

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

Review of the Residential Tenancies Act 1987 (WA)

30 June 2020

The Western Australian Council of Social Service Inc. (WACOSS) welcomes the opportunity to make a submission to the review of the *Residential Tenancies Act 1987 (WA)* (the RTA).

WACOSS is the peak body for the community services sector in Western Australia and works to create an inclusive, just and equitable society. We advocate for social and economic change to improve the wellbeing of Western Australians, and to strengthen the community services sector that supports them. WACOSS is part of a network consisting of National, State and Territory Councils of Social Service, who advance the interests of people on low incomes and made vulnerable by the systems in place.

WACOSS is proud to also be a member of the Make Renting Fair WA Alliance¹ and endorses its submission to this review. WACOSS 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; and
- Greater protections for tenants' privacy.

Background

Access to safe, secure and affordable shelter is essential for people to be able to fully engage in our community. Stable tenancies are crucial to support positive outcomes in areas like health and wellbeing, education and employment.

¹ Make Renting Fair WA, <https://www.make Renting fair wa.org.au/>

Conversely, insecurity and instability in housing creates the circumstances for increased hardship and entrenched disadvantage. It is unfortunately the case, however, that insecurity and instability are significant aspects of our current rental system for tenants.

The landlord/tenant relationship is an inherently inequitable one, but this is compounded by the disempowerment of renters under the current legislation. The limited protections and rights granted to renters are substantially undermined by the precedence yielded to the interests of landlords.

The consequences of this power imbalance is reflected in the results of a 2017 survey, which found that 50 per cent of renters feared being blacklisted by landlords and agents. This fear prevented one in seven renters from making a complaint or asking for a repair. 42 per cent of tenants had not asked for repairs or made a complaint because they feared being evicted or having their rent increased. Such fears are far from groundless, with 11 per cent having had their rents increased after requesting a repair and 10 per cent having faced angry landlords or agents as a result. 2 per cent reported facing eviction for making a complaint, 2 per cent for requesting a repair, and 2 per cent for taking their complaint to a third party.²

The current system creates a deeply paternalistic relationship, where one party to the arrangement exercises a degree of control over the personal life of the other party that is rare in commercial arrangements outside of the labour market. Landlords are able to dictate, amongst other things, whether a tenant has pets or not, how many pictures they can hang, how secure the property is, even whether the tenant can make minor energy efficiency improvements.

It needs to be recognised that tenants are not guests at the landlord's home. As such they should be able to make the premise their home during the course of their tenancy, with a reasonable expectation that they care for the property while residing there.

Landlords are in the business of providing a product for profit. As such, we should be able to expect that product to meet a certain standard, and considering this is the place in which people spend a considerable proportion of their lives, it is not unreasonable that we expect those standards to be high.

The community should be able to be confident that the rental market is providing liveable, affordable, ongoing housing that people can confidently be able to make their home. For the majority of landlords, this will not be an issue. What we should not do is allow the continuation of a system that acts as an enabler for those who are unwilling or unable to meet even that basic standard. Access to housing is a basic human right. Profiting by being a landlord, however, is not.

A meaningful rebalancing of the rights afforded under the *Residential Tenancies Act* is necessary in order to produce a fair and equitable rental system. With the numbers of renters growing, as well as the length of time people are likely to be in rental properties, it is essential that this relationship is reformed to be more in keeping with community standards and expectations about our right to be safe and secure at home.

² CHOICE, National Shelter and the National Association of Tenant Organisations (2017) *Unsettled: Life in Australia's private rental market*

Improving Security of Tenure

No-grounds terminations

Abolishing 'no-grounds' terminations is fundamental to creating a more equitable rental framework. While it remains possible for a tenant to be evicted without a demonstrable cause, the ability of tenants to exercise their rights is significantly diminished. As a result, this is one of the key reforms that needs to occur in order to support other much-needed improvement to the rights of renters as part of this review process.

Renters deserve assurance that if they have not breached the terms of their lease agreement, their tenancy will not be terminated. Despite this, 8.5 per cent of the respondents to the *Make Renting Fair* survey reported that they had been evicted without reason.³

The current provision unjustly places renters in a deeply precarious position, establishing a systemic power imbalance between tenant and landlord. This power imbalance acts as a substantial deterrent for renters to make any requests of the property manager or landlord, or take any action which may inadvertently put their tenancy at risk. As a result, they are less willing to make requests or take action which may increase their health, safety or comfort.

This is apparent from the results of the *Make Renting Fair* survey, where 42 per cent of respondents said they were very concerned that making a request for repairs could mean they were evicted, with a further 11.2 per cent somewhat concerned.

These fears are not unreasonable. 'No grounds' terminations provide landlords with the ability to evict a tenant on the basis of retaliation and discrimination.

That provisions enabling 'no grounds' terminations do not belong in a modern and equitable rental system has been recognised in other jurisdictions in Australia, with Tasmania, Victoria and Queensland all having instituted or planning to institute provisions that prevent 'no grounds' evictions from taking place.

WACOSS supports Option B in section 2.1 of the discussion paper. 'No-grounds' terminations should be replaced with a list of prescribed reasonable grounds for eviction, which would provide landlords with adequate rights and protections. It is crucial that this list is exhaustive and not too broad in scope, in order to also provide adequate protections for renters. The legislation must recognise that a tenant's basic right to shelter and security takes precedence over a landlord's discretion to terminate a lease.

Fixed-term tenancies

Without appropriate mechanisms and protections in place, short fixed-term tenancies could be utilised by landlords to circumvent any reforms that restrict their ability to terminate leases without cause.

In a reformed and rebalanced rental system that better protects the rights of tenants, the desirability and usefulness of fixed term tenancies is substantially reduced. There may, however, be

³ For more details and data from the *Make Renting Fair* survey, see the submission made by the *Make Renting Fair* WA Alliance.

a limited range of circumstances where such arrangements do have a role, such as providing transitional housing as part of a support model.

As such, **WACOSS supports Option C in section 2.2** of the discussion paper, whereby they would only be permitted in limited circumstances, with appropriate grounds and timeframes developed to establish those circumstances in consultation with stakeholders.

Other

The current COVID19 pandemic demonstrates the need for clear powers that enables the State Government to institute a moratorium on all evictions when necessary.

The public health measures that have been necessary to reduce the spread of COVID19 have seen a number of businesses reduce staff or close entirely. Casual workers are unable to access sick leave or annual leave, despite potentially facing requirements to self-isolate or to be placed in quarantine. These events place considerable pressure on the ability of tenants to meet their rental payments, increasing the risk of evictions. Tenants that are evicted during such a crisis are much less likely to be able to undertake the kind of activities necessary to minimise transmission, particularly if they become homeless.

The WA Government has taken the important step of introducing a temporary moratorium on evictions for six months (with limited exemptions). While the current pandemic will pass, a permanent power should be established to enable the State Government to place an emergency moratorium on evictions so that it can quickly respond in the case of future crises. These powers could also be utilised during natural disasters or other extreme economic downturns that could result in market failure.

Rents, bonds and other charges

Rent increases

Western Australians living in poverty are the most likely to be living in housing that is in the worst condition, and as a result, often the most expensive to maintain. The risk of poverty is more than twice as high for households renting privately than home-owners with or without a mortgage. Poverty is the highest amongst public renters, though this is in part due to the fact that the tight eligibility requirements for public housing means that this group has some of the lowest incomes.⁴

Over late 2018 and early 2019, the *100 Families WA* collaborative research project conducted a baseline longitudinal survey with 400 families living in Perth, as part of developing an evidence base on poverty and social exclusion in Western Australia. Of these families, 17.3 per cent were homeless at the time of survey, 41.5 per cent were living in public or community housing, and 31.8 per cent were living in private rental accommodation.

31.3 per cent of these families reported that they could not pay their rent or mortgage on time at some point in the past year. 18.5 per cent said they did not have and could not afford a decent and

⁴ ACOSS (2018) [Poverty in Australia](#)

secure home. 16.3 per cent could not afford a home with doors and windows that are secure, and 5.9 per cent could not afford a separate bed for each child.⁵ For more information on the relevant findings from *100 Families WA*, please see the project team's submission to this review.

Research by the Bankwest Curtin Economics Centre (BCEC) found that Perth ranks as the least affordable city in Australia in terms of the typical housing cost shares paid by renters, at around 27 per cent of income. Further, around a fifth of WA's renters paid in excess of 40 per cent of income towards housing costs in 2015-16, compared with a national rate of 17 per cent. 10 per cent of WA renters were found to be paying at least half of their income in housing costs.⁶

Australian Housing and Urban Research Institute (AHURI) research has found that much of the growth in Australian housing supply has been in the mid-to-high price segments. This increase in the supply in these segments is not creating a 'trickle-down' effect into the low price segments by freeing up established housing stock.⁷

This lack of trickle-down is reflected in the findings of the WA Housing Industry Forecasting Group, which noted that, even during the period of 2017-18 where there were historically high levels of rental stock, "for those on the lowest incomes, conditions have not changed."⁸ With vacancy rates having significantly dropped, we have already seen that rents are increasing, which will increase the burden on low-income households and renters. WA rental housing is more expensive than it should be, particularly for low income households.

The more of their income that households must dedicate to covering housing costs, the less they will be able to spend on other essentials like food, energy and health. Quite simply, unaffordable rental is a drag on our economy, whereas improving affordability would have a stimulus effect on local spending. Unaffordable rental can also mean that any slight increases in rent can have a dramatic impact on a household's ability to stay in a property and maintain the important connections they have established throughout their local community.

The annual *Anglicare Rental Affordability Snapshot* takes a 'snapshot' of the rental market on a given day and examines whether the properties being advertised are both affordable for a range of different low income household types and whether those properties are appropriate for the composition of their household.⁹

The 2020 report found that *zero* percent of properties across Western Australia were affordable and appropriate for a single relying on the JobSeeker Payment. When the temporary COVID-19 supplements were factored in, this still only increased to *just 0.8* per cent in Perth and the North West, and 1.2 per cent in the South West and Great Southern.

⁵ Ami Seivwright and Paul Flatau (2019) [The 100 Families WA Baseline Report](#)

⁶ Bankwest Curtin Economics Centre (2019) [Getting Our House In Order?](#), BCEC Housing Affordability Report

⁷ Rachel Ong, Tony Dalton, Nicole Gurrán, Christopher Phelps, Steven Rowley and Gavin Wood (2017) 'Housing supply responsiveness in Australia: distribution, drivers and institutional settings', *Australian Housing and Urban Research Institute*, AHURI Final Report 281

⁸ Housing Industry Forecasting Group (2017) *Forecasting Dwelling Commencements in Western Australia 2017-2018*

⁹ Anglicare WA (2020) [Rental Affordability Snapshot – Western Australia](#)

For a single on the minimum wage, only 1.2 per cent of properties advertised for rent in Perth were affordable and appropriate. Due to slightly lower rents in the South West and the Great Southern, 3.5 per cent of properties in that area were affordable and appropriate, while only 1 per cent were in the North West.

The low level of accessible properties available to rent for low-income households, strongly indicates the likelihood that many of those households will be living in housing stress or housing that is not appropriate for their circumstances. This hardship is exacerbated for households in the North West, with substantially higher rental costs in the region.

The failure of rents in the bottom end of the market to adequately drop to a level that is approaching affordable for those in the lower income quintiles demonstrates that leaving the setting of rents to the vagaries of the market within a system that disempowers tenants is not resulting in socially desirable outcomes. Median rents have now increased to \$360 per week in Perth, which is the first increase in the median since January 2017.¹⁰ With rents now rising once again and vacancies fewer, the issue of affordability will become even more pressing.

High rental returns also fuel investment in the property market, pushing up the cost of owning a home, which both limits spending within the domestic economy and exposes it to the vagaries of the boom and bust cycle of property speculation. A more efficient and effective rental market capable of delivering affordable housing to all Western Australians would in turn support a more productive and inclusive society.

Further, it is difficult for tenants to challenge increases in rent. This is both because tenants fear that landlords will mark their attempts to do so against them, potentially leading to their eviction, and due to asymmetry of information – market data is far more readily accessible for landlords and property managers than tenants.

Limiting rental increases, therefore, is absolutely essential. **In relation to part 4.4 of the discussion paper, WACOSS supports Option C in the case of periodic tenancies**, which proposes that rental increases should be limited to no more frequently than two year intervals. In the case of fixed term tenancies, landlords should not be permitted to increase rent.

In response to part 4.5 of the discussion paper, WACOSS supports Option C, under which legislation would place a cap on all rent increases across the state. WACOSS proposes that the cap should be limiting increases to no more than the Consumer Price Index (CPI).

We recognise that there may be limited circumstances where it is reasonable for the rents to increase by more than CPI, such as when substantial improvements have been made to the property. In those circumstances, however, any proposed increase above CPI should have to be justified by the landlord to the State Administrative Tribunal.

The landlord should also be prevented from increasing the rent between the end of one tenancy and the start of another by more than CPI. This is particularly necessary if the status quo is maintained for either no-grounds terminations or the use of fixed-term tenancy arrangements, to prevent

¹⁰ REIWA (2020) [Perth rents increase for the first time since January 2017](#)

landlords terminating tenancies early in order to increase rents, or only offering short fixed-term tenancies.

As with terminations, the current COVID19 pandemic demonstrates the need for clear powers that enables the State Government to suspend rent collection when necessary.

While this is an unprecedented situation, it highlights a gap in the State Government's ability to intervene in the rental market in exceptional circumstances. With a range of businesses unable to operate during this time and so drastically restricting people's ability to access paid employment, many tenants face considerable challenges in meeting rental payments. The limitation that has been introduced to prohibit rent increases during the emergency is a welcome response. The State Government should be further empowered, however, to suspend rental payments for a period of time to facilitate a timely response in future crises.

Utility charges

The current situation where tenants are only responsible for the charges relating to the consumption of utility services supplied to the premises when the account is in the lessor's name, is entirely appropriate. As such, **WACOSS supports Option A in section 4.6** of the discussion paper, to maintain the status quo.

If the landlord has made the decision that they wish to retain the account in their name for whatever reason, it is reasonable that they should pay the charges associated with holding that account, as well as the charges related to supply.

As a result of not being the 'customer', tenants face difficulties in accessing payment arrangements, rebates or hardship provisions that would be available to them if the account was in their name. Requiring tenants to pay charges other than consumption creates an extra cost burden which they may be unable to receive any assistance for, and which they cannot choose to mitigate.

Further, in situations where the landlord is retaining the account in their name in order to benefit from solar rebates and feed-in tariffs, without passing on those benefits to the tenant, it would be profoundly inequitable to instead pass on supply and ancillary charges.

New South Wales and South Australia have time limits set out in legislation as to when bills for water usage charges have to be provided to tenants.

Under s 39 (2) of the *NSW Residential Tenancies Act 2010*,

A tenant is not required to pay the water usage charges if the landlord fails to request payment from the tenant within 3 months of the issue of the bill for those charges by the water supply authority.

This 3-month cap is also seen in the South Australian *Residential Tenancies Act 1995*, where s 73 (3) states that the tenant is not required to pay rates and charges for water supply if:

the landlord fails to request payment from the tenant within 3 months of the issue of the bill for those rates and charges by the water supply authority; or

the tenant has requested from the landlord a copy of the account for the rates and charges and the landlord has failed to provide the copy to the tenant within 30 days of the request and at no cost.

The NSW Act also states, in s 39 (3) that “A landlord must give the tenant not less than 21 days to pay the water usage charges.”

The clear rationale behind the inclusion of these provisions in their Residential Tenancies Acts is to protect tenants from being hit by sizeable bills as a result of the lessor failing to send through the bill in a timely manner. Time limits of this nature should also be considered for inclusion in the Western Australian Act.

Council rates

WACOSS supports Consumer Protection’s proposal in section 4.7 of the discussion paper to maintain the status quo whereby landlords cannot pass on any rates and charges to tenants. These are part of the costs associate with owning a property – a property which the landlord has decided to profit from by renting out. It is certainly not the case that the landlord is “subsidising the tenant’s living arrangements,” as the tenant is already paying the rent that forms the landlord’s profits from that investment (along with related tax deductions or negative gearing arrangements). That profit is what they have been able to acquire by virtue of their ownership of the property, something the tenant cannot do as the non-property owner, making it perfectly reasonable that the landlord would pay the property related taxes and charges.

The premises

Minimum standards

The lack of minimum standards in rental properties places the health and wellbeing of renters at risk. The fear of eviction can deter tenants from seeking repairs to the rental property from real estate agents and landlords. Due to the very low supply of genuinely affordable rental properties for those on the lowest incomes, as well as discrimination in the rental market, low income renters may be forced to compromise on housing quality. Minimum standards that must be met for all rental properties establish a clear baseline that can be easily understood by landlords and tenants.

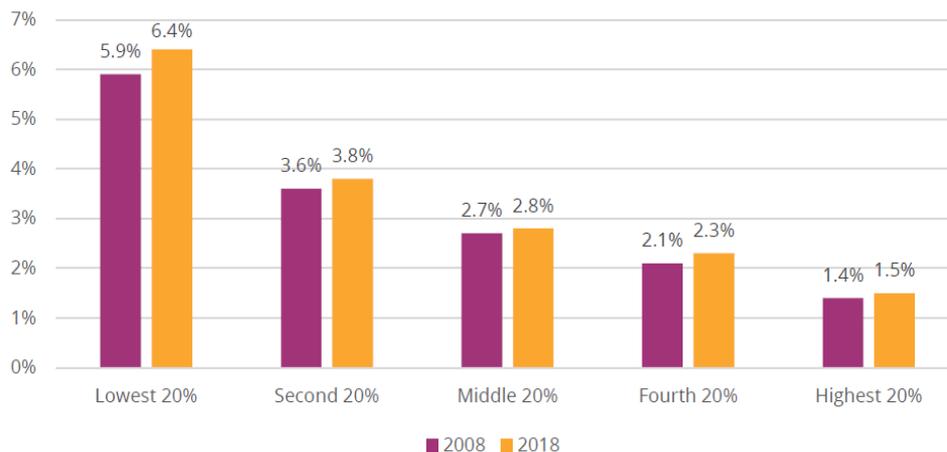
53 per cent of respondents to the Make Renting Fair survey reported they had issues with locks, doors and windows. 48.4 per cent had difficulties keeping property cool or warm, while 24 per cent reported that the property lacked a fly screen. 22.2 per cent had not been informed about safety issues connected to the address.

Households living in poor quality housing with inefficient appliances have limited capacity to reduce their exposure to extreme heat, and older households often underestimate their vulnerability to adverse health outcomes. Many aged pensioners put their health and life at risk in an effort to keep

energy bills down, leading to poorer wellbeing outcomes and rising health care costs. Infants and young children growing up in poor quality housing face poorer health and higher rates of chronic illness that can have developmental and lifelong impacts. Inadequate housing ultimately costs us all more as a community, through the associated burden of chronic disease.

Energy costs disproportionately impact households on the lowest incomes, as they spend a much higher percentage of their disposable income on energy bills and have little if any capacity to absorb additional costs.

**Electricity and gas expenditure as a percentage share of income
by disposable income quintiles (Australia-wide)**



Source: ACOSS and the Brotherhood of St Laurence (2018)

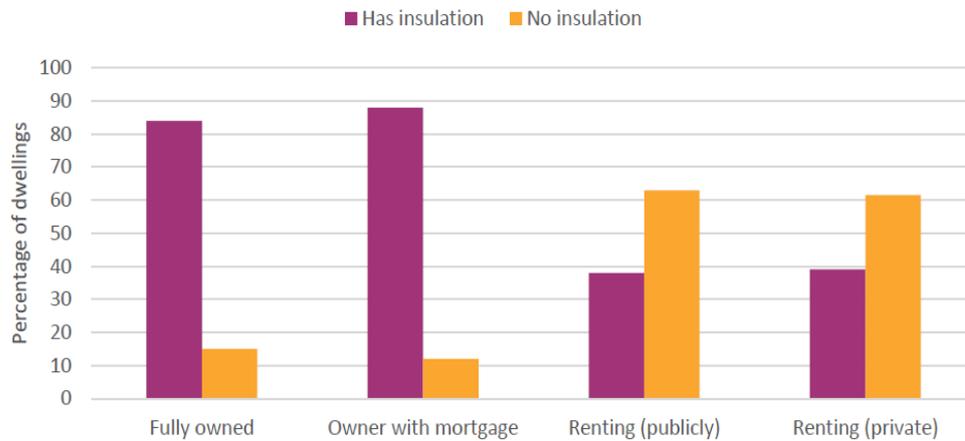
Home energy inefficiency is a key driver of utility stress and energy poverty for low income households. Common causes of energy inefficiency are little or no insulation; inefficient or faulty built-in heating, cooling and hot water devices; significant draughts caused by structural problems, such as broken windows and window frames, collapsing roofs, and holes in flooring; and a lack of window coverings.¹¹

The 2016 Bankwest Curtin Economics Centre *Energy Poverty in Western Australia* survey found that rental households were dramatically less likely to be insulated, meaning that those on low incomes were more likely to be using more power to regulate the temperature in their dwelling.¹²

¹¹ Make Renting Fair WA (2019) [Minimum Standards](#)

¹² Bankwest Curtin Economics Centre. (2016). [Energy Poverty in Western Australia: A Comparative Analysis of Drivers and Effects](#) (Research Report no. 2/16).

Percentage of dwellings with insulation in Perth 2009/10 (per cent)



Source: ABS. Cat. No. 4656-5, BCEC (2016) *Energy Poverty in Western Australia*

The Public Interest Advocacy Centre of New South Wales investigated residents who had been or were at risk of having their energy disconnected or water restricted, finding that renters were far more likely to be vulnerable to disconnection. 67 per cent of those who were disconnected, 60 per cent of those who were notified and 52 per cent of those who had been worried about disconnection were renting, compared with 32 per cent of all NSW residents.¹³

The lack of insulation and other energy efficiency measures in rental properties is fundamentally the result of the 'split incentive', where tenants get the benefit of lower energy bills, while property owners are the ones responsible for paying for it, and are unlikely to see any immediate benefit. In competitive rental markets they may be able to charge higher rents or they may see an improvement to the value of the property when they sell, but neither is guaranteed. Hence the reason why it is necessary to mandate standards for landlords to meet in order to be able to rent out their properties.

Empowering renters to make better choices about the properties they rent can be achieved through the mandatory disclosure of relevant information (for instance, as occurs in the ACT). However, in a tight rental market where renters may have limited options to choose from, improved information will not be sufficient to achieve tangible outcomes. As such, minimum standards need to be established to ensure tenants are able to access liveable, quality housing options (as are being progressively introduced in Victoria, Queensland and the ACT).

Section 10 of the *NSW Residential Tenancies Regulation 2010* sets out the water efficiency measures required for payment of usage charges by tenants. Landlords are only able to pass on water usage charges where the property meets those water efficiency measures. This is a sensible measure that should be included within the Western Australian legislation.

¹³ PIAC (2018) *Close to the Edge*, <https://piac.asn.au/wp-content/uploads/2018/11/PIAC-CTTE-Consolidated-Report-FINAL.pdf>

WACOSS supports Option B in section 5.1 of the discussion paper, whereby the RTA is amended so that minimum standards for rental premises, and the process for monitoring and enforcing those minimum standards, can be prescribed.

These minimum standards need to cover issues like deadlocks, hot and cold water, kitchens with working appliances, access to light in interior rooms, waterproofness, and being mould-free at the time of lease commencement, as well as energy and water efficiency features, such as insulation, window coverings, and efficient appliances.

Making modifications

For a tenant to be able to make a place a home and to address changes in their circumstances and needs they must be able to make simple modifications to their premises.

Where modifications are of a minor nature and do not impact the structural integrity of the property, it is unreasonable to require tenants to obtain permission from the landlord in order to make those modifications. Tenants should be permitted to make the minor modifications necessary to enhance the basic amenity of the premises, improve its energy efficiency or accessibility, or support their health.

As demonstrated in research published by the Bankwest Curtin Economics Centre, the ability to make modifications is essential for enabling people to age-in-place. While 45 per cent of older renters surveyed as part of this research reported that landlords were supportive of modifying properties to make them appropriate for later life without increasing rents, this was not the universal experience. 7 per cent reported that their rent had been increased after the changes, while 10 per cent had their requests refused.¹⁴ Allowing modifications can dramatically reduce the public cost and improve life outcomes for seniors otherwise forced to enter aged care early, as often happens after they have been hospitalised for a fall at home.

WACOSS supports Option B in section 5.2 of the discussion paper, whereby the RTA would be amended 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, or to improve disability access and ageing in place, and to make any other modifications with the lessor's consent, which cannot be unreasonably withheld.

Where modifications have been necessary to support a tenant's health, safety, security or efficient energy consumption, or to improve the accessibility of a property for ageing or disability, however, tenants should not be required to remove those modifications or cover the cost of their removal. It should be presumed that modifications of this nature improve both the marketability and value of the home.

Consideration should be given to requiring landlords to make certain modifications themselves to improve the accessibility and safety of the leased premises where a tenant has received formal health advice, such as from an occupational therapist.

¹⁴ Helen Hodgson, Amity James and Eileen Webb (2018) *Older Renters in the Western Australian Private Rental Sector*, BCEC Research Report No 19/18, Bankwest Curtin Economics Centre

Pets

Research has linked pet ownership to higher levels of social connections, as it facilitates contact with neighbours and trigger conversations.¹⁵ For many people in private rental accommodation, this enabler of social connection is denied to them by the terms of their lease.

Tenants should be able to keep a suitable pet in their home without requiring permission from the landlord to do so.

The ability of landlords to charge an extra 'pet bond' is unreasonable and should be removed from the WA legislation. Pet bonds are an unnecessary extra cost imposed on tenants and in particular those on low incomes for whom their pets provide an important support for their wellbeing. WACOSS is not aware of any evidence indicating that the keeping of pets in a rental property genuinely generates the need for any more repairs or cleaning, and so higher costs for landlords, that cannot be covered by the money accessible to them under the standard bond.

Termination of tenancy agreements

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.

Tenants are no more able to predict their future than anybody else, but are penalised at a time they may be experiencing significant personal or financial stress, and are needing to be able to change their accommodation circumstances.

These break-lease costs act as yet another barrier for tenants to enforce their rights, as they may feel they have no option but to accept the situation in which they find themselves, as they cannot afford the costs associated with breaking the lease early.

Further, the current arrangements are a barrier to tenants being able to accept longer leases, due to the potentially substantial liabilities they may face.

They are also profoundly inequitable, as landlords are able to terminate tenancy agreements with little to no consequence – they are not required to provide the former tenant with payments to cover their rent for a period of time or to provide them with shelter (ie. another property or put them up in a hotel) until such time as they are able to secure a new tenancy.

Should they not be removed altogether, provisions should be introduced to waive break-lease payments where they would result in financial hardship. They should also be waived when a landlord has refused or cannot make modifications to the property that have been requested by a tenant with a disability or an older person to support their continued occupancy.

¹⁵ Australian Institute of Health and Welfare (2019) *Australia's welfare*, www.aihw.gov.au/reports/australias-welfare/social-isolation-and-loneliness

WACOSS supports Option B in section 6.4 of the discussion paper, whereby the RTA is amended to allow tenants to terminate a fixed tenancy agreement in specified circumstances without incurring break lease fees.

Dispute resolution

Disposal of Security Bonds

A presumption of 'no fault' should be established in relation to the bond money, it is automatically returned to the tenant, unless there is a substantiated claim made against it. If a bond claim ends up disputed before a mediator, the onus should be on the agent or landlord to provide evidence to make a claim against it.

Resolving other disputes

Residential tenancy matters should be moved out of the courts and into a tribunal that has a greater focus on mediation, with reported decisions for a transparent system. The current process whereby tenancy matters are addressed in the Magistrates Court is clearly not functioning in the best interests of tenants, landlords or any aspiration to achieve a conciliated outcome.

The process should begin with facilitated mediation between the parties, with disputes to be referred on to a tribunal where mediation does not succeed. Any decision by the tribunal should be reported for transparency and consistency. There must also be a right to appeal in tenancy matters that involve evictions or significant financial claims.

Boarding and Lodging

It is not desirable to have the boarding and lodging sector, which is housing some of the most vulnerable people in the population, to be so unregulated. Western Australia is the only jurisdiction in the country that has not incorporate amendments into existing tenancy legislation or introduced new legislation to afford boarders and lodgers the necessary rights and protections.

WACOSS supports Option B in section 8 of the discussion paper, whereby specific new laws based on the rights and responsibilities applicable to landlords and tenants under the RTA would be developed that are suited to the requirements of the boarding sector.

Other

Public Housing

Discriminatory provisions in the Residential Tenancies Act need to be removed to ensure that public housing tenants are entitled to the same rights and protections as renters in the private market.

As identified by the WA Equal Opportunity Commission, public housing tenants in many cases are “subject to a harsher regime than tenants in the private market.”¹⁶ The Commission notes the ways in which this is enabled by the RTA, with the use of section 75A in particular applying “a stricter standard to public housing tenants than non-public housing tenants.” The Commission also notes that under section 75A, public housing tenants are denied the statutory protections to notice which other tenants are entitled to by the RTA.

With public housing tenants at significant risk of homelessness should they be evicted, it is manifestly unjust to subject them to such a punitive approach. Public housing tenants deserve the same level of basic rights and protections as any other renter, if not more as they may be navigating the system while dealing with the impacts of poverty, illness, trauma and other challenges.

If you would like to discuss this submission further, please contact the WACOSS Research and Policy Development Leader Chris Twomey at chris@wacoss.org.au or 6381 5300.

Yours sincerely,

A handwritten signature in black ink that reads "L. Giolitto". The signature is written in a cursive, flowing style.

Louise Giolitto
Chief Executive Officer
WACOSS

¹⁶ Equal Opportunity Commission (2013) *A Better Way*, www.eoc.wa.gov.au/docs/default-source/publications/Reports-and-reviews/a-better-way-report.pdf