

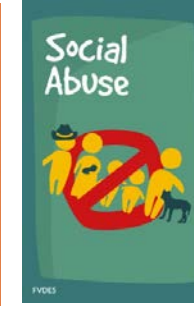
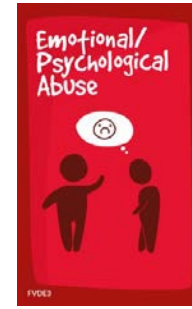
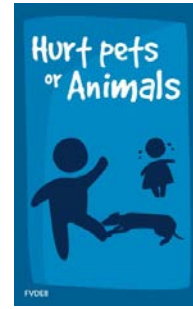
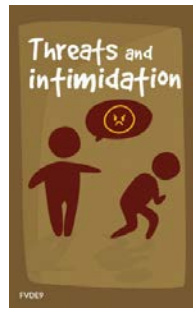


Family violence prevention – changes to WA tenancy laws

Presented by
**Consumer Protection
to Financial Counsellors**
August 2018

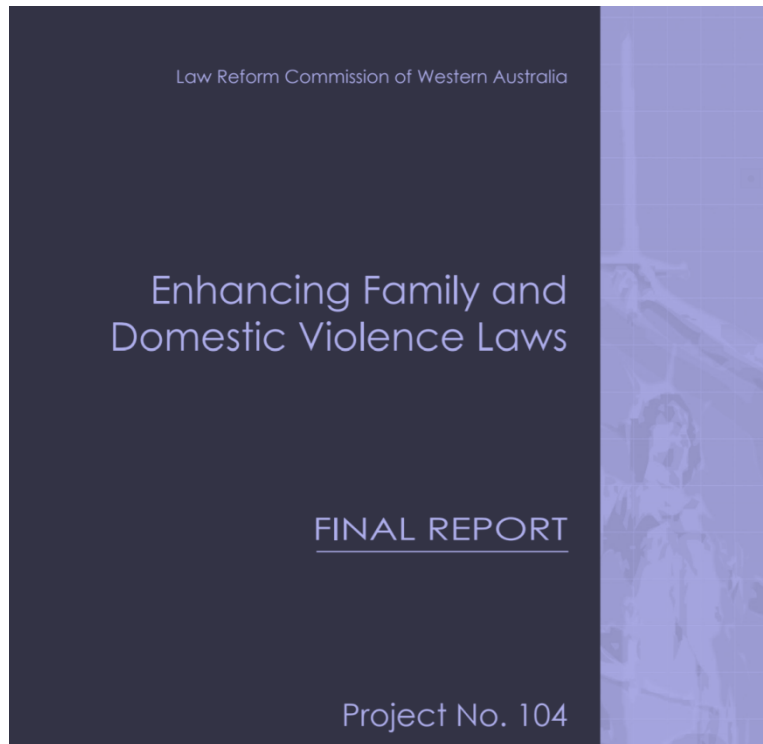


- What is changing?
 - Residential Tenancies Legislation Amendment (Family Violence) Bill 2018 is in Parliament
 - Amending the *Residential Tenancies Act (RTA) 1987* and the *Residential Parks (Long-stay Tenants) Act 2006*



Thanks to **Legal Aid WA** for allowing us to use Blurred Borders cards

- Where have these changes come from?
 - The Law Reform Commission of Western Australia





Statistics on family violence

1

40 per cent

of all requests for homelessness services in WA are from people leaving family violence.

2

33,000+

reported incidents of family and domestic violence (FDV) to WA Police in 2016-17.

3

88 fatalities

linked to family and domestic violence reviewed by the WA Ombudsman 2012-2017.

4

\$22 billion

is the annual national spend on health, social welfare and administration costs associated with FDV.

- New options for tenants affected by FDV
 - Give 7 days notice to lessor and leave rental
 - Apply to court to have perpetrator removed from tenancy agreement and remain in the home



- Other key changes

- The Court will be able to assign liability for damages or unpaid rent to the perpetrator.

- Tenants affected by FDV will be able to:

- change locks without permission; and
 - make security upgrades at their own cost.

- Restriction on listing tenants, who are victims of FDV, on tenancy databases.



FVPL1



FV101



FV02

- Changes in detail

- What is family violence? (Section 3 of the RTA)

- Family violence has the meaning given in the *Restraining Orders Act 1997* section 5A(1).

- Family violence is a reference to:

- violence, or a threat of violence, by a person towards a family member of the person; or

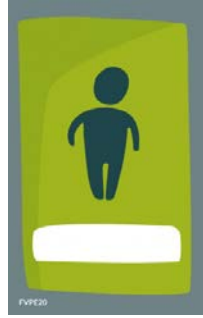
- any other behaviour by the person that coerces or controls the family member or causes the member to be fearful.



- Changes in detail – family is 2 persons:
 - who are, or were, married to, in a de facto relationship with, or related to, each other; or
 - one of whom is a child who ordinarily resides, or resided, regularly resides or stays, or resided or stayed, with the other person; or
 - one of whom is, or was, a child of whom the other person is a guardian; or
 - who have, or had, an intimate personal relationship, or other personal relationship, with each other.



- Continued ... Who is a family member?
 - **Other personal relationship** means
 - a personal relationship of a domestic nature in which the lives of the persons are, or were, interrelated and the actions of one person affects, or affected, the other person.
 - **Related** means
 - a person is related to that person taking into consideration the cultural, social or religious backgrounds of the 2 persons; or
 - related to the person's spouse or former spouse or de facto partner or former de facto partner.

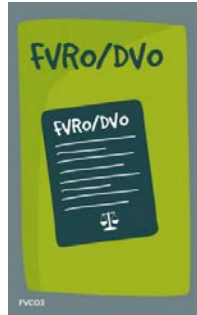


• Changes in detail – family violence behaviour

- Any of the following against the family member:
 - Assault or sexual assault or sexually abusive behaviour
 - Stalking or cyber stalking or repeated derogatory remarks
 - Damaging or destroying the family member's property
 - Causing death or injury to the family member's animal
 - Denying financial autonomy or withholding money needed to meet reasonable living expenses of dependent family member or their child
 - Preventing social connections or kidnapping or depriving liberty
 - Distributing, publishing or threatening to distribute or publish intimate personal images
 - Exposing children to any of these behaviours



- Changes in detail – victim wants to leave
 - Section 71AB
 - Tenant gives lessor prescribed notice of termination
 - Notice must be accompanied by one of the following:
 - a DVO;
 - a family court injunction or application for a family court injunction;
 - 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 a charge; or
 - a report of family violence, in a form approved by the Commissioner for Consumer Protection.



• Report of family violence

– Who can sign?

- Doctor
- Psychologist
- Social worker
- Police officer
- Manager of a women’s refuge
- Prescribed person(s) / class of



Section 71AB(2)(d) Residential Tenancies Act 1987 and section 45A(2)(d) Residential Parks (Long-stay Tenants) Act 2006

Section 1 – Tenant Information

First Name	Other Name/s	Surname/Family Name	
Address of the rental premises		Suburb	Postcode
Telephone Number		Email Address	

Section 2 – Tenant Declaration

I declare the information about family and domestic violence I have provided to the Certified Professional listed below is true and accurate to the best of my knowledge and was provided in good faith.

I understand that it is an offence to make a fraudulent declaration, and that I may be liable for a penalty if found guilty of this offence.

Name Date Signature

Section 3 – Certified Professional Information

Name of Authorised Professional		Agency Name or Stamp (if applicable)
Occupation / Position		
Business Address		
Suburb	Postcode	

Section 4 - Certified Professional Declaration

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

I declare I have assessed the information provided by the Tenant and have determined that he/she, or their dependant(s), has been or is likely to be subjected or exposed to family violence during the tenancy period.

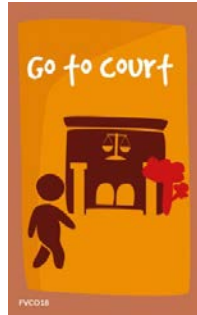
Name Date Signature

A certified professional should sign the above declaration only after assessing the tenant and the tenant’s circumstances, and should make the determination based upon the accepted standards of their profession and relevant knowledge and professional judgement.

- Changes in detail – after victim gives notice
 - Section 71AB and 71AD
 - Victim tenant’s liability ceases at the end of the notice period (default seven days)
 - Lessor must give a copy of the termination notice (but not the attached documents) to any co-tenants
 - Co-tenants have seven days to decide whether to remain in the tenancy or to leave
 - If leaving, co-tenants give 21 days’ notice



- Victim wants to remain in the tenancy
 - Section 71AE
 - Tenant applies to court to have perpetrator's interest in the tenancy agreement terminated
 - Court must be satisfied that:
a family violence order is in force against the perpetrator; or the perpetrator has, during the period of the tenancy, committed family violence against the victim tenant or their dependent.
 - Tenant applies using Magistrate Court **Form 12**
 - The lessor and any co-tenants must be named as respondents on the application.



- Factors the court must take into account
 - Section 71AE
 - best interests of any child ordinarily resident at the premises;
 - 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;
 - effect the order might have on the lessor and any tenants other than the protected tenant;
 - effect the order might have on any pets kept on the premises;
 - 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.



• Assigning liability for damages & debt



– Section 17B

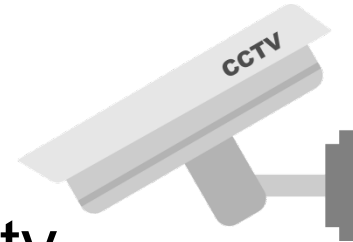
- Ordinarily, co-tenants are jointly and severally liable for damage and debt arising out of the tenancy agreement
- Either a departing tenant or a remaining tenant can apply to the court for an order to determine each tenant's liability for damages and any debt arising out of the tenancy agreement
- Use a **Form 12** to apply – all co-tenants and the lessor should be listed as respondents to the action
- The Court can order:
 - who is to pay what to whom; and
 - disposal of part or all of the bond – includes releasing part of the bond to victim tenant if they're leaving and are held not to owe any debt to lessor.

- Changing locks

- Tenant is allowed to change locks without first seeking the permission of the lessor either:

- after the perpetrator's interest in the tenancy agreement has been terminated; or
 - if it is necessary to prevent family violence that the tenant suspects on reasonable grounds is likely to be committed against the tenant or their dependent.
 - Tenant must provide lessor with a copy of key within 7 days
 - Lessor is prohibited from giving a copy of a key to anyone the tenant has instructed them in writing not to give the key to





- Security upgrades

- Tenant allowed to make prescribed security upgrades to premises without lessor's permission:

- after perpetrator's interest in tenancy agreement is terminated; or
- if it is necessary to prevent family violence that the tenant suspects on reasonable grounds is likely to be committed against the tenant or their dependent.
 - Cost of repairs is borne by the tenant
 - Alterations must be made by a qualified tradesperson
 - Must comply with strata by-laws, and have regard to age and character of the house
 - Tenant must restore premises at end of tenancy if lessor asks



- ## Tenancy databases

- Section 82J of the Act currently allows a tenant to apply to the court to have a tenancy database listing about them wholly or partially removed, amended in a stated way or not listed in a database if the listing is unjust in the circumstances.
- The Amendment Bill makes clear it is unjust to list a person on a tenancy database if the reason for the listing arises out of them being subjected or exposed to family violence.
- Application to the court would be made on a **Form 12**.

- Want more information?
 - We have a dedicated web page
www.dmirs.wa.gov.au/familyviolence

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