

Please note, although the following information is specifically aimed at regional real estate professionals who have not received an agency visit, this information may be of interest to individuals who fall outside this category.

New residential tenancy laws

All real estate practitioners (**including sales representatives**) need to be mindful of how the forthcoming changes to the residential tenancy law will impact upon the way they do business.

Amendments to the *Residential Tenancies Act 1987* (RT Act) and *Residential Tenancies Regulations 1989* (the Regulations) will come into force on 1 July 2013.

The information below will help members of the real estate industry familiarise themselves with the amendments. The Department will be publishing detailed information on some of the more complex changes to the RT Act in a forthcoming e-Bulletin.

The Department encourages agents to:

- ensure all relevant staff are adequately trained and familiar with the amendments;
- provide their clients (landlords and tenants) with information on how they are affected by the amendments;
- identify how the amendments apply to existing residential tenancy agreements; and
- to review their office systems and procedures to ensure compliance with the amendments.

It is also important that staff involved in the sale of a tenanted home are aware they must negotiate a convenient time with the tenant for prospective purchasers to visit prior to issuing a written notice, or at least get consent from the tenant at or immediately before the time of entry. The tenant will also have the right to remain upon the premises during the visit.

Please find attached a document which highlights the major changes to the RT Act and Regulations.

Useful links:

[Notices & forms](#)

[Information for landlords](#)

[Information for tenants](#)

[Information for Dept. of Housing Tenants](#)

[Frequently asked questions: Existing leases & how the new laws apply](#)

[RTA Comparison - An overview of the key changes to the Act including rationale](#)

[Amended Residential Tenancies Act 1987](#)

[Amended Residential Tenancies Regulations 1989](#)

[E-Bulletin Archive](#)

Should you wish to discuss any aspects of the amendments to the RT Act and Regulations, please contact Proactive Compliance on (08) 9282 0874 or email

[**Proactive.Compliance@commerce.wa.gov.au**](mailto:Proactive.Compliance@commerce.wa.gov.au). For general tenancy advice or other consumer protection queries, please call **1300 30 40 54**.

Changes to the *Residential Tenancies Act 1987*

NB The information contained in this presentation is an overview of the major changes to the *Residential Tenancies Act 1987* (the Act). It does not include every change that will apply from 1 July 2013. See State Law Publisher at www.slp.wa.gov.au for the complete amended Act after the implementation date.

EXISTING	NEW CHANGES
The term owner is used	The term owner will be replaced by the term lessor which includes the owner and a 'head tenant'.
	Property Manager = Licensed Real Estate Agent. The licensed agent, rather than the property manager, will become responsible under residential tenancies law.
	The definition of 'tenant' now includes where the context requires a prospective tenant or former tenant.
BONDS	
Tenancy bonds – choice of REBA tenancy bond trust account, any financial institution, Bond Administrator	Following commencement of the new Act, all new security bonds must be lodged with the Bond Administrator as soon as practicable, and in any event, within 14 days of being received (s.29)(4)(b).
	Existing bonds to be transferred after renewing a tenancy. All bonds must be transferred to the Bond Administrator within 18 months of the new Act commencing.
	Department of Housing (DoH) will be exempt from the 18 month transition for a period of time however all new DoH bonds must be deposited with the Bond Administrator.
Security bonds can be increased every 12 months where there has been an increase in rent	Security bonds can be increased every 6 months if there has been an increase in rent (s.31).
	Pet bond now applies to any pet capable of carrying parasites that can affect humans but does not apply to guide dogs. (s.29(8))
	Tenants must not be asked to sign a bond disposal form unless the residential tenancy agreement to which the bond relates has ended and any amount of the security bond to be paid to the lessor and/or the tenant is clearly stated on the form.
NEW TENANCY AGREEMENTS	
Agents' / landlords' own tenancy agreement	A prescribed tenancy agreement must be used if there is a written tenancy agreement between the parties. The prescribed tenancy agreement is available free from the Department of Commerce website.
Copy of the tenancy agreement to be provided at the time it is signed and an executed copy provided within 21 days	Copy of the tenancy agreement must be provided to the tenant at the time it is signed, and a copy provided to the tenant signed by all parties within 14 days (s.54).

PROPERTY CONDITION REPORTS (PCR)

Agents' / landlords' own PCR (not compulsory)

Prescribed – 2 copies must be provided to tenant within 7 days of the tenant moving in (s.27C). The PCR must contain prescribed content which is available from the Department of Commerce website.

Tenant has a further 7 days to mark any disagreement/s on the PCR and return copy to the lessor.

If the tenant does not return the PCR, the tenant is taken to have accepted it as an accurate record of the condition of the property.

In the event of a disagreement it is understood that the parties do not agree and the PCR is not conclusive of the condition of the property. As is currently the case, a Magistrate may look at information other than the PCR to determine the condition of the property.

At the conclusion of the tenancy

The lessor must, as soon as practicable and within 14 days:

- Conduct an inspection of the residential premises.
- Prepare a final report describing the condition of the premises.
- Provide a copy of the report to the tenant as soon as practicable and in any event within 14 days.

The tenant must be given a reasonable opportunity to be present at the final inspection.

Option fee amount at discretion of agent

Option fee capped (s.27).

Weekly Rent of the Property	Location of the Property	
	Above 26 th parallel of south latitude	Below 26 th parallel
\$500 or less	\$50 maximum	\$50 maximum
More than \$500 and less than \$1200	\$100 maximum	\$100 maximum
\$1200 or more	\$100 maximum	\$1200 maximum

Option fee must be refunded by cash or EFT as soon as possible and at the latest within 7 days of the decision to refuse the application.

Amount must be applied towards the rent or repaid in cash to the tenant who succeeds in their application.

RENT	
	<p>If the method of payment of rent is not stipulated in the tenancy agreement, tenants can pay their rent in the form of cash, cheque, or EFT (s.34A).</p> <p>If a fixed-term tenancy agreement is due to end and a new residential tenancy agreement is signed with the tenants for the same property, <i>the rent must stay the same for the first 30 days</i> (s.31B).</p>
Rent variations by notice in writing to the tenant.	<p>Rent variations to be by notice in a form approved by the Minister for Commerce (s.30).</p> <p>Fixed-term agreements must <i>stipulate how much the rent will be increased by or the method of calculating the increase</i>.</p> <p>Where rent payable is calculated by reference to the tenant's income, notice is only required for a change to the method of calculating the increase (s.31A).</p>
A tenant can make an application to the Court for an order declaring the rent is excessive on the grounds that there has been a reduction in chattels and/or facilities, or the owner was motivated to increase rent to terminate the tenancy (s.32). An application can be made despite the fact the tenant has paid, or agreed to pay, the rent.	<p>If the tenant has received a notice of an increase in rent, or there has been a significant reduction in chattels or facilities, the tenant has 30 days to seek an order about excessive rent. An application can be made despite the fact the tenant has paid, or agreed to pay, the rent (s.32).</p>
Abandoned documents	<p>If the tenant leaves behind important documents (eg official documents, photographs and correspondence) the lessor must take care of them for 60 days (s.80A). The lessor must take reasonable steps to notify the tenant. The tenant may reclaim the document if they pay reasonable costs.</p> <p>After 60 days, the lessor may destroy the documents. If the lessor destroys a document, they can make an application to the court for payment for reasonable costs from the Rental Accommodation Account.</p>
Abandoned premises – owner applies to the Court for an order declaring the tenant has abandoned the premises (s.77)	<p>Reasonable grounds for abandonment – tenant has failed to pay rent and at least one of the following:</p> <ul style="list-style-type: none"> • uncollected newspapers or mail; • reports from neighbours indicating abandonment; • absence of household goods; and/or • disconnection of gas/electricity/telephone. <p>24-hour written notice for abandonment of premises – If tenant does not respond in 24 hours the lessor can enter to inspect and secure the premises. This can be followed by a notice of termination or court order.</p> <p>Termination of agreement if premises abandoned s.76A – If tenant does not respond to written notice within 7 days the tenant is taken to have abandoned the premises. Tenant can apply to the court to dispute the notice within 7 days, or for compensation within 28 days (s.76B).</p>

DISPUTES	
	Disputes between tenants about tenancy agreement debts can go to Court (s.17A).
Magistrate's discretion regarding property manager representing the landlord.	Lessors can now be represented in Court by a property manager (licensed agent) (s.22). The Magistrate continues to inform themselves as they see fit in proceedings (s.21).
Representation in Court by not-for-profit advocates at the Magistrate's discretion – very rare.	<u>Both</u> tenants and lessors can be represented by a not-for-profit body acting as an advocate [s.22(2)(b)].
	If this applies and if the parties do not agree on the PCR and there is a dispute at the end of the tenancy, the Magistrates Court may look at other evidence (s.21).
URGENT REPAIRS	
Tenant must give notice to owner of the repair and intention to incur expense. Owner shall compensate tenant for any reasonable expenses incurred by the tenant in making urgent repairs. Examples of urgent repairs included in Schedule 2.	<p>Tenant shall notify the lessor as soon as practicable about the urgent repair, and the lessor shall ensure the repairs are carried out as soon as practicable.</p> <p>Anything that exposes the tenant to injury, damage or undue hardship, including loss of essential services, must be arranged (not completed) to be fixed by the lessor within 24 hours. Any other urgent repairs need to be arranged within 48 hours (s.43). A list of essential services for the purpose of s.43 is attached.</p> <p>If, within the prescribed period, the tenant cannot contact the lessor, or the lessor fails to make arrangements for the repairs to be carried out as soon as practicable, the tenant may arrange for the repairs to be made to the <u>minimum extent</u> necessary with a suitable repairer. The lessor must reimburse the tenant for any reasonable costs. If the lessor is not contactable or fails to make the necessary arrangements for essential repairs, the tenant can arrange a suitable repairer to make repairs and seek compensation as soon as possible where tenant sees to repairs (s.43).</p>
GENERAL TERMS	
Quiet enjoyment	
The owner shall take reasonable steps to ensure the tenant's quiet enjoyment (s.44).	In addition to current obligations, if the tenant's quiet enjoyment is breached, the Department of Commerce can take action and a fine can be imposed (s.59E).
Lessor's right of entry	
Owners right of entry 7–14 days' notice to be given (s.46).	Before giving notice of entry, the lessor or property manager must make a reasonable effort to negotiate a suitable time and day with the tenant.
	<p>Notice must indicate before or after 12 noon at a minimum. Specific time or timeframe also reasonable. Reasonable time is now defined (s.46)</p> <ul style="list-style-type: none"> • <i>between 8.00 a.m. and 6.00 p.m. on a weekday; or</i> • <i>between 9.00 a.m. and 5.00 p.m. on a Saturday; or</i> • <i>at any other time agreed between the lessor and each tenant.</i>
Owners right of entry – with notice – not more than every 4 weeks.	Maximum 4 routine inspections in any 12 months (s.46).

	<p>Inspection no longer allowed when collecting rent. The lessor must compensate the tenant if damage is caused to the tenant's goods during inspections.</p>
SECURITY	
<p>Owner shall provide and maintain locks necessary to ensure reasonable security (s.45).</p> <p>Reasonable security is not defined</p>	<p>What is required to achieve a reasonable level of security with a lead-in period is in the Amendment Regulations published in the Government Gazette (s.45). The means reasonable level of security is defined. These are:</p> <ul style="list-style-type: none"> • main entry door – a single cylinder deadlock (if there is a double cylinder deadlock or lockable security screen compliant with Australian standards already fitted, retrofitting of a single cylinder deadlock is not required); • all other external doors – a deadlock or, if a deadlock cannot be fitted, a patio bolt lock or a key lockable security screen to Australian standards; • exterior windows – must be fitted with a lock that prevents the window from being opened from outside. This does not have to be a keyed lock (if there are window security screens compliant with Australian standards already fitted, retrofitting of window locks or latches is not required); and • external lighting – a light at the main entry that can be operated from the inside. <p>The requirements for locks to entry doors and lockable windows do not apply where the door or window is situated on the second storey or above in apartments and multi- storey homes.</p> <p>Exemptions will apply to properties listed on the State Heritage Register and to rural properties. In these instances, the requirement will remain for a reasonable level of security to be maintained.</p>
LOCK OUTS	
<p>Maximum penalty \$4,000</p>	<p>Maximum penalty for lock outs by lessor or tenant increased to \$20,000 (s.59F).</p>
END OF FIXED-TERM TENANCY	
<p>Automatically terminated at end of fixed-term or can 'roll-on' into a periodic tenancy.</p>	<p>Does not terminate at the end of the fixed term unless either party gives the other a minimum of 30 days' notice of intention not to renew the tenancy agreement. If both lessor and tenant give a notice specifying different days, the day that is the earlier of the 2 days is taken (s.70A). After the expiry of the fixed-term, the notice for a periodic tenancy will apply.</p>
CONTRACTING OUT	
<p>Allowed under certain sections and continues to have an effect for the life of that existing agreement (s.91).</p>	<p>Is <u>prohibited</u> in all <u>new</u> agreements commencing after the implementation of the amended Regulations.</p>
HOME OPEN	
	<p>The tenant is entitled to be present during home opens (s.46(6)).</p>
	<p>The lessor is liable for any damage to the tenant's goods on the premises when the lessor is exercising a right of entry (s.46(8)).</p>

HOME SALE - previous owner remains as tenant	
Previously when a house was sold and the outgoing owner stayed on as a tenant for a period of time after settlement the RTA did not apply.	The RTA will apply if the previous owner remains as a tenant for a month or longer in a house that has sold and settled, or if a new owner moves in a month or more prior to settlement (s.5(2))
MORTGAGEE FORECLOSURE	
	Mortgagee foreclosures – 30 days’ notice to vacate must be provided by the mortgagee to the tenant after right of possession granted by an appropriate Court (s.80). No rent may be charged to the tenant during the 30 days following the notice.
INFRINGEMENT NOTICES	
Infringement notices.	Remain but now have longer timeframes (s.88A).
RESIDENTIAL TENANCY DATABASES	
	Information systems used to collect and store information about tenants for use by members.
	Files kept by lessors for internal use <u>are not</u> databases recognised by the legislation.
	Notice now has to be given to prospective tenants of all databases used (even if it’s not intended to use them on this occasion) (s.82C).
	If the lessor discovers the tenant is listed they must notify the tenant (s.82D).
	Only tenants named on the tenancy agreement can be listed on a tenancy database (s.82E).
	Tenants can only be listed on a database after the tenancy agreement has ended. Listings can only be made for one, or both, of the following reasons: <ul style="list-style-type: none"> • the tenant has vacated owing an amount more than the rental bond for a breach of the tenancy agreement, which is still outstanding at the time of the listing; or • the Court has made an order terminating the tenancy agreement (s.82E).
	The listing must include the reason for being included (s.82E).
Types of listings s82E	
	The lessor or property manager cannot list a tenant on a tenancy database unless they have advised the tenant in writing and given details of the proposed listing, or taken reasonable steps to try to advise them.
	The tenant must be given at least 14 days to object to the listing.

Ensuring quality of listings (s82G and s82H)	
	A lessor or property manager must advise a database operator within 7 days if a listing is out of date, inaccurate or ambiguous.
	A copy of such notice must be kept by the lessor / property manager for 12 months.
	The database operator must make the required amendments / deletions within 14 days.
Disputes about listings (s.82J)	
	A tenant who believes that a listing is incorrect, out-of-date or unjust can apply to the court if they cannot get it removed or amended by the lessor / property manager (a form 12 must be used).
	Such action will be against the lessor / property manager.
When listings must be removed (s.82K)	
	All listings older than 3 years must be removed from a database.
	Also when a minor is listed and they have now turned 18 years of age.
	Listings under 3 years must also be removed if they are out of date, eg: <ul style="list-style-type: none"> • where the amount owed above the bond has been repaid to the lessor within 3 months; or • where a termination order obtained from the Court has been successfully appealed.

URGENT REPAIRS (section 43)

Urgent repairs are those that are not an essential service but if left unattended are necessary to avoid the risk of injuring a person, causing property damage or causing the tenant undue hardship or inconvenience.

In relation to urgent repairs necessary for the supply or restoration of a service, which are prescribed in the Regulations as an **essential** service, an appointment for repair must be **arranged** within 24 hours (burst water service, gas leaks or dangerous electrical faults). Any other urgent repairs need to have an appointment **arranged** within 48 hours.

Essential services for the prescribed for s.43 of the Act are: electricity, gas, a functioning refrigerator, (but only if it is provided with the premises), sewerage, septic tank or other waste water management treatment; water supply (including hot water).

If the lessor is unable to be contacted during the above timeframes, or fails to make the necessary arrangements for urgent repairs as soon as practicable, the tenant can arrange a suitable repairer to make **minimum** repairs.

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