

# Review of the Residential Tenancies Act 1987 (WA)

Submission to the Department of  
Mines, Industry Regulation and Safety  
(Consumer Protection Division)

July 2020



# Contents

Introduction .....	3
Summary of recommendations .....	4
Improving security of tenure .....	6
“No grounds” termination .....	6
Impact of the Response Act on terminations in boarding and lodging accommodation .....	7
Fixed term tenancy agreements .....	8
Before the tenancy begins .....	9
Regulating the tenancy application process .....	9
Lessor Disclosure.....	9
Rent, Bonds and other charges.....	10
Option fees.....	10
Amount of security bond .....	10
Bond guarantees and alternative products .....	11
Frequency of rent increases .....	11
High pressure rent zones .....	11
Charges for utilities .....	12
Rates and other charges .....	12
The premises.....	12
Minimum Standards .....	12
Climate change and energy healthy housing.....	13
Modifications to the premises.....	14
Pets in rental premises .....	15
Ongoing maintenance and repairs.....	15
Drug testing of the premises .....	15
Swimming pool fence certification .....	16
Tenant and lessor rights and responsibilities .....	16
Termination of Tenancy agreements.....	16
Eligibility related grounds of termination.....	16
Sale of rental premises .....	16
Mortgage repossession of the rental premises.....	17
Termination of the tenancy agreement by the tenant.....	17
Dispute Resolution.....	18
Disposal of security bonds .....	18

Resolving other disputes.....	18
Boarders and lodgers .....	19
The Proposal .....	19
Modified tenancy regulations.....	20
Occupancy principles .....	20
What is an occupancy agreement? – an example .....	21
When does an occupancy agreement start? - an example of .....	22
Occupancy Principles – an example of .....	22
Modifying the RTA in certain circumstances.....	24
A quality rental market .....	24
Knowledge of the law .....	24
Register of lessors .....	25
Code of practice .....	25
Miscellaneous .....	25
Disposal of abandoned goods.....	25
Appendices.....	0
Appendix 1 – Impact of inclusion of boarders and lodgers in the Response Act. ....	0
References .....	0

# Introduction

Shelter WA welcomes the opportunity to provide a submission to the Department of Mining, Industrial Relations and Safety (DMIRS) for the *Residential Tenancies Act (1987)* and commends the WA State Government for seeking reform in this area.

Shelter WA is the independent peak body, in Perth Western Australia, that advocates for social and affordable housing and ending homelessness. Shelter WA takes a strategic leadership role, championing the development of an effective housing system and bringing all parts of the system together to achieve this. Shelter WA brings together a strong coalition committed to diverse and affordable housing choice for all. With a focus on housing for people on low to moderate incomes and groups that experience housing insecurity. Shelter WA undertakes research and policy development, engagement, and advocacy to drive solutions to build an effective housing system and alleviate housing-related poverty.

Shelter WA is also be a member of the Make Renting Fair WA Alliance (the Alliance). Shelter WA endorses the Alliance's submission to this review and supports the ten key recommendations of the alliance to:

- End unfair evictions.
- Allow reasonable modifications.
- Create minimum standards, including for climate appropriate housing.
- Stabilise rent increases.
- Include boarders and lodgers.
- Allow pets.
- Quick, fair and consistent dispute resolution.
- Provide a better deal for public housing tenants.
- Increase access to tenant advocacy and information.
- Greater protections for tenants' privacy.

This submission does have some nuances to the Alliance's submission, specifically in the areas of boarding and lodging and pets, but in principle the essence of all 10 recommendations of the Alliance are supported.

Rental reform has been occurring across the nation in recent years. The Victorian Government has undertaken a number of positive reforms to their tenancy legislation, and is seen as leading the way for tenancy reform n a number of areas. The Western Australian government is to be congratulated that law reform is occurring in such an important part of the WA housing system. Renting for life is becoming more of a reality for many West Australians and ensuring the right balance of tenant rights and landlord obligations is critical to ensure security of tenure and making renting a more viable and attractive housing option.

This submission has been prepared in partnership with the community housing sector. In developing this submission, Shelter WA formed two review groups: an RTA review group and a Boarders and Lodgers review group comprised of community housing representatives.

The agreement at National Cabinet in March 2020 to introduce a moratorium on evictions from residential tenancy agreements is a welcomed initiative by the Government. However, due to the quick turnaround of introducing the *Residential Tenancies COVID Response Act 2020* (the Response Act) there was no consultation with the sector. As a result, boarding and lodging accommodation providers have been forced into a regulatory system that does not respond to the specific needs of their operations or their tenants. There have been several unintended consequences of this Response Act which has hampered the sector's ability to provide accommodation to people in boarding and lodging facilities. For this reason, the section of this submission that responds to the proposed regulatory framework for boarding and lodging has been informed by this, expressing the feedback raised by the sector.

## Summary of recommendations

Relevant CRIS Section	Shelter WA recommendation
2.1 No grounds termination	Option B – Replace no grounds termination with prescribed ground for termination.  For boarding and lodging facilities, the ability to terminate swiftly must remain for certain circumstances.
2.2 Fixed Term tenancy agreements	Support options A, D and E.
3.1 Regulating the tenancy application process	Support the proposal and take into consideration the under the 'program' eligibility set out by the funder.
3.2 Lessor disclosure	Support options A and B.
4.1 Option fees	Support the proposed change.
4.2 Amount of security bond	Support the proposal to retain the current provisions.
4.3 Bond guarantees and alternative bond products	Support the proposal to retain the current prohibition on bond guarantee products
4.4 Frequency of rent increases	Support option A and C as per submission.
4.5 High pressure rent zones	Support option A and B.
4.6 Charges for utilities	Support option A.

4.7 Rates and other charges	Support the proposal.
5.1 Minimum standards	Support option B – with flexibility for community housing providers who under their contracts with State Government must meet certain minimum standards.
5.2 Modifications to the premises	Support option B.
5.3 Pets in rental premises	Support the proposal in principle.
5.4 Ongoing maintenance and repairs	Support option A.
5.5 Drug testing of the premises	Support the proposal.
5.6 Swimming pool fence certification	Support the proposal.
5.7 Tenant and lessor rights and responsibilities	Support the proposal.
6.1 Eligibility related grounds of termination	Support the proposal – except in situations where the eligibility criteria is failed by the carer or companion of a person with a disability.
6.2 Sale of the rental premises	Support option B.
6.3 Mortgagee repossession of the rental premises	Support the proposal.
6.4 Termination of the tenancy agreement by the tenant	Support option B.
7.1 Disposal of security bonds	Support the proposal.
7.2 Resolving other disputes	Support options B and C.
8 Boarding and lodging	Support the proposal.
9 Modifying the RTA in certain circumstances	Support the proposal.
10.1 Knowledge of the law	Support option B.
10.2 Register of lessors	Support option A.
10.3 Code of practice	Support options A and B.
11.1 Disposal of abandoned goods	Support the proposal.

# Improving security of tenure

## “No grounds” termination

Options	Shelter WA Response
A – Status Quo	Do not support
B – Replace no grounds termination with prescribed grounds for termination	Support with special consideration given to the operational needs of boarding and lodging accommodation providers.
C – Retain no grounds termination but increase the notice period	Do not support

Shelter WA supports option B, to remove no grounds termination from the Act with prescribed grounds for termination. There is an ongoing imbalance of power within the tenant and landlord relationship and the removal of “no grounds” termination will address this issue immediately.

Security of tenure is a centrepiece to ensuring every West Australian has housing that is appropriate for their needs and that enables them to thrive.

However, abolishing “no grounds” termination without well designed prescribed grounds for termination to protect lessors, tenants and other residents in congregate living arrangements can cause significant problems under situations where immediate termination is required.

The most recent review of the Long-stay accommodation through the Inquiry into Residential Parks (Long-Stay Tenants) Amendment Bill 2018 recommended and implemented the removal of “no grounds” termination clauses in these residency agreements. A clear and strong precedent to guide this law reform process.

Shelter WA propose that the following issues be considered when determining the prescribed grounds for termination:

- Need to have provisions to quickly terminate in congregate living arrangements.
- Needs to be clearly defined and consider natural justice of the individual.
- Adopt a common ground and no wrong door approach to services and tenancies.
- Need to consider best practices for community housing providers.

In addition, some areas for prescribed termination can consider the following:

- The landlord or family needs to live in the property.
- The landlord is undertaking major renovations which require vacant possession.
- The tenant is breaching the agreement, such that it justifies termination, such as:
  - Damages to the property.
  - Failure to pay rent – giving consideration to systemic failure.
  - Illegal activities occur on the premises including drug use.
  - Threatening or anti-social behaviour.

## Impact of the Response Act on terminations in boarding and lodging accommodation

As highlighted in the introduction, the passage of the Response Act to enable the six-month moratorium on residential tenancy evictions has created some very specific issues for the boarding and lodging accommodation sector.

Boarding and lodging accommodation provides niche housing to many vulnerable people in our community. Boarding and lodging residents are often exiting the justice system, are coming from living on the streets and/or have complex mental health and alcohol and other drug abuse issues. Boarding and lodging is their only option for housing as they cannot access private renting or social housing. As residents often have complex needs, shared living in boarding and lodging facilities requires careful management to ensure that the health and safety of residents and staff is considered.

Currently, boarding and lodging accommodation facilities are not covered under the *Residential Tenancies Act (1987)* WA. The current review of this Act seeks feedback on how to incorporate boarding and lodging within that legislative framework. A significant change for boarding and lodging accommodation providers is their inclusion in the recent Response Act.

It is critical that boarding and lodging facilities can terminate accommodation agreements in a swift manner when residents pose serious risks to other residents, or to staff. It is not unknown for these risks to escalate quickly and get out of control in environments that involve congregate living with people living in proximity. Sharing rooms in a home or residing in larger scale boarding and lodging facilities presents challenges with people living so closely together.

The risks could include- for example - instances of violence, serious anti-social behaviour or evidence of drug dealing on the premises. The ability under the Response Act to only terminate in very limited circumstances and only through the magistrate's court system (with a potential wait time for a court date of 2-3 weeks) is impacting on the ability to provide safe and secure boarding and lodging accommodation for existing and new residents. Consequently, boarding and lodging facilities are now a higher risk to manage and maintain, as 'bad, risky and unsafe' behaviour cannot be addressed quickly.

Prior to the Response Act, boarding and lodging accommodation providers could swiftly terminate residency agreements (under a licence to occupy agreement (LTO) in circumstances where the resident breaches the conditions of the LTO and House Rules.

Boarding and lodging facilities have House Rules which are enforced to keep everyone safe. Residents must follow House Rules as part of their licence to occupy agreement to reside in a lodging facility. The breach and termination provisions in those contracts enable swift action for the provider and termination periods within three days is not uncommon. These terminations are enacted to keep all residents and staff in the accommodation facility safe. As this ability to immediately terminate has been withdrawn, the safety risk to staff is unacceptable with some facilities withdrawing staff from their lodging facilities.



Under the Residential Tenancies Act (1987) WA, s75A 'Termination of social housing tenancy agreement due to objectionable behaviour' is used to manage issues such as illegal activity, nuisance, interference with any other person who resides in the facility. The Response Act does not allow for this type of termination to occur for boarding and lodging facilities and the termination must now proceed to the Magistrate's Court. This process is far too slow for dealing with these highly volatile situations which place other residents at risk in a lodging facility environment. It's very important to keep front and centre the requirement for housing providers to exercise their duty of care to residents and the risks to them that can arise from this harmful disruptive behaviour.

Furthermore, these changes have led to a significant increase in anti-social behaviours during this time, such as alcohol and drug taking, illegal activity, nuisance and stand over tactics by some residents who are aware they cannot be terminated as they would have been in the past. This has left other residents feeling unsafe, with some indicating that they are considering going back onto the street to feel safe. Staff have also reported feeling unsafe and organisations feel compromised as to their ability to provide safe workplaces.

Whilst there is a mandatory conciliation process in place in the Response Act, this process is not swift enough and not practical for these circumstances. It also appears that s49 of the Response Act doesn't apply to serious damage or injury. What is required is a 24-hour turnaround for termination applications. Using s76 of the Response Act to draft a regulation enabling swift termination applications through arbitration for boarding and lodging accommodation providers would be a good start for an interim solution whilst we navigate the emergency period.

Appendix 1 presents a table of issues and incidents in the accommodation facilities of two member organisations of Shelter WA. The organisation details have been de-identified. From the table it is evident that the blanket inclusion of boarding and lodging accommodation facilities in the Response Act, without consultation, has meant that providers cannot keep residents or staff safe at these facilities, and to ensure they can continue to offer accommodation to vulnerable people in our community.

## Fixed term tenancy agreements

Shelter WA supports the ability for tenants to access longer term tenancies. The prevailing issue for longer term tenancy agreements is within the existing ability for landlords to evoke a "no grounds" termination. When "no grounds" termination is replaced with prescribed termination provisions, this will more effectively deal with the issue of tenure.

As the C-RIS outlines, bond administration data shows an average tenancy of two years. Not all tenants will want to sign a five-year tenancy, but there should be the option to do so, provided the tenant meets the obligations of the tenancy agreement.

A key issue for community housing providers and providers of short-term accommodation is to have the flexibility to offer tenancy arrangements that address the need for probationary terms. This is an important aspect to offering accommodation to individuals who have complex needs and may need flexibility in their accommodation, as they secure housing.

A further complexity to consider is the funding nature of which accommodation programs are in. often accommodation programs are limited by the funding cycle and therefore makes the option for longer term tenancies difficult.

Option	Shelter WA Response
A – Status quo	Support
B – Use of fixed term agreements prohibited in all circumstances	Do not support
C – Fixed term tenancies permitted in only limited circumstances	Do not support
D – Fixed term tenancies permitted, with tenants entitled to an option to renew for a total minimum period of five years	Support
E – Amend the RTA to incentivise the use of longer fixed term agreements	Support

## Before the tenancy begins

### Regulating the tenancy application process

Shelter WA supports the proposal in the C-RIS. The only element to consider is that some properties within the community housing and homelessness services sector have eligibility requirements set out by the Department of Communities and therefore restricting questions will inhibit a provider’s ability to assess eligibility and assess suitability to a dwelling which may result in an increase of failed tenancies, poor or unsuitable allocations and further increase the complexity to accessing housing and supported housing programs.

### Lessor Disclosure

Shelter WA supports the disclosure of important information to the prospective tenant to assist in their decision making.

The REBA Act does not define what constitutes ‘material information’. It would be helpful if this were defined in the appropriate legislative instrument, to enable flexibility in the policy as ‘material facts’ may change over time, to ensure that prospective tenants can make an informed decision. Not dissimilar to the recent changes made to the Strata Titles Act which now requires additional disclosure to prospective buyers, this would be a welcome change for tenants.

The 'facts' listed in question 19 of the C-RIS is a good starting point for defining 'material facts'.

Options	Shelter WA Response
A – Status quo	Support with the inclusion of what constitutes 'material facts'.
B – Mandatory disclosure about the premises	Support.
C – Mandatory disclosure about the premises and database of lessor non-compliance	Do not support

## Rent, Bonds and other charges

### Option fees

Option fees create an additional financial barrier to prospective tenants in the search for a rental property. This is a major issue for people on low incomes who often do not have the additional funds to lodge with their rental application.

Shelter WA supports the proposed change in the C-RIS to:

Prohibit a lessor from requiring applicants to pay an option fee. Instead it is proposed that a lessor be able to obtain a holding fee from a tenant whose application has been assessed and who has been offered a tenancy agreement for the premises. The amendment will also prohibit a lessor who has received a holding fee from entering into a tenancy agreement with another person for the period covered by the holding fee.

If the proposal in the C-RIS does not proceed as outlined, Shelter WA supports the holding fee definition being described and the following matters considered:

- Ensure a holding fee is appropriately defined and limited to those in circumstances where it allows a tenant to property consider entering into the tenancy agreement.
- The option to provide a holding fee rest with the tenant not the lessor.
- The holding fee be no more than one week's rent.
- Safeguard the tenant in circumstances where the refusal to enter into a tenancy agreement is the result of the lessor seeking the imposition of unreasonable terms.

### Amount of security bond

Shelter WA supports the proposal to retain the current provisions in the RTA for the level of security bond.

Other areas for consideration:

- Allow for a property bond to be transferred upon a change of address rather than require disposal and re-lodgement.
- If tenants are not eligible for bond assistance through the Department of Communities then there needs to be flexibility for community housing providers to offer 'staggered bonds' to tenants. There are administrative issues with this that need to be managed.
- Boarders and lodgers get access to bond assistance program run by the Department of Communities.

## Bond guarantees and alternative products

Shelter WA supports the proposal to retain the current prohibition on bond guarantee products in the RTA.

## Frequency of rent increases

Options	Shelter WA Response
A – Status quo	Support – as this enables community housing providers to continue six monthly rent reviews as clients are often on income support payments which are indexed in line with CPI twice a year.
B – Allow for rent increases at not less than 12 monthly intervals	Do not support
C – Allow for rent increases at not less than 2 yearly intervals	Support – for private residential tenancy agreements.

## High pressure rent zones

Options	Shelter WA Response
A – Status quo	Support
B – Cap on rent increase in designated zones	Support
C – Cap on rent increases for all zones	Do not support

Shelter WA supports the establishment of high pressure rent zones. As evidenced in the C-RIS, the Western Australian rental market is often held hostage to periods of economic booms particularly related to mining activity. The excessive rent prices in the Pilbara during the 2010 mining construction boom created significant housing poverty issues for those communities and for people who rented.

This included key workers who were not provided with housing as part of their employment package, (for example childcare workers, retail and hospitality staff) or private renters who were on low incomes but not able to access social or affordable housing options. An impact on young people was if they found employment that did not come with a home or accommodation, they were unable to leave the family home, with some families forced to stay in the Pilbara and/or their workplace so their son or daughter had a place to live. Also, there was a key impact on women in abusive relationships. When the house was tied to their partners work as women were often unable to find an alternative, affordable housing options they either had to stay in this home or leave the Pilbara and their work and other commitments.

## Charges for utilities

Options	Shelter WA Response
A – Status quo	Support
B – Amend the RTA to provide that a tenant will only be required to pay for utility costs if the premises are separately metered.	Do not support
C – Amend the RTA to provide that a lessor must not require a tenant to pay charges other than charges payable by the lessor for the utilities supplied to the premises.	Do not support

## Rates and other charges

Shelter WA supports the proposal to maintain the status quo where no rates or charges can be passed onto the tenant.

# The premises

## Minimum Standards

Shelter WA supports the objective of minimum standards as outlined in the C-RIS. It is critical that people are not living in properties that are unsafe, create energy poverty and cause ill-health.

Options	Shelter WA Response
A – status quo	Do not support
B – Amend the RTA so that minimum standards for rental premises are the process for	Support – with flexibility for community housing providers who under their contracts with State

monitoring and enforcing those minimum standards can be prescribed.	Government must meet certain minimum standards.
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Some areas to consider for the prescription of minimum standards should be based on structural soundness and weatherproof of the property.

Elements to consider include:

- Draughtproof.
- Free from damp and mould.
- Adequate ventilation.
- Adequate lighting.
- Adequate waste disposal facilities.
- Adequate cooking, washing and laundry facilities.
- Free from vermin and pests.
- Reasonable ceiling insulation.
- Window covering in all living and bathroom areas.
- Fixed heater installed in main living areas.
- Ceiling fan or suitable cooling device in main living areas.

#### Climate change and energy healthy housing

The impacts of climate change are becoming more prevalent in the impact that climate and energy poverty is having on people in their homes. This is magnified for renters if their housing is not energy efficient and they are residing in properties that don't have basic things like energy efficient heating and cooling options. Improving the energy efficiency of homes is an important way to address poverty by reducing people's energy bills and the broader costs associated with energy in Western Australia. It forms an essential part of responding to climate change.

Low-income households spend disproportionately more of their income on electricity, with 10 per cent of low-income households spending more than 10 per cent of their disposable income on electricity, compared to an average of 4 per cent of spending for the average household.<sup>1</sup>

Research shows that lower income earners are more likely to be renters, with 40 per cent of the lowest income households in Perth renting either privately or from the State Government.<sup>2</sup> The same research shows that rental properties are far less likely to be equipped with solar power or solar hot water, reflecting the lack of regulation or financial incentives for landlords to invest in home power or thermal generation.<sup>3</sup>

Tenants living in social housing are disproportionately affected by increases in power and utility bills but are the least able to enjoy the benefits of energy efficiency, comfort and sustainability of their homes. In addition to this, a lower proportion of social housing tenants in WA have their need for

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<sup>1</sup> BCEC (2016). Energy Poverty in Western Australia, Perth.

<sup>2</sup> BCEC (2018). Impact of tariff structure changes on energy vulnerable households.

<sup>3</sup> Ibid.

thermal comfort met by their current home (66 per cent), which is particularly low among Indigenous households and households with children.<sup>4</sup>

The benefits of investing in improving energy efficiency of homes is significant. However, without government intervention to address the market failures, the cost of inefficient homes will continue to fall disproportionately on low-income and disadvantaged households who are most in need.

## Modifications to the premises

Options	Shelter WA Response
A – Status quo	Do not support
B – Amend the RTA so that a tenant is entitled, without consent of the lessor, to make minor modifications that do not impact the structural integrity of the premises and can be easily reversed, or to improve disability access and ageing in place, and to make any other modifications with the lessor’s consent, which cannot be unreasonable withheld.	Support

Shelter WA supports option B in the C-RIS. Tenants should be able to make minor modifications without seeking prior consent. Shelter WA agrees with the proposal of option B that modifications beyond minor in nature would require the consent of the lessor, but the request cannot be unreasonably withheld. The changes made to the RTA in 2019 to accommodate modifications for matters of family and domestic violence are a strong and clear precedent to ensure this reform can happen within the review of the Act. . Further Shelter WA supports defining what minor modifications include in the regulations.

Examples of minor modifications include:

- Installing picture hooks.
- Changing curtains where the originals are kept unless otherwise agreed.
- Fixing furniture to walls.
- Changing shower heads where the originals are kept unless otherwise agreed.
- Installing LED light globes.
- Painting walls which should not have to be remediated unless otherwise agreed.
- Installing child safety gates.
- Installing access ramps.
- Installing safety rails.
- Small garden changes.

Other considerations for this option are:

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<sup>4</sup> BCEC (2016). Energy Poverty in Western Australia.

- Making modifications to transitional housing is costly once the resident leaves so the cost-benefit for this type of accommodation needs to be considered.
- Returning the property to prior status before modifications needs to be considered.
- Clarity around the responsibility for fixtures and fittings for removal at the end of the tenancy.

## Pets in rental premises

Shelter WA supports the proposal in the C-RIS to amend the RTA to allow tenants to keep pets at the premises unless the lessor applies for and obtains approval confirming it would be unreasonable to allow the tenant to keep the pet at the premises.

This is an important consideration as it will be difficult in transitional short-term accommodation arrangements to potentially allow for pets, especially given the quick turnaround of some of these properties. However, so long as there is a provision that enables the lessor to have some level of flexibility in these accommodation situations the amendment should be considered.

The other consideration is the interaction of this proposal with the existing Strata Title Act and the ability for strata complexes to have bylaws prohibiting pets in a strata complex. Which legislative framework will take precedence?

However, there does need to be a commensurate bond required to ensure that damage from pets in a property can be appropriately recouped by the lessor. An appropriate pet bond amount be determined with consultation with the community housing sector.

## Ongoing maintenance and repairs

Options	Shelter WA Response
A – Status quo	Support
B – Require all lessors to lodge a lessor bond with the Bond Administrator	Do not support

## Drug testing of the premises

Shelter WA supports the proposal in the C-RIS to:

It is not proposed to amend the RTA to require mandatory testing for drug residue during or between tenancies. Rather, it is proposed that lessors, property managers and tenants be educated to follow the DoH Guidance. The DoH Guidance clarifies the obligations and responsibilities of lessors and property managers in managing potential risks arising from drug contamination. Providing further education for lessors and property managers in following the DoH Guidance rather than via amendments to the RTA is a risk-based response.



## Swimming pool fence certification

Shelter WA supports the proposal in the C-RIS.

## Tenant and lessor rights and responsibilities

Shelter WA supports the proposal in the C-RIS to amend the RTA to:

- allow lessors and tenants to agree for the tenant to share in the repair and maintenance of the premises where the tenancy period is greater than five years and the tenant has greater rights in relation to making modification to the premises;
- allow a lessor or tenant to commence termination proceedings where the other has committed repeated serious breaches of the agreement or the Act within a twelve-month period; and
- create an offence under the RTA of wilful damage to the premises.

# Termination of Tenancy agreements

## Eligibility related grounds of termination

Shelter WA supports the proposal in the C-RIS to:

amend the RTA to allow a lessor to terminate the tenancy agreement if the tenant is no longer employed by the lessor or, in relation to social housing tenancy agreements, the tenant ceases to satisfy the eligibility criteria for the tenancy.

except in situations where the eligibility criteria are failed by the carer or companion of a person with a disability.

Another potential issue with the eligibility criteria is where a carer or a support companion for a person with a disability earns an income and resides in the home may cause the tenant to no longer satisfy an income eligibility criterion. It would be suggested in this situation the RTA is written to exclude the income of a carer/support companion or to include an exception for situations where the eligibility criteria is failed by the care or support companion of a pers with a disability.

## Sale of rental premises

Options	Shelter WA Response
A – Status quo	Do not support
B – increase the notice period to 60 days	Support

C – Amend the RTA to prohibit a lessor from terminating the tenancy agreement unless the purchaser requires the premises for their own residence or intends to change the use of the premises.	Do not support
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## Mortgage repossession of the rental premises

Shelter WA supports this proposal in the C-RIS to:

amend the RTA to provide that a tenancy agreement does not automatically terminate on possession of the premises where the mortgagee has expressly or impliedly consented to the premises being leased. Possession of the premises can only occur after an order is made by the Supreme Court.

This proposal will improve security of tenure under the circumstances where a mortgagee takes possession of the premises.

While this is a very rare circumstance, given the financial stress within the Western Australian economy and the current recession it is important to consider such circumstances and to ensure that the impact to relevant stakeholders is limited and unlikely to have significant impacts, particularly those already under financial stress and hardship.

## Termination of the tenancy agreement by the tenant

Options	Shelter WA Response
A – Status quo	Do not support
B – Amend the RTA to allow tenants to terminate a fixed tenancy agreement in specified circumstances.	Support
C – Amend the RTA to allow a residential tenancy agreement to include a break lease clause.	Do not support

Shelter WA supports option B, as tenants should be provided the same flexibility and rights lessors are to terminate the agreement under certain situations.

Prescribed grounds for termination

- Under the circumstances of family and domestic violence.
- Feeling unsafe or threatened by a lessor/property manager.
- Tenant is required to move for medical treatment, rehabilitation, or other necessary treatment.

- The tenant has been offered a place in social housing or supported accommodation.
- The tenant requires care in an aged facility and has accepted an offer in that facility.
- The lessor has placed the property on the market for sale and is proposing to conduct home open inspections, and the proposed sale was not disclosed to the tenant prior to entering into the tenancy agreement.

Break lease costs act as an additional barrier for tenants to find appropriate and suitable housing to meet their needs.

The current arrangement by which tenants are liable to pay the rent for the premises until another tenant can be found and to compensate the lessor for other expenses incurred as a result of breaking the lease early do not adequately reflect the volatility and unpredictability in many people’s lives.

## Dispute Resolution

### Disposal of security bonds

Shelter WA supports the proposal in the C-RIS to:

amend the RTA to allow either party to apply to the Bond Administrator for release of the security bond and that the Bond Administrator is obligated to seek the views of all other interested parties before releasing the security bond. The Bond Administrator would do this by sending an email to all other persons whose names are on the bond record, as currently occurs in New South Wales, Queensland, South Australia, and Tasmania.

If the Bond Administrator does not receive a response, or the parties agree to the original claim, the Bond Administrator will dispose of the bond. If the claim is disputed, then dispute resolution is to be applied. The dispute resolution process proposed is that, in the first instance, the parties will be referred to Consumer Protection for mediation.

If the parties are unable to reach agreement, or are unwilling to participate in mediation, the dispute will be referred to the Commissioner for determination. Ultimately, the parties will be entitled to appeal the Commissioner’s determination to either the Magistrates Court or SAT, depending on the jurisdiction decided for tenancy disputes into the future.

### Resolving other disputes

Options	Shelter WA Response
A – Status quo	Do not support
B – Jurisdiction for tenancy disputes transferred to the SAT	Support

C – Matters proceed to mediation in the first instance, and then if not resolved, to the court of tribunal	Support
D – Dispute resolution consisting of a range of options including mediation in the first instance, determination of prescribed disputes by the Commissioner and final adjudication by the court or tribunal	Do not support

Shelter WA supports option B primarily and then option C. It is well understood that the current dispute system for matters to the Magistrates Court is time consuming, costly and not timely.

Transferring the dispute to the SAT would enable:

- The right of appeal of a Tribunal decision.
- Right to challenge interpretations.
- History of Tribunal decision making for consistency.
- Consistent application of the RTA.
- Quicker turnaround for resolving disputes.

## Boarders and lodgers

Western Australia is the only jurisdiction that does not have some form of regulation for rights and responsibilities in the boarding and lodging sector.

While the discussion paper suggests options relating to how it is incorporated in legislation, Shelter WA is concerned about the adequacy of protections for boarders and lodgers, and clarity for accommodation providers, which must be balanced against the viability of providing this form of accommodation.

Shelter WA believes that boarding accommodation must be understood as a means of addressing rental options for vulnerable people, in the context of housing affordability. Boarding and lodging accommodation facilities are an important part of the housing system that assists affordable and secure rental demand in the current housing affordability crisis and prevents homelessness.

The demand for accommodation in boarding houses is likely to increase over time as the lack of supply of affordable housing options decline and more people and households on low income emerge, especially as the State recovers from the COVID-19 pandemic.

### The Proposal

Shelter WA supports the proposal in the C-RIS to:

amend the RTA to introduce regulations for boarding and lodging. The proposal is that where the premises are capable of accommodating above a threshold number of residents, modified tenancy regulations will be drafted and implemented. Where the premises are capable of accommodating below a threshold number of residents, for example in the landlord's own home, the proposal is to introduce occupancy principles. The detail of the modified tenancy laws and the occupancy principles, as well as the threshold number of residents, will be developed in consultation with key stakeholders during the drafting stage.

With such a large variety of accommodation and services provided for boarders and lodgers within the community and housing sector it would be unfair, and unreasonable to place modified tenancy regulations on one group and occupancy principles on another based on a set threshold of people/rooms.

Furthermore, due to the variation in services provided by boarding and lodging accommodation providers, Shelter WA does not support the need to define the number of people for it to be a lodging or boarding house, nor define what a lodging and boarding house is based on the number of rooms.

Therefore, Shelter WA does not support this proposal if it removed the threshold and selected either occupancy principles or modified tenancy regulations. The two sections below highlight the considerations needed for the modified tenancy regulations and occupancy principles in conjunction.

## Modified tenancy regulations

The types of matters that would be regulated by the modified tenancy laws include:

- form of agreement.
- rent in advance.
- security bonds.
- property condition reports.
- rights and obligations of the accommodation provider and the resident.
- house rules.
- urgent eviction.
- termination of the agreement.

The occupancy principles would address such matters as:

- minimum content of a residency agreement.
- security bonds.
- house rules.
- terminations of tenancies.

As outlined in the section on "no grounds" termination, the passage of the Response Act has had serious impacts on the ability of the boarding and lodging sector to provide critical accommodation options for vulnerable people in WA.

## Occupancy principles

Adopting occupancy principles and defining boarders and lodgers under the RTA would be similar to the model used in the Australian Capital Territory under their *Residential Tenancies Act 1997 (ACT)*. The Occupancy principles would be part of the occupancy agreements model of law reform implemented by the Western Australian Government in its *Residential Tenancies Act 1987*.

Occupancy agreements are agreements that are not residential tenancy agreements and that would not otherwise be subject to residential tenancies legislation. Consequently, occupancy agreements are very different from residential tenancy agreements.

Occupancy agreements allow more variation than residential tenancy agreements. This is important, because there is greater variation between the sorts of housing services provided under occupancy agreements (for example, a students' residential college is very different from a domestic violence refuge). Hence, the occupancy principles need to be developed as less prescriptive and more modest than the provisions relating to residential tenancy agreements, allowing for more variation to suit the community sectors' needs.

Shelter WA in collaboration with the community sector have developed what an occupancy agreement can cover, how an occupancy agreement starts and what the occupancy principles under that agreement that need to be considered. To ensure consistency with existing terminology in WA, under an occupancy agreement a landlord/lessor remains, rather than as a 'landlord' in the ACT and a boarder/lodger is referred to as a 'resident', not 'resident'.

What is an occupancy agreement? – an example

An agreement is an occupancy agreement if —

- (a) a person (the landlord) gives someone else (the resident) a right to occupy stated premises; and
- (b) the premises are for the resident to use as a home (whether or not with other people); and
- (c) the right is given for value; and
- (d) the agreement is not a residential tenancy agreement.

The agreement —

- (a) Must be in writing from the day occupancy commences; and
- (b) It must be written in a way that is understandable to the resident; and
- (c) state the landlord's name, address and any telephone number and the resident's name and any telephone number; and
- (d) fully describe the services to be provided under the agreement; and
- (e) fully describe the rights and responsibilities of both parties; and
- (f) state the amount of rent payable, when it is payable and how it must be paid; and
- (g) state the components of the rent attributable to accommodation, a food service, a personal care service or another service; and
- (h) state the amount of any rental bond payable; and
- (i) for a fixed term agreement, state the term for which it applies; and
- (j) be signed by the parties."

(3) The right to occupy may be—

- (a) exclusive or not;
- (b) given with a right to use facilities, furniture, or goods.

- (4) The person given the right to occupy the premises may be—
- (a) a boarder or lodger; or
  - (b) someone prescribed by regulation for this section.

Note – This does not apply to nursing homes, retirement villages, hostels, campus student accommodation, crisis accommodation, and refuges.

When does an occupancy agreement start? - an example of

An occupancy agreement starts on the earliest of the following days:

- (a) the day stated in the agreement;
- (b) the 1st day both parties have signed the agreement and received a copy signed by the other;
- (c) the day the resident takes possession of the premises;

Occupancy Principles – an example of

Shelter WA has highlighted the 9 occupancy principles what should be developed as part of the reform of the Residential Tenancies Act 1987 (WA), with comments under each principle to provide further detail and clarity.

1. *A resident is entitled to live in premises that are –*
  - (a) *Reasonably clean; and*
  - (b) *In a reasonable state of repair; and*
  - (c) *Reasonably secure.*

The rationale behind this principle is to emphasise the basic entitlement for ‘residents,’ i.e. boarders and lodgers. The use of the word ‘reasonable’ demonstrates consistency with the occupancy principles remaining a less prescriptive approach compared the RTA agreements. What is considered reasonable would be considered on a case by case basis through the courts. That which is considered ‘reasonable’ would vary depending on the housing service provided, the amount of rent paid, and other conditions set out in the occupancy agreement as created by the landlord. Repairs and maintenance should be complimented by the landlord’s rights highlighted in in Principle 5.

2. *A landlord is entitled to set reasonable rules of the premises, and an resident is entitled to know and acknowledge the rules of the premises before moving in.*

The rationale behind this principle is to state the premises is subjected to an occupancy agreement which would be negotiated, agreed, understood, and signed by both the ‘resident’ and ‘landlord’ before the resident is to move into the premises. This principle does not prescribe what the rules may be, but rather this is left for the landlord to determine, given they are consistent with the occupancy principles.

3. *A resident is entitled to the certainty of having the occupancy agreement in writing at the commencement of the occupancy.*

Providing a written occupancy agreement, despite its inconvenience for short-term stay accommodation, is necessary to protect the rights and responsibilities of both landlord and resident, as well as to formalise the commencement of the occupancy agreement.

4. *A resident is entitled to quiet enjoyment of the premises.*

‘Quiet enjoyment’ means that a resident is entitled to reside at the premises free from interference and harassment from the landlord (it does not require that the premises should be free from noise). We would suggest that quiet enjoyment under the occupancy principles would be less strong than that subscribed under the RTA for tenancy agreements and should ultimately be explained by the landlord under the house rules (Principle 2). This principle does not prevent the landlord from entering the premises when needed and stated in Principle 5.

5. *A landlord is entitled to enter the premises at a reasonable time on reasonable grounds to carry out inspections or repairs and for other reasonable purposes, unless in case of an emergency.*

This principle confirms the right of the landlord to enter the premises but remains broad to be consistent with occupancy principles remaining less prescriptive than tenancy agreements governed by the RTA. As with Principle 1 the terminology ‘reasonable’ will depend on the type of service provided, amount of rent paid, and other considerations set out in the occupancy agreement. The principle does not prescribe that an amount of notice should be given before the entry. It also qualifies the resident's entitlement at Principles 1 and 4. As for ‘in case of emergency’ this will need to be determined by the landlord and set out in the occupancy agreement and the house rules.

6. *A resident is entitled to know, before moving in, how the rent under an occupancy agreement is calculated and under what circumstances it may be increased, including the amount of notice that is to be given, and that the amount of notice must be reasonable.*

The rationale behind this aligns with Principle 2 and 3 whereby the resident has a right to know the arrangements of the occupancy agreement prior to moving into the premise and for these to be in writing.

7. *A resident is entitled to know why and how the occupancy may be terminated, including how much notice will be given before eviction.*

This is a basic, and minimal, entitlement. The principle does not prescribe grounds for termination, nor does it prescribe the amount of notice required, rather this is left up to each landlord, subject to Principle 8, below. Significantly, the principle does not require that the landlord apply to the Tribunal for orders to terminate the occupancy agreement. A resident who disputes the termination of their occupancy, however, may be able to use the dispute resolution provisions (seen in Principle 9) and to determine whether the occupancy agreement should end shown below by Principle 7.

8. *A resident must not be evicted without reasonable notice, unless the occupancy agreement needs to be terminated immediately due to safety concerns and/or illegal behaviour, which would be specified by the occupancy agreement and house rules.*



Once again, this principle does not prescribe the amount of notice required. The term ‘reasonable’ here is the same as above but also considers the reason for eviction.

9. *A landlord and resident should try to resolve disputes using reasonable dispute resolution processes.*

This principle encourages the use of dispute resolution processes without prescribing specific alternatives. We would support under the RTA reform a tribunal and mediation dispute resolution reform which would include access for disputes that occurred in occupancy agreement.

10. *A resident is not liable to pay a penalty or fee for breach of any term of the agreement or any of the roles of the premises.*

This principle ensures residents, i.e. boarders and lodgers are protected from additional/unnecessary/unreasonable fees for a breach in agreement. This does not prevent a landlord withholding a bond for damages and does not prevent the resident’s agreement being terminated for a breach in agreement.

In Summary, Shelter WA supports the proposal for occupancy principles and/or modified tenancy regulations but does not support the imposing a threshold on the number of people and/or rooms. The development of the boarders and lodgers’ action under the Act reform will need to be done with consideration for the large variety in services and accommodation for boarders and lodgers within the community sector. Hence, it will be critical for the providers of boarding and lodging services to be engaged and consulted with how this is drafted.

## Modifying the RTA is certain circumstances

Shelter WA supports the objective in the C\_RIS to develop a policy framework that guides future modifications of the application of the RTA. To be done in consultation with the sector.

## A quality rental market

### Knowledge of the law

Options	Shelter WA Response
A – Status quo	Do not support
B – Voluntary qualification for private lessors	Support
C – Mandatory training for all private self-managing lessors	Do not support

## Register of lessors

<b>Options</b>	<b>Shelter WA Response</b>
A – Status quo	Support
B – A register of all private lessors is implemented	Do not support

## Code of practice

<b>Options</b>	<b>Shelter WA Response</b>
A – Status quo	Support
B – A voluntary code of practice to apply to lessors	Support
C – A mandatory code of practice to apply to all lessors	Do not support

# Miscellaneous

## Disposal of abandoned goods

Shelter WA supports the proposal in the C-RIS.

# Appendices

## Appendix 1 – Impact of inclusion of boarders and lodgers in the Response Act.

Date	Issue/Incident	Previous Action Available/likely	Consequences under current RT(COVID-19Response) A
March	Boarder charged with intent to sell and supply of meth	1. Breach of Licence to Occupy and house rules – Immediate termination	<ul style="list-style-type: none"> <li>Alleged drug dealer (Methamphetamine) remains in a 40-bed lodging house with vulnerable people – <u>risk to individuals and community</u></li> <li>Perception of ‘no ability to act’ on the part of the Landlord – <u>reputational and commercial risk</u></li> </ul>
April	Residents become aware of new legislation – alcohol use becoming common throughout the lodge	<ol style="list-style-type: none"> <li>Warning letter</li> <li>Breach of LTO notice</li> <li>Termination</li> </ol>	<ul style="list-style-type: none"> <li>Increased change of risky behaviours- <u>risk to individuals and community</u></li> <li>Consider the need to remove staff and replace with Contracted security staff if behaviours escalate – <u>reputational and commercial risk</u></li> <li>Breaching the same people over and over for the same behaviours staff report it feels a bit ‘pointless’, as they cannot follow through with further action</li> </ul>
April	As a result of ongoing poor behaviours and safety issues, a large community housing	Without this legislation, a large community housing organisation had maintained a commitment to	<ul style="list-style-type: none"> <li>With such limited ability to end an LTO, considering emerging risks, allocations were ceased</li> </ul>

	organisation reverses original decision to maintain allocations into lodging facilities	continue to allocate into lodges to address the risks COVID-19 presented to the homeless population	
April	Concerns regarding The Residential Tenancies (COVID 19 Response) Bill 2020 constricts a NGO specialist homelessness service and community housing provider ability to end an LTO.	The organisation would have continued to conduct business as per LTO protocols	Risk mitigation implemented. Will only undertake allocations where evidence that the person will be of low risk to other residents (e.g. someone well known to the organisation)
April	Resident A moved from one lodging house to another due to constant quarrelling (e.g. verbal abuse) with resident B. Resident A was the instigator and more dominant and demonstrated tendencies of stand over behaviour to vulnerable residents. Resident A moved to another lodging house and his behaviour is being closely monitored.	Threatening and / or violent behaviour (including intimidating behaviour), serious breach of Licence to Occupy and house rules – Immediate termination	<ul style="list-style-type: none"> <li>• Relocation has resulted in the same behaviour being reported about the resident after being moved.</li> <li>• Not having the ability to terminate residents for serious behaviour places all other residents and staff in danger should said behaviour escalate</li> <li>• Other residents do not feel safe in the lodging house and seek alternative accommodation even if it is inappropriate or expensive, whilst others have indicated that they would resort to rough sleeping</li> <li>• In the absence of clear potential consequences of serious breaches to LTO, potential of escalation of behaviours which places other residents or staff at risk.</li> </ul>
April	As part of a Specialist Homelessness Services and smaller community housing	<ol style="list-style-type: none"> <li>1. Warning letter</li> <li>2. 1<sup>st</sup> breach of LTO notice</li> <li>3. 2<sup>nd</sup> breach of LTO notice</li> </ol>	<ul style="list-style-type: none"> <li>• No further breaches are available to the resident therefore termination is the only option remaining, whilst the need to</li> </ul>

	<p>provider's COVID 19 Response Plan, Housing Services implemented a plan to prohibit visitors entering lodging houses (except for essential services) to minimise the risk of introducing COVID 19 into lodging houses. A resident ignored the directive and allowed a visitor to reside overnight and was issued with a breach notice. Said resident had already received 2 breaches pre-March 2020 would normally be at risk of termination. The policy regarding visitors is intended to protect the health of all residents, who form part of a high-risk cohort from COVID infection.</p>	<p>4. 3<sup>rd</sup> breach of LTO notice 5. Termination</p>	<p>nominate a termination date for the end of September will no doubt result in further complications.</p> <ul style="list-style-type: none"> <li>since this incident, there have been several similar concerns at the same house with other residents, exposing other residents to serious risk of health</li> </ul>
April	<p>Several residents have been caught possessing and consuming alcohol in an assigned dry house.</p>	<p>Breach of Licence to Occupy and house rules – Immediate termination There is a strict dry house policy as it is designated for those recovering from addictions</p>	<ul style="list-style-type: none"> <li>Residents will continue current consumption and affect other residents with unacceptable associated behaviour</li> <li>Residents who have recovered from addiction and seeking a dry environment to continue their recovery are exposed to alcohol and at risk of returning to their previous use</li> </ul>
May	<p>Room Inspections resume – standards very poor - one room in particular looked like 'a bar</p>	<p>6. Warning letter 7. breach of LTO notice Termination</p>	<ul style="list-style-type: none"> <li>Deteriorating property standards – <u>commercial risk</u></li> </ul>

	after closing time on a Friday night'. There were a lot of empty alcohol bottles, cigarette butts etc		<ul style="list-style-type: none"> <li>• Breaching the same people over and over for the same behaviours, staff report it feels a bit 'pointless', as they cannot follow through with further action. It also means that tenant behaviour does not change and / or gets even worse, as there are no severe consequences for their actions.</li> </ul>
May	Multiple tenants involved in anti-social behaviour involving drink and suspected drugs. Police attended multiple times.	<ol style="list-style-type: none"> <li>1. Warning Letter</li> <li>2. Breach notice / Termination</li> </ol>	<ul style="list-style-type: none"> <li>• Fighting and antisocial behaviour on the street outside the building – <u>reputational risk</u></li> <li>• Causes ongoing problems within the building and increases already high tensions – <u>individual and community risk</u></li> <li>• Bystanders and other lodge residents getting drawn into the bigger problems – <u>individual and community risk</u></li> </ul>
May	Increased drug activity resulting in unacceptable behaviour	Breach of Licence to Occupy and house rules – Immediate termination	<ul style="list-style-type: none"> <li>• Criminal behaviour. Significant risk to staff and other residents due to unpredictable behaviour and possible sharps injuries</li> </ul>
	Female resident failed to pay rent arrears and had boyfriend stay overnight. Loud arguments resulted in neighbour complaints, ongoing property damage including smashed window and 2 internal doors, rear security screen removed to	Termination – resident there had been many discussions and 2 breaches issued for arrears and property damage.	<ul style="list-style-type: none"> <li>• Significant potential impact on the safety and quite enjoyment of other residents of the complex.</li> <li>• Damage exceeds the bond held resulting in impact on financial sustainability.</li> <li>• Neighbour and/or complex owner relations being negatively impacted due to the behaviour displayed.</li> </ul>

	allow access to and from unit without neighbours knowing.		<ul style="list-style-type: none"> <li>• Neighbour relations result in future residents from the organisation not being welcomed and victimised.</li> </ul>
June	Resident had overnight visitor, resident had been previously issued with breach notice for same	2 <sup>nd</sup> breach Termination	<ul style="list-style-type: none"> <li>• Other residents questioning why the organisation is not removing him</li> <li>• Possible Covid 19 infection introduced to the lodging house via visitor</li> <li>• Risk that other residents may commence having overnight visitors knowing that they cannot be removed</li> </ul>
June	Alleged drug abuse and associated behaviour, resident was moved into crisis accommodation for case management and support as an alternative to eviction, he claimed to be a non-drinker at the time. Within one-week resident returned intoxicated to the crisis accommodation with a bottle of alcohol. He was given a verbal warning and informed that any future breach may jeopardise his accommodation	Eviction for serious breach of house rules	<ul style="list-style-type: none"> <li>• Moving problems from one house to another due to not having ability to evict in real time</li> <li>• Exposing vulnerable residents to drug and alcohol use in a dry house</li> <li>• Difficulty enforcing further action for future breaches due to Covid 19 restrictions</li> </ul>
June	Argument between two lodgers resulted in one receiving head butt. Police were called but police call was cancelled.	Eviction for violent and threatening behaviour	<ul style="list-style-type: none"> <li>• Require sufficient evidence and/or witnesses to evict under RTA</li> <li>• Fear that vulnerable residents are being intimidated to silence them</li> </ul>

	Residents involved not willing to make police report or provide further information to the organisations		<ul style="list-style-type: none"> <li>• Residents not willing to make police reports</li> </ul>
Throughout	Tenants smoking in their rooms	<ol style="list-style-type: none"> <li>1. Warning letter</li> <li>2. Breach notice</li> </ol>	<ul style="list-style-type: none"> <li>• Potential fire hazard; cost of cleaning the rooms between lodgers increased– safety and <u>commercial risk</u></li> <li>• The strong and lingering smoke smell in the building could have negative health impacts on staff and other lodgers – <u>individual / community /staff risk</u></li> <li>• Smoking in the rooms whilst also consuming alcohol is also a huge fire risk – <u>commercial risk</u></li> </ul>



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