



Western Australia

# **Residential Tenancies Legislation Amendment (Family Violence) Act 2019**

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## **Residential Tenancies Legislation Amendment (Family Violence) Act 2019**

### **Contents**

<b>Part 1 — Preliminary</b>		
1.	Short title	2
2.	Commencement	2
<b>Part 2 — <i>Residential Tenancies Act 1987</i> amended</b>		
3.	Act amended	3
4.	Section 3 amended	3
5.	Section 17B inserted	3
	17B. Determination of rights and liabilities after termination of tenant's interest on grounds of family violence	3
6.	Section 27C amended	5
7.	Section 29 amended	6
8.	Section 41 amended	6
9.	Section 43 amended	6
10.	Section 45 amended	7
11.	Section 46 amended	9
12.	Section 47 amended	10
13.	Section 56A inserted	11
	56A. Discrimination against tenants subjected or exposed to family violence	11
14.	Section 59E amended	12
15.	Section 59F amended	12
16.	Section 60 amended	13
17.	Section 67 amended	14
18.	Part V Division 2A inserted	15

	<b>Division 2A — Special provisions about terminating tenant's interest on grounds of family violence</b>	
	71AA. Terms used	15
	71AB. Notice of termination of tenant's interest on ground that tenant subject to family violence	15
	71AC. Review of notice of termination under s. 71AB	17
	71AD. Rights of co-tenants after notice under s. 71AB	17
	71AE. Termination of tenant's interest by court on grounds of family violence	18
	71AF. Review of Division	20
19.	Section 81A amended	21
20.	Section 82J amended	21
21.	Section 85 amended	21
22.	Section 88B inserted	21
	88B. Cross-examination of persons in proceedings involving family violence	22
23.	Section 88 amended	22
24.	Section 94 amended	22
25.	Various penalties amended	23
	<b>Part 3 — Residential Parks (Long-stay Tenants) Act 2006 amended</b>	
26.	Act amended	25
27.	Section 21 amended	25
28.	Section 33 amended	25
29.	Section 38 amended	26
30.	Part 3 Division 4A inserted	27
	<b>Division 4A — Special provisions about termination of tenant's interest on grounds of family violence</b>	
	45A. Notice of termination of tenant's interest on ground that tenant subject to family violence	27
	45B. Rights of co-tenants after notice under s. 45A	28
	45C. Review of Division	29
31.	Section 58A inserted	30
	58A. Discrimination against tenants subjected or exposed to family violence	30
32.	Part 5 Division 3A inserted	30

	<b>Division 3A — Orders relating to termination of tenant's interest on grounds of family violence</b>	
	74A. Review of notice of termination under s. 45A	30
	74B. Termination of tenant's interest by SAT on grounds of family violence	31
	74C. Determination of rights and liabilities after termination of tenant's interest on grounds of family violence	33
	74D. Review of Division	34
33.	Section 94A inserted	35
	94A. Cross-examination of persons in proceedings involving family violence	35
34.	Section 95 amended	36
35.	Schedule 1 clause 12 amended	36
36.	Schedule 1 clause 13 amended	37
37.	Schedule 1 clause 14 amended	38
38.	Glossary amended	40
39.	Various penalties amended	40





Western Australia

## **Residential Tenancies Legislation Amendment (Family Violence) Act 2019**

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**No. 3 of 2019**

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**An Act to amend the *Residential Tenancies Act 1987* and the *Residential Parks (Long-stay Tenants) Act 2006* to provide for termination of tenants' interests on the grounds of family violence, and for related matters.**

*[Assented to 26 February 2019]*

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

### **1. Short title**

This is the *Residential Tenancies Legislation Amendment (Family Violence) Act 2019*.

### **2. Commencement**

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.



## Part 2 — Residential Tenancies Act 1987 amended

### 3. Act amended

This Part amends the *Residential Tenancies Act 1987*.

### 4. Section 3 amended

- (1) In section 3 insert in alphabetical order:

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

*prescribed* means prescribed in the regulations;

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

- (2) In section 3 in the definition of *rent* delete “a period of the  
tenancy;” and insert:

the tenancy period or part of the tenancy period;

### 5. Section 17B inserted

After section 17A insert:

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

- (1) A tenant, or former tenant, under a residential tenancy  
agreement may apply to a competent court for a  
determination of the rights and liabilities of the parties  
to the agreement once the former tenant’s interest in

**s. 5**

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the agreement has been terminated under section 60(1)(ba) or (bb).

- (2) When hearing an application under subsection (1) or section 71AE(3), the court —
  - (a) must determine the rights and liabilities of the parties to the agreement, as affected by the termination; and
  - (b) may order a party to pay compensation to another party for loss or injury, other than personal injury, relating to the termination.
- (3) Without limiting subsection (2), a determination or order under that provision may apportion the disposal of a security bond to the lessor and each tenant or former tenant as appropriate having regard to subsection (4).
- (4) Despite any law to the contrary, each tenant under a residential tenancy agreement has an equal interest in the security bond in respect of the agreement unless the court in a particular case determines otherwise under this section.
- (5) In making a determination or order under subsection (2), the court must have regard to all of the following principles —
  - (a) that family violence is a fundamental violation of human rights and is unacceptable in any form;
  - (b) the need to prevent further victimisation of a person who has experienced family violence through the unjust application of the principle of joint and several liability or the principle of vicarious liability;
  - (c) the need to maximise the safety of persons who have experienced family violence by reducing

- any financial burden arising from the family violence;
  - (d) the need to prevent, or reduce to the greatest extent possible, the consequences of family violence;
  - (e) the need to protect the wellbeing of children by preventing them from being subjected or exposed to further family violence;
  - (f) the need to encourage perpetrators of family violence to accept responsibility for their behaviour and the effect it has on others.
- (6) Nothing in subsection (2) is to be read as enabling the court to order compensation for early termination of a residential tenancy agreement.

**6. Section 27C amended**

- (1) In section 27C(4) delete “tenancy —” and insert:

tenancy or tenant’s interest in a residential tenancy agreement —

- (2) After section 27C(4) insert:

- (4A) A lessor is taken to comply with subsection (4) if, before the termination of a tenant’s interest, the lessor —
- (a) enters residential premises under section 46(6B); and
  - (b) in relation to that entry —
    - (i) conducts an inspection of the premises; and

**s. 7**

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- (ii) prepares a report describing the condition of the premises; and
- (iii) provides a copy of the report to the tenant.

(3) In section 27C(5) delete “subsection (4)(a).” and insert:

subsection (4)(a) or (4A)(a).

**7. Section 29 amended**

After section 29(8) insert:

- (9) Nothing in subsection (1)(a) prevents the lessor from requiring further payment from a remaining tenant towards the security bond in order to cover the disposal of a former tenant’s portion of the security bond under section 17B(3).

**8. Section 41 amended**

In section 41 delete “period of the tenancy.” and insert:

tenancy period.

**9. Section 43 amended**

- (1) In section 43(1) in the definition of *prescribed period*:
- (a) in paragraph (a) delete “in the regulations”;

- (b) in paragraph (b) delete “longer period prescribed in the regulations;” and insert:

prescribed longer period;

- (2) In section 43(1) in the definition of *urgent repairs* paragraph (a) delete “in the regulations”.

**10. Section 45 amended**

- (1) In section 45:

- (a) delete “It” and insert:

(1) It

- (b) in paragraph (a) delete “prescribed in the regulations; and” and insert:

prescribed; and

- (c) in paragraph (c) delete “that” and insert:

that, except as provided in subsection (2),

- (2) At the end of section 45 insert:

- (2) It is a term of every residential tenancy agreement —
- (a) that a tenant may alter or add any lock or other means of securing the residential premises —
- (i) after the termination of a person’s interest in a residential tenancy agreement under section 60(1)(bc); or

**s. 10**

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

and

- (b) that the tenant must give to the lessor a copy of the key to any lock or other means of securing the residential premises altered or added under paragraph (a) as soon as practicable, and in any event within 7 days, after the lock or other means of securing the residential premises has been altered or added; and
  - (c) that the lessor must not give a copy of a key referred to in paragraph (b) —
    - (i) to a person whose interest in the residential tenancy agreement has been terminated under section 60(1)(bc); or
    - (ii) in any event, to a person who the tenant has instructed the lessor in writing not to give the copy of the key.
- (3) A tenant who breaches a term referred to in subsection (2)(b) without reasonable excuse, in addition to any civil liability that the tenant might incur, commits an offence.
- Penalty for this subsection: a fine of \$5 000.
- (4) Subsection (2)(b) does not apply if the lessor is a person reasonably suspected of being likely to commit the family violence referred to in subsection (2)(a)(ii).

**11. Section 46 amended**

(1) After section 46(2)(g) insert:

- (ga) for the purpose of inspecting the premises and assessing any damage after the termination of a tenant's interest under —
  - (i) section 60(1)(ba) or (bb); or
  - (ii) section 60(1)(bc);

(2) After section 46(6) insert:

- (6A) It is a term of every residential tenancy agreement that the lessor may enter the premises under subsection (2)(ga)(i) —
  - (a) not more than 7 days after receiving notice under section 71AB(1) or 71AD(4); and
  - (b) not less than 3 days after giving notice to each tenant of the lessor's intention to enter the premises.
- (6B) It is a term of every residential tenancy agreement that the lessor may enter the premises under subsection (2)(ga)(ii) —
  - (a) not more than 10 days before the hearing of the application under section 71AE; and
  - (b) not less than 3 days after giving notice to each tenant of the lessor's intention to enter the premises.

**s. 12**

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**12. Section 47 amended**

- (1) In section 47(1) delete “A” and insert:

Except as provided in subsection (4), a

- (2) After section 47(3) insert:

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

- (a) after the termination of the person’s interest in a residential tenancy agreement under section 60(1)(bc); or
  - (b) in any event, if it is necessary to prevent the commission of family violence that the tenant suspects, on reasonable grounds, is likely to be committed by the person against the tenant or a dependant of the tenant.
- (5) For the purposes of subsection (4) —
- (a) the cost of making the prescribed alterations must be borne by the tenant; and
  - (b) the tenant must give written notice to the lessor of the tenant’s intention to make the prescribed alterations; and
  - (c) work on the prescribed alterations must be undertaken by a qualified tradesperson, a copy of whose invoice the tenant must provide to the lessor within 14 days of the alterations being completed; and



- (d) the prescribed alterations must be effected having regard to the age and character of the property and any applicable strata company by-laws; and
  - (e) the tenant must restore the premises to their original condition at the end of the residential tenancy agreement if the lessor requires the tenant to do so and, where restoration work has been undertaken by a tradesperson, must provide to the lessor a copy of that tradesperson's invoice within 14 days of that work having been performed.
- (6) Subsection (4) does not apply to premises entered into the Register as defined in the *Heritage of Western Australia Act 1990* section 3(1) or in the register as defined in the *Heritage Act 2018* section 4.

**13. Section 56A inserted**

After section 56 insert:

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

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

- (a) has been or might be subjected or exposed to family violence; or
- (b) has been convicted of a charge relating to family violence.

Penalty: a fine of \$5 000.

**s. 14**

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**14. Section 59E amended**

After section 59E(2) insert:

- (3) When a charge of an offence under subsection (1) relates to a failure by the lessor to give the tenant a copy of a key to the premises, it is a defence to the charge to prove that —
  - (a) the copy of the key had been given to the lessor under section 45(2)(b); and
  - (b) the tenant was a person to whom the lessor was instructed not to give the copy of the key under section 45(2)(c)(ii).

**15. Section 59F amended**

- (1) In section 59F(1) delete “section 45(b)” and insert:

section 45(1)(b)

- (2) After section 59F(2) insert:

- (2A) A lessor who breaches the term referred to in section 45(2)(c) without reasonable excuse commits an offence.

Penalty for this subsection: a fine of \$20 000.

**16. Section 60 amended**

(1) In section 60:

(a) delete “Despite” and insert:

(1) Despite

(b) after paragraph (b) insert:

(ba) in the case of a particular tenant’s interest in the agreement, where the tenant —

(i) gives notice under section 71AB(1) of termination of the tenant’s interest together with at least 1 of the documents required under section 71AB(2); and

(ii) vacates the premises on or after the expiration of the period of notice required under section 71AB(5);

(bb) in the case of a particular tenant’s interest in the agreement, where the tenant —

(i) gives notice under section 71AD(4) of termination of the tenant’s interest; and

(ii) vacates the premises on or after the expiration of the period of notice required under section 71AD(5);

(bc) in the case of a particular tenant’s interest in the agreement, where a competent court terminates the tenant’s interest under section 71AE;

**s. 17**

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(2) At the end of section 60 insert:

- (2) The termination of a tenant's interest in a residential tenancy agreement does not terminate the agreement in respect of any other tenant under the agreement.

Note: The heading to amended section 60 is to read:

**How residential tenancy agreements and tenant's interests in agreements are terminated**

**17. Section 67 amended**

(1) In section 67 delete "Notice of termination of a residential tenancy agreement by the tenant shall —" and insert:

- (1) Except as provided in subsection (2), a notice of termination of a residential tenancy agreement, or of the tenant's interest in the agreement, must —

(2) At the end of section 67 insert:

- (2) A notice given under section 71AB(1) must be in a prescribed form.

18. **Part V Division 2A inserted**

After section 70 insert:

**Division 2A — Special provisions about terminating  
tenant's interest on grounds of family violence**

**71AA. Terms used**

In this Division —

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

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

*premises*, in relation to a residential tenancy agreement, means the residential premises to which the agreement relates.

**71AB. Notice of termination of tenant's interest on ground that tenant subject to family violence**

- (1) Despite any other provision of this Act or another written law or a requirement under a contract, a tenant may give to the lessor notice of termination of the tenant's interest in the residential tenancy agreement on the ground that the tenant or a dependant of the tenant is, during the tenancy period, likely to be subjected or exposed to family violence.
- (2) A notice under this section must be accompanied by a document, applicable during the tenancy period, comprising 1 of the following —
  - (a) a DVO;

**s. 18**

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- (b) a Family Court injunction or an application for a Family Court injunction;
- (c) a copy of a prosecution notice or indictment containing a charge relating to violence against the tenant or a court record of a conviction of the charge;
- (d) a report of family violence, in a form approved by the Commissioner, completed by a person who has worked with the tenant and is 1 of the following —
  - (i) a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession;
  - (ii) a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the psychology profession;
  - (iii) a social worker as defined in the *Mental Health Act 2014* section 4;
  - (iv) a police officer;
  - (v) a person in charge of a women's refuge;
  - (vi) a prescribed person or class of persons.
- (3) The lessor must not disclose information in a document provided to the lessor under subsection (2) to another person except in accordance with this Act or another written law.

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

- (4) The lessor must ensure that information provided to the lessor under subsection (2) is kept in a secure manner so far as it is reasonably practicable to do so.

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

- (5) If a tenant gives notice under this section, the period of notice must be not less than 7 days before the termination day.

**71AC. Review of notice of termination under s. 71AB**

- (1) In this section —  
*terminating tenant* means a tenant who has given, or purportedly given, notice of termination under section 71AB.
- (2) A lessor may, within 7 days after receiving a notice under section 71AB, apply to a competent court to review whether notice was validly given under that section.
- (3) In its review, the court —
- (a) must examine whether the terminating tenant has complied with section 71AB in giving the notice; and
  - (b) cannot examine whether the terminating tenant, or a dependant of the tenant, has been or might be subject to family violence.
- (4) If the court finds that notice was not validly given under section 71AB, the court must make an order declaring that the terminating tenant's interest in the residential tenancy agreement has not been terminated, otherwise the court must dismiss the application.

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

- (1) In this section —  
*co-tenant*, in relation to a notice under section 71AB(1), does not include the tenant who gave the notice.

**s. 18**

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- (2) A lessor must give a copy of a notice received by the lessor under section 71AB(1) to each co-tenant under the residential tenancy agreement within 7 days after receiving the notice.
- (3) Nothing in subsection (2) requires or permits the lessor to give a copy of a document provided under section 71AB(2) to a co-tenant.
- (4) The co-tenant may, within 7 days after receiving the copy of the notice, give notice of termination of the co-tenant's interest in the residential tenancy agreement to the lessor.
- (5) If a co-tenant gives notice of termination under subsection (4), the period of notice must be not less than 21 days before the termination day.

**71AE. Termination of tenant's interest by court on grounds of family violence**

- (1) In this section —  
*excluded tenant* means a tenant against whom an order is sought or made under subsection (2);  
*family violence order* means a DVO, Family Court injunction or other court order denying a tenant's right of occupancy in premises under a residential tenancy agreement;  
*protected tenant* means a tenant for whose benefit an order is sought or made under subsection (2).
- (2) Despite any other provision of this Act or another written law, or a requirement under a contract, a court may make an order terminating a tenant's interest in a residential tenancy agreement if it is satisfied —
  - (a) that a family violence order is in force against the excluded tenant; or



- (b) that the excluded tenant has, during the tenancy period, committed family violence against the protected tenant or a dependant of the protected tenant.
- (3) The court may make the order on an application by any of the following —
  - (a) the excluded tenant;
  - (b) a protected tenant;
  - (c) a prescribed person acting on behalf of the protected tenant.
- (4) Before making the order the court must consider the following matters —
  - (a) the best interests of any child ordinarily resident at the premises;
  - (b) the best interests of the protected tenant, including, if the premises under the residential tenancy agreement are social housing premises, the ability of the tenant to meet any eligibility criteria for those premises;
  - (c) the effect the order might have on the lessor and any tenants other than the protected tenant;
  - (d) the effect the order might have on any pets kept on the premises;
  - (e) the fact that perpetrators of family violence might seek to misuse the protections offered to tenants and lessors under this Act to further their violence and the need to prevent that misuse.
- (5) The court is to have regard to the matter set out in subsection (4)(a) as being of primary importance.

**s. 19**

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- (6) The order takes effect on a day specified in the order, being a day that is not less than 7 days and not more than 30 days after the order is made.
- (7) The court may make the order in proceedings under this Act or the Act under which the family violence order is made.

**71AF. Review of Division**

- (1) The Minister must carry out a review of the operation and effectiveness of this Division, and prepare a report based on the review, as soon as practicable after the 3<sup>rd</sup> anniversary of the day on which this Division comes into operation.
- (2) Without limiting the scope of the review, the review must address the following —
  - (a) the effect of this Division on lessors' rights to recover debts owed by tenants;
  - (b) the effect of this Division on lessors' insurance policies;
  - (c) the effect of this Division on contractual certainty;
  - (d) the extent to which this Division affects contractual obligations upon lessors and co-tenants who are not perpetrators of family violence and the impact of those obligations;
  - (e) such other matters as appear to the Minister to be relevant.
- (3) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 3<sup>rd</sup> anniversary.

**19. Section 81A amended**

In section 81A(2) delete “section 60(e),” and insert:

section 60(1)(e),

**20. Section 82J amended**

Delete section 82J(2) (2<sup>nd</sup> occurrence) and insert:

- (2A) Without limiting subsection (2)(b), the inclusion of the applicant’s name or other personal information about the applicant is unjust if the circumstances relating to the listing result from the applicant being subjected or exposed to family violence.
- (2B) The court may order personal information about a person in a residential tenancy database to be wholly or partly removed, amended in a stated way or not listed in a residential tenancy database.

**21. Section 85 amended**

In section 85(1)(c) delete “circumstances specified in the regulations, be given or served by electronic means in accordance with the regulations.” and insert:

prescribed circumstances, be given or served by prescribed electronic means.

**22. Section 88B inserted**

After section 88A insert:

**88B. Cross-examination of persons in proceedings involving family violence**

The *Restraining Orders Act 1997* section 44C applies to proceedings under this Act that involve family violence as if references to the respondent were references to the person allegedly committing the family violence.

**23. Section 88 amended**

After section 88(2) insert:

- (3) Regulations made under subsection (1) for the purposes of section 47(4) or 71AB(2)(d)(vi) cannot come into operation earlier than 6 months after they are published in the *Gazette*.

**24. Section 94 amended**

In section 94(3) delete “a market rate indicator specified in the regulations.” and insert:

a prescribed market rate indicator.

**25. Various penalties amended**

In the provisions listed in the Table delete “Penalty:” and insert:

Penalty for this subsection:

**Table**

s. 11A(1)	s. 16(1)
s. 19(2)	s. 22(5)
s. 27C(1) and (4)	s. 27(1)
s. 28(1) and (2)	s. 29(1), (4), (6) and (8)
s. 32(7)	s. 33(1)
s. 34(1) and (2)	s. 51(1), (2), (3) and (4)
s. 53(1), (2) and (3)	s. 54(1)
s. 56(1) and (2)	s. 57(2A)
s. 59E(1)	s. 59F(1) and (2)
s. 63(3)	s. 80A(3), (4) and (6)
s. 82C(2)	s. 82D(2)
s. 82E(1)	s. 82F(1)
s. 82G(2) and (3)	s. 82H(2)
s. 82I(1) and (2)	s. 82K(2)
s. 82(2)	s. 93(1)

**s. 25**

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s. 95(3) and (4)	s. 96(2)
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**Part 3 — *Residential Parks (Long-stay Tenants)*  
*Act 2006* amended**

**26. Act amended**

This Part amends the *Residential Parks (Long-stay Tenants) Act 2006*.

**27. Section 21 amended**

After section 21(3) insert:

- (4) Nothing in subsection (1) prevents the park operator from requiring further payment from a remaining long-stay tenant towards the security bond in order to cover the disposal of a former long-stay tenant's portion of the security bond under section 74C(3).

**28. Section 33 amended**

After section 33(2) insert:

- (2A) A long-stay tenant's interest in a long-stay agreement is terminated if the tenant has —
- (a) given notice of termination under section 45A(1) together with at least 1 of the documents required under section 45A(2); and
  - (b) vacated the agreed premises on or after the expiration of the period of notice required under section 45A(5).
- (2B) A long-stay tenant's interest in a long-stay agreement is terminated if the tenant has —
- (a) given notice of termination under section 45B(4); and

**s. 29**

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- (b) vacated the agreed premises on or after the expiration of the period of notice required under section 45B(5).
- (2C) The termination of a long-stay tenant's interest in a long-stay agreement does not terminate the agreement in respect of any other long-stay tenant under the agreement.

Note: The heading to amended section 33 is to read:

**How long-stay agreements and tenant's interests in agreements are terminated**

**29. Section 38 amended**

- (1) In section 38 delete "A notice of termination must —" and insert:
  - (1) Except as provided in subsection (2), a notice of termination must —
  - (2) At the end of section 38 insert:
    - (2) A notice given under section 45A(1) must be in a prescribed form.



**30. Part 3 Division 4A inserted**

After section 45 insert:

**Division 4A — Special provisions about termination of tenant's interest on grounds of family violence**

**45A. Notice of termination of tenant's interest on ground that tenant subject to family violence**

- (1) Despite any other provision of this Act or another written law or a requirement under a contract, a long-stay tenant may give to the park operator notice of termination of the tenant's interest in an on-site home agreement on the ground that the tenant or a dependant of the tenant is, during the tenancy period, likely to be subjected or exposed to family violence.
- (2) A notice under this section must be accompanied by a document, applicable during the tenancy under the agreement, comprising 1 of the following —
  - (a) a DVO;
  - (b) a Family Court injunction or an application for a Family Court injunction;
  - (c) a copy of a prosecution notice or indictment containing a charge relating to violence against the long-stay tenant or a court record of a conviction of the charge;
  - (d) a report of family violence, in a form approved by the Commissioner, completed by a person who has worked with the long-stay tenant and is 1 of the following —
    - (i) a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession;

- (ii) a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the psychology profession;
  - (iii) a social worker as defined in the *Mental Health Act 2014* section 4;
  - (iv) a police officer;
  - (v) a person in charge of a women's refuge;
  - (vi) a prescribed person or class of persons.
- (3) The park operator must not disclose information in a document provided to the park operator under subsection (2) to another person except in accordance with this Act or another written law.  
Penalty for this subsection: a fine of \$5 000.
- (4) The park operator must ensure that information provided to the park operator under subsection (2) is kept in a secure manner so far as it is reasonably practicable to do so.  
Penalty for this subsection: a fine of \$5 000.
- (5) If a long-stay tenant gives notice under this section, the period of notice must be not less than 7 days before the termination day.

**45B. Rights of co-tenants after notice under s. 45A**

- (1) In this section —  
*co-tenant*, in relation to a notice under section 45A(1), does not include the tenant who gave the notice.
- (2) A park operator must give a copy of a notice received by the park operator under section 45A(1) to each co-tenant under the long-stay agreement within 7 days of receiving the notice.

- (3) Nothing in subsection (2) requires or permits the park operator to give a copy of a document provided under section 45A(2) to a co-tenant.
- (4) The co-tenant may, within 7 days after receiving the copy of the notice, give notice of termination of the co-tenant's interest in the long-stay agreement to the park operator.
- (5) If a co-tenant gives notice of termination under subsection (4), the period of notice must be not less than 21 days before the termination day.

**45C. Review of Division**

- (1) The Minister must carry out a review of the operation and effectiveness of this Division, and prepare a report based on the review, as soon as practicable after the 3<sup>rd</sup> anniversary of the day on which this Division comes into operation.
- (2) Without limiting the scope of the review, the review must address the following —
  - (a) the effect of this Division on lessors' rights to recover debts owed by tenants;
  - (b) the effect of this Division on lessors' insurance policies;
  - (c) the effect of this Division on contractual certainty;
  - (d) the extent to which this Division affects contractual obligations upon lessors and co-tenants who are not perpetrators of family violence and the impact of those obligations;
  - (e) such other matters as appear to the Minister to be relevant.

**s. 31**

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- (3) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 3<sup>rd</sup> anniversary.

**31. Section 58A inserted**

At the end of Part 4 Division 1 insert:

**58A. Discrimination against tenants subjected or exposed to family violence**

A park operator must not refuse to enter into a long-stay agreement with any person on the ground that the person —

- (a) has been or might be subjected or exposed to family violence; or
- (b) has been convicted of a charge relating to family violence.

Penalty: a fine of \$5 000.

**32. Part 5 Division 3A inserted**

After section 74 insert:

**Division 3A — Orders relating to termination of tenant's interest on grounds of family violence**

**74A. Review of notice of termination under s. 45A**

- (1) In this section —
- terminating tenant* means a long-stay tenant who has given, or purportedly given, notice of termination under section 45A.

- (2) A park operator may, within 7 days after receiving a notice of termination under section 45A, apply to the State Administrative Tribunal to review whether notice was validly given under that section.
- (3) In its review, the State Administrative Tribunal —
  - (a) must examine whether the terminating tenant has complied with section 45A in giving the notice; and
  - (b) cannot examine whether the terminating tenant, or a dependant of the tenant, has been or might be subject to family violence.
- (4) If the State Administrative Tribunal finds that notice was not validly given under section 45A, the Tribunal must make an order declaring that the terminating tenant's interest in the on-site home agreement has not been terminated, otherwise the Tribunal must dismiss the application.

**74B. Termination of tenant's interest by SAT on grounds of family violence**

- (1) In this section —

*excluded tenant* means a tenant against whom an order is sought or made under subsection (2);

*family violence order* means a DVO, Family Court injunction or other court order denying a long-stay tenant's right of occupancy in the agreed premises;

*protected tenant* means a tenant for whose benefit an order is sought or made under subsection (2).
- (2) Despite any other provision of this Act or another written law or a requirement under a contract, the State Administrative Tribunal may make an order

terminating a tenant's interest in an on-site home agreement if it is satisfied —

- (a) that a family violence order is in force against the excluded tenant; or
  - (b) that the excluded tenant has, during the tenancy period, committed family violence against the protected tenant or a dependant of the protected tenant.
- (3) The State Administrative Tribunal may make the order on an application by any of the following —
- (a) the excluded tenant;
  - (b) a protected tenant;
  - (c) a prescribed person acting on behalf of the protected tenant.
- (4) Before making the order the State Administrative Tribunal must consider the following matters —
- (a) the best interests of any child ordinarily resident at the premises;
  - (b) the best interests of the protected tenant;
  - (c) the effect the order might have on the lessor and any remaining tenants;
  - (d) the effect the order might have on any pets kept on the agreed premises;
  - (e) the fact that perpetrators of family violence might seek to misuse the protections offered to long-stay tenants and park operators under this Act to further their violence, and the need to prevent that misuse.
- (5) The State Administrative Tribunal is to have regard to the matter set out in subsection (4)(a) as being of primary importance.

- (6) The State Administrative Tribunal must specify in an order the day on which the order takes effect.
- (7) The day specified under subsection (6) must be not less than 7 days and not more than 30 days after the order is made.

**74C. Determination of rights and liabilities after termination of tenant's interest on grounds of family violence**

- (1) A long-stay tenant, or former long-stay tenant, may apply to the State Administrative Tribunal for a determination of the rights and liabilities of the parties to the long-stay agreement once the former long-stay tenant's interest in the agreement has been terminated under section 33(2A) or (2B).
- (2) When hearing an application under subsection (1) or section 74B(3), State Administrative Tribunal —
  - (a) must determine the rights and liabilities of the parties to the agreement, as affected by the termination; and
  - (b) may order a party to pay compensation to another party for loss or injury (except personal injury) relating to the termination.
- (3) Without limiting subsection (2), a determination or order under that provision may apportion the disposal of the security bond to the park operator and each long-stay tenant or former long-stay tenant as appropriate having regard to subsection (4).
- (4) Despite any law to the contrary, each long-stay tenant under a long-stay agreement has an equal interest in the security bond in respect of the agreement unless the State Administrative Tribunal in a particular case determines otherwise under this section.

- (5) In making a determination or order under subsection (2), the State Administrative Tribunal must have regard to all of the following principles —
- (a) that family violence is a fundamental violation of human rights and is unacceptable in any form;
  - (b) the need to prevent further victimisation of a person who has experienced family violence through the unjust application of the principle of joint and several liability or the principle of vicarious liability;
  - (c) the need to maximise the safety of persons who have experienced family violence by reducing any financial burden arising from the family violence;
  - (d) the need to prevent, or reduce to the greatest extent possible, the consequences of family violence;
  - (e) the need to protect the wellbeing of children by preventing them from being subjected or exposed to further family violence;
  - (f) the need to encourage perpetrators of family violence to accept responsibility for their behaviour and the effect it has on others.
- (6) Nothing in subsection (2) is to be read as enabling the State Administrative Tribunal to order compensation for early termination of a long-stay agreement.

**74D. Review of Division**

- (1) The Minister must carry out a review of the operation and effectiveness of this Division, and prepare a report based on the review, as soon as practicable after the 3<sup>rd</sup> anniversary of the day on which this Division comes into operation.



- (2) Without limiting the scope of the review, the review must address the following —
- (a) the effect of this Division on lessors' rights to recover debts owed by tenants;
  - (b) the effect of this Division on lessors' insurance policies;
  - (c) the effect of this Division on contractual certainty;
  - (d) the extent to which this Division affects contractual obligations upon lessors and co-tenants who are not perpetrators of family violence and the impact of those obligations;
  - (e) such other matters as appear to the Minister to be relevant.
- (3) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 3<sup>rd</sup> anniversary.

**33. Section 94A inserted**

After section 94 insert:

**94A. Cross-examination of persons in proceedings involving family violence**

The *Restraining Orders Act 1997* section 44C applies to proceedings under this Act dealing with the issue of family violence as if references to the respondent were references to the person allegedly committing the family violence.

**s. 34**

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**34. Section 95 amended**

After section 95(3) insert:

- (4) Regulations made under subsection (1) for the purposes of section 45A(2)(d)(vi) or Schedule 1 clause 14(4) cannot come into operation earlier than 6 months after they are published in the *Gazette*.

**35. Schedule 1 clause 12 amended**

- (1) In Schedule 1 clause 12(2) delete “It” and insert:

Except as provided in subclause (8), it

- (2) After Schedule 1 clause 12(7) insert:

- (8) It is a term of every on-site home agreement —
- (a) that a long-stay tenant may alter or add any lock or similar device to the agreed premises —
- (i) after the termination of an excluded tenant’s interest in a long-stay agreement under section 74B; or
- (ii) in any event, if it is necessary to prevent the commission of family violence that the tenant suspects, on reasonable grounds, is likely to be committed against the tenant or a dependant of the tenant;
- and
- (b) that the tenant must give to the park operator a copy of the key to any lock or similar device altered or added under paragraph (a) as soon as practicable, and in any event within 7 days, after the lock or similar device has been altered or added; and

- (c) that the park operator must not give a copy of a key referred to in paragraph (b) —
  - (i) to an excluded tenant whose interest in the long-stay agreement has been terminated under section 74B; or
  - (ii) in any event, to a person who the tenant has instructed the park operator in writing not to give the copy of the key.
- (9) A long-stay tenant who breaches a term referred to in subclause (8)(b) without reasonable excuse, in addition to any civil liability that the tenant might incur, commits an offence.  
Penalty for this subclause: a fine of \$5 000.
- (10) Subclause (8)(b) does not apply if the park operator is a person reasonably suspected of being likely to commit the family violence referred to in subclause (8)(a)(ii).
- (11) A park operator who breaches a term referred to in subclause (8)(c) without reasonable excuse, in addition to any civil liability that the park operator might incur, commits an offence.  
Penalty for this subclause: a fine of \$20 000.

**36. Schedule 1 clause 13 amended**

- (1) In Schedule 1 clause 13(2):
  - (a) in paragraph (g) delete “purchasers.” and insert:  
  
purchasers; or

**s. 37**

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- (b) after paragraph (g) insert:
  - (ga) for the purpose of inspecting the agreed premises and assessing any damage after the termination of a tenant's interest under —
    - (i) section 33(2A) or (2B); or
    - (ii) section 74B.

(2) After Schedule 1 clause 13(2) insert:

- (3) It is a term of every long-stay agreement that the park operator may enter the agreed premises under subclause (2)(ga)(i) —
  - (a) not more than 7 days after receiving notice of termination under section 45A(1) or 45B(4); and
  - (b) not less than 3 days after giving notice to the long-stay tenant of the park operator's intention to enter the agreed premises.
- (4) It is a term of every long-stay agreement that the park operator may enter the agreed premises under subclause (2)(ga)(ii) —
  - (a) not more than 10 days before the hearing of the application under section 74B; and
  - (b) not less than 3 days after giving notice to each long-stay tenant of the park operator's intention to enter the agreed premises.

**37. Schedule 1 clause 14 amended**

(1) In Schedule 1 clause 14(1) and (2) delete "A" and insert:

Except as provided in subclause (4), a

- (2) After Schedule 1 clause 14(3) insert:
- (4) It is a term of every long-stay agreement that a long-stay tenant may affix any prescribed fixture, or make any prescribed renovation, alteration or addition to the agreed premises (the *prescribed alterations*), necessary to prevent entry onto the agreed premises of a person —
- (a) if the person is an excluded tenant whose interest in a long-stay agreement has been terminated under section 74B; or
  - (b) in any event, if it is necessary to prevent the commission of family violence that the tenant suspects, on reasonable grounds, is likely to be committed by the person against the tenant or a dependant of the tenant.
- (5) For the purposes of subclause (4) —
- (a) the cost of making the prescribed alterations must be borne by the long-stay tenant; and
  - (b) the long-stay tenant must give written notice to the park operator of the tenant's intention to make the prescribed alterations; and
  - (c) work on the prescribed alterations must be undertaken by a qualified tradesperson, a copy of whose invoice the long-stay tenant must provide to the park operator within 14 days of the alterations being completed; and
  - (d) the prescribed alterations must be effected having regard to the age and character of the property and any applicable strata company by-laws; and
  - (e) the long-stay tenant must restore the agreed premises to their original condition at the end of the long-stay agreement if the park operator requires the tenant to do so and, where restoration work has been undertaken by a tradesperson, must provide to the park operator a copy of that tradesperson's

invoice within 14 days of that work being performed.

**38. Glossary amended**

- (1) In the Glossary clause 1 insert in alphabetical order:

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

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

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

- (2) In the Glossary clause 1 in the definition of *notice of termination* delete “agreement” and insert:

agreement, or an interest in the agreement,

**39. Various penalties amended**

In the provisions listed in the Table:

- (a) delete “Penalty:” and insert:

Penalty for this subsection:

- (b) delete “Penalty:” and insert:

Penalty for this subclause:

**Table**

s. 7(2)	s. 9(2)
s. 11(2)	s. 12(1), (3) and (4)
s. 13(1)	s. 15(1), (2) and (3)
s. 16(1), (2) and (3)	s. 17(1)
s. 20(2)	s. 21(1), (2) and (3)
s. 22(1)	s. 23(1), (2) and (3)
s. 25(1) and (2)	s. 26(2)
s. 28(1) and (2)	s. 41(5)
s. 59(1)	s. 87(1)
s. 93(3) and (4)	Sch. 1 cl. 12(5), (6) and (7)

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