index).**

It was noted that the absence of protection against excessive rent increases is particularly relevant to regional tenancies for whom the government has a social obligation to protect vulnerable low income citizens. Participants endorsed arguments for a cap on rent increases linked to CPI increases.

Recommendation 90 **That DOCEP investigate further the effect of the recent amendments to the Privacy Act 1988 (Cth) on the operation of tenant databases. This investigation should determine the adequacy of the recent amendments to the Privacy Act 1988 (Cth) in protecting the privacy of tenants, and make**

recommendation regarding any appropriate amendments to the Residential Tenancies Act in order to address any shortcomings identified.

Given the potential for significant detriment to tenants it is appropriate that the issue not be left to upcoming changes to Federal privacy provisions and that the RTA address this issue. Participants agreed that the references in Section 44 of the RTA to tenant privacy could be extended to include tenant access to database information.

Recommendation 119 **That the current provisions in the Act allowing parties to terminate a tenancy agreement without stating any ground be retained.**

Recommendation 120 **That the current 60 day notice period required for ‘no ground’ termination be retained.**

It was agreed that if there is no reason to evict a tenant, the tenant’s fundamental human right to housing should not be violated (as per the security of tenure rhetoric in the Commonwealth, State and Territory Housing Agreement). Participants endorsed the TAS recommendation to abolish no just cause evictions. However in the event that the provision remains, it was agreed that :

- 1 the period of notice should be extended to 6 months;*
- 2 the circumstances of cases to be heard; and*
- 3 the use of S64 be limited to private rentals only.*

Recommendation 124 **That the Act not be amended to require a court to consider, in the case where a ‘no ground’ termination notice has been given, “all the circumstances” such as to justify termination.**

It was agreed that, if “no grounds” terminations remain, at the very least the right to procedural fairness should apply and hence the circumstances of any termination case should be able to be raised.

Recommendation 134 **That the Act be amended to make adequate provision for documents left on premises after the termination of an agreement (in the case of abandonment or otherwise).**

Protection of documents left on premises was strongly supported. Concern was expressed at the inadequate protection of other personal belongings left at premises.

Recommendation 140 **That the current dispute resolution process be transferred to an independent residential tenancies tribunal, or to the proposed State Administrative Tribunal.**

Participants endorsed this recommendation because it is a less formal and less adversarial dispute resolution mechanism than the Court. It was stressed that any such tribunal would need to be adequately resourced and trained. It was proposed that a Residential Administrative Appeals Tribunal,

covering Homeswest, could form one of the panels under the proposed Civil and Administrative review Tribunal (CART).

Recommendation 142 **That the Act be amended to require that reasons for decisions of the tribunal (or the court, if the current process is retained) be provided in cases that the tribunal (or the court) considers to be of legal or social significance.**

Participants endorsed this recommendation, which also has educative value and would lead to a reduction in disputes.

Recommendation 148 **That the Act be amended to provide a separate Part in the Act for caravan park and park home tenancies.**

Participants agreed that the unique situation of park home owners requires separate legislation to the RTA given they lease land but no buildings. It was also agreed that caravan park tenants (renting both the home and the site) need specific protections under the RTA, for example in relation to park rules, extra fees for visitors, rent increases and security of tenure. It was agreed that a separate section within the Act (similar to boarders and lodgers) would be appropriate

Recommendation 174 **That section 15(2)(c) of the Act be amended to clearly state that a court may not make an order of compensation for non-economic loss.**

Participants did not support this recommendation as tenants are far more likely to suffer non-economic loss as a result of the owner's breach than vice versa.