Government of **Western Australia**
Department of **Mines, Industry Regulation and Safety**

Decision Regulatory Impact Statement

A review of the *Residential Tenancies Act 1987* (WA)

January 2022

REVIEW OF THE RESIDENTIAL TENANCIES ACT 1987 (WA)

DECISION REGULATORY IMPACT STATEMENT

This Decision Regulatory Impact Statement (D-RIS) has been prepared in compliance with the Western Australian (WA) Government's requirement for Regulatory Impact Assessment.

The purpose of this D-RIS is to recommend preferred options for reform of the regulation of residential tenancies in Western Australia.

Every care has been taken to ensure accuracy in the preparation of this paper. The contents do not constitute legal advice, legal information, or government policy. This paper should not be used as a substitute for a related Act or professional advice.

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Executive summary

The *Residential Tenancies Act 1987* (WA) (RTA) is the law that regulates the legal relationship between tenants and lessors in Western Australia.

The current review of the RTA commenced in 2019, with the aim of examining the lifecycle of a tenancy, from the lead up to its commencement through to its conclusion. The intent is to improve the RTA by bringing it into line with the modern residential tenancy landscape, improving security of tenure for tenants and ensuring beneficial outcomes for both lessors and tenants.

This Decision Regulatory Impact Statement (DRIS) represents the first phase of proposed reforms in the current review of the RTA. The proposals for change are intended to prioritise the first steps in improving security of tenure, reforming dispute resolution processes and other reforms that underpin improvements needed to help the Western Australian rental market to adapt to the evolving landscape.

The remaining issues from the review will be progressed as part of a subsequent phase of reforms.

Changing landscape

The Western Australian rental sector is experiencing substantial change. People are now renting for longer. Where once people largely rented as an option while saving for a deposit to buy their first home, many are now renting as it is the only option available to them.[1] There are also indications that some households, particularly singles and couples, increasingly view the private rental sector as a more flexible housing arrangement that suits their lifestyle.[2] The rental premises is potentially a long term home for many renters.

An increased number of families and older Australians are now in the rental market. The number of older Australians renting is expected to increase into the future, as younger renters, unable to afford to purchase their own home, remain in the rental market into their older years.[3]

Similar trends are unfolding in rental markets across Australia. The private rental sector has experienced significant growth throughout the country, growing at twice the rate of all households over the 10 year period from 2006-2016.[4] Approximately one quarter of all Australian households now live in the private rental sector.[5] In Western Australia, approximately 28.3 per cent of occupied private dwellings are rented.[6]

[1] B. Coates, 'Where is home for marginalised consumers?', (February 2019), accessed from https://grattan.edu.au/wp-content/uploads/2019/04/CPRC-Renters-Forum-25-February-2019.pdf
[2] Australian Housing and Urban Research Institute, Final Inquiry Report - *Inquiry into the future of the private rental sector* (August 2018), p12.
[3] Above n 1.
[4] Ibid, p2.
[5] Ibid.
[6] Australian Bureau of Statistics 2016 Census QuickStats, accessed from https://quickstats.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/5GPER?opendocument#mortgage-rent

Home ownership rates are continuing to decline across Australia and with fewer people entering the housing market, it is expected that demand for the rental market will continue to increase. Data from the Australian Bureau of Statistics shows that the steepest decline in home ownership rates over a 25 year period were for people aged 25-35 years, an age group typically entering the housing market.[7] This represents a 21 per cent decline over this period to 39 per cent attaining home ownership in this age group in 2013-14 compared to 60 per cent in 1988-89.[8]

The growth in the trend of people renting for longer and renting for life necessitates a review of the regulation of the rental sector to ensure the regulatory framework reflects these changes.

Security of tenure

As indicated above, improving security of tenure is one of the overarching policy objectives of this review of the RTA. The concept of security of tenure can perhaps best be described as "the right to choose to stay, not to be forced to move – from one's home".[9] In light of the changing rental marketplace, the need for security of tenure for all tenants has been identified as a key driver for regulatory reform in recent jurisdictional reviews of residential tenancy legislation.[10] The capacity of the private rental sector to provide stable housing options for a broad demographic will assist in delivering better outcomes for the community. As more tenants rent for longer and seek longer term tenancies, security of tenure becomes increasingly important.

Dispute resolution

Dispute resolution was identified by lessors, tenants and industry stakeholders as a key area requiring reform, with 92 per cent of respondents supporting reform to the status quo. WA is the only Australian jurisdiction in which all residential tenancy disputes are heard in the local Magistrates Court.[11]

Improving the dispute resolution system was also considered important for tenants to uphold their rights in relation to other proposals in the Consultation Regulatory Impact Statement (CRIS). For example, many tenants submitted that attending court is a stressful, intimidating and inconvenient prospect for them. With an accessible dispute resolution system, tenants may be more willing to contest matters such as unfair terminations, conditions on making minor modifications or keeping pets, and security bond disposals.

[7] Australian Institute of Health and Welfare 2017, *Australia's welfare 2017*, p5.
[8] Ibid.
[9] Mark Bennett, 'Security of Tenure for Generation Rent: Irish and Scottish Approaches' (2016) 47 *Victoria University of Wellington Law Review* 363, 368.
[10] For example, New Zealand and Victoria have proposed options to increase security of tenure as part of their respective tenancy reviews.
[11] In Tasmania, some residential tenancy disputes are first determined by the Residential Tenancy Commissioner. However, some disputes, such as disputes about vacation notices, are referred directly to the Magistrates Court.

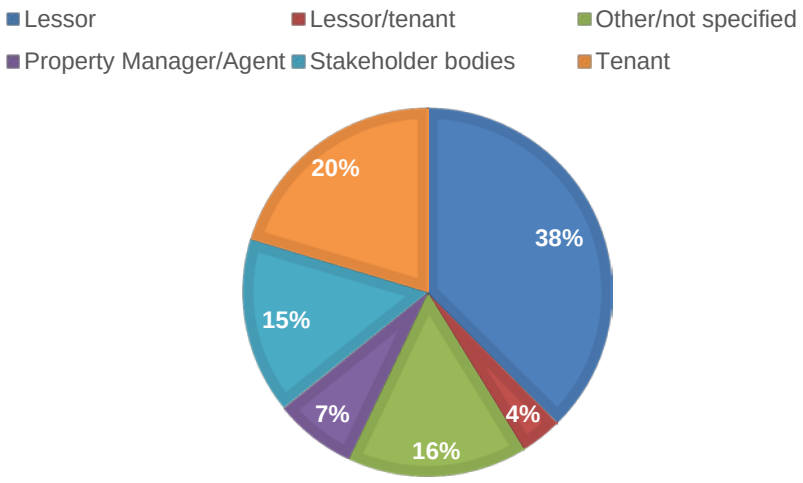
Consultation

Stakeholder feedback was sought in response to a CRIS that was released in December 2019. The closing date for submissions was extended to 30 June 2020, due to the onset of the coronavirus (COVID-19) pandemic.

The CRIS contained a number of proposals and options for reform aligned with the lifecycle of a tenancy. Proposals contained in the CRIS were formed around the themes of: improving security of tenure by examining no grounds terminations and fixed term tenancy agreements; disclosure of information prior to a tenancy starting; consideration of rents, bonds and other charges including the frequency of rent increases; consideration of the premises including allowing tenants to make minor modifications and keep pets; the termination of tenancy agreements; and dispute resolution.

More than 350 submissions were received in response to the CRIS. Most of these responses were from lessors (38 per cent), with tenants the next highest category of respondents (20 per cent). A breakdown of responses to the CRIS is provided in Chart 1 below. "Stakeholder bodies" includes advocate groups, government departments and other organisations.

Chart 1 – breakdown of responses to the CRIS.



In July 2020, the Department of Mines, Industry Regulation and Safety – Consumer Protection Division (Consumer Protection) also held a series of workshops with lessors to gain further feedback on specific topics in the CRIS.

Review outcomes

Feedback from both the CRIS and workshops identified dispute resolution as the key issue for lessors, tenants and bodies representing these groups. As stated, 92 per cent of respondents supported reform to dispute resolution.

Other key themes raised included:

- tenants (and groups representing them) favoured reforms that increased tenants' rights, including their ability to keep pets, make minor modifications and enjoy security of tenure; and
- lessors (and industry groups representing them) were concerned that the reforms would shift the balance of power too far in favour of tenants.

This report makes policy recommendations regarding an initial suite of proposed reforms from the review that will improve security of tenure, reform dispute resolution and make other reforms that underpin improvements needed to help the Western Australian rental market to adapt to the evolving landscape. Topics addressed are:

- without grounds terminations;
- fixed term tenancy agreements;
- disposal of security bonds;
- the dispute resolution process;
- frequency of rent increases;
- modifications to premises; and
- pets in rental premises.

An overview of the recommendations in relation to each of these topics is provided below. A subsequent phase of reforms will consider the remaining CRIS proposals and issues from the review.

Overview of recommendations

The following summarises recommendations for amending the RTA.

Recommendations for improving security of tenure

Without grounds terminations

Recommendation 1

That without grounds terminations by the lessor be replaced with a list of grounds for termination.

The review considered the compatibility of without grounds terminations with the objective of improving security of tenure for tenants. A without grounds termination notice allows a lessor to terminate a periodic tenancy without having to specify the reason for

ending the tenancy.[12] This is in contrast to other sections of the RTA that require lessors to give a reason for terminating the tenancy.

Currently, there is a growing shift, both domestically and internationally, towards prohibiting without grounds terminations in favour of prescribed grounds.[13]

The review considered maintaining the status quo whereby lessors may use section 64 of the RTA to terminate a periodic tenancy without grounds, giving tenants 60 days' notice and tenants can end a periodic tenancy under section 68 of the RTA by giving 21 days' notice.

The review also explored the option of replacing without grounds termination with prescribed grounds. Under this option, the RTA would be amended to remove without grounds terminations by lessors. A number of new grounds would be inserted in the RTA that a lessor could rely upon to terminate a periodic tenancy agreement. The notice period would remain as 60 days.

A further option was considered whereby without grounds terminations would be retained, but with an increase in the period of notice required to terminate a tenancy. This option would increase the notice period a lessor would be required to give from the current 60 days' notice to a longer period.

The review recommended that the RTA be amended to prohibit without grounds terminations by lessors and introduce additional grounds for termination.

Fixed term tenancy agreements

Recommendation 2

That fixed term tenancy agreements of any duration continue to be permitted, but that termination of a fixed term tenancy agreement by the lessor only be permitted without reason at the end of the first fixed term.

The review considered the issue that many WA tenants are currently on short fixed term tenancy agreements and therefore always face the uncertainty of the agreement not continuing beyond the end of the term. This can have the effect of making tenants reluctant to enforce their rights, such as asking for repairs to the premises.[14]

According to data from the Bond Administrator (established under the RTA), in Western Australia the average length of a tenancy between 2016 and 2021 was 23 months. This

[12] Lessors may terminate pursuant to RTA section 64 with 60 days' notice and tenants may terminate pursuant to RTA section 68 with 21 days' notice.
[13] CRIS pp 14-15.
[14] A survey of tenants conducted by the Make Renting Fair Alliance found that 53 per cent of tenants felt "concerned" or "very concerned" that they would be evicted (or not have their lease renewed) if they were to request repairs.

indicates that a substantial proportion of tenants live in premises well beyond a six or 12 month fixed term. However, according to a survey conducted by CHOICE in 2018 the majority of Western Australian tenants are currently on lease agreements that are shorter than 23 months.[15]

The review explored the following options:

- maintaining the status quo, whereby lessors and tenants would continue to be able to enter into both fixed and periodic tenancy agreements in all circumstances;
- use of fixed term agreements prohibited in all circumstances. Under this option, only open ended, periodic tenancies would be allowed under the RTA;
- fixed term tenancies permitted in limited circumstances. Under this option, fixed term tenancies would only be permitted in circumstances where the premises are genuinely only available for a limited period of time;
- fixed term tenancies permitted, with tenants entitled to an option to renew for a total minimum period of five years; and
- amend the RTA to encourage the use of longer fixed term agreements.

The review recommended that fixed term tenancy agreements be permitted for any duration, but termination at the end of a fixed term tenancy agreement by the lessor without reason only be permitted at the end of the first fixed term. This would enable lessors to continue to use fixed term tenancies and secure its benefits, such as certainty of income for a fixed period, while reducing the risk of lessors using recurrent short fixed term leases as a way of avoiding compliance with the prohibition of without ground terminations.

Recommendations regarding dispute resolution

Disposal of security bonds

Recommendation 3

To allow either party to apply to the Bond Administrator for release of the security bond. The Bond Administrator would be obligated to seek the views of all other interested parties before releasing the security bond. If the Bond Administrator does not receive a response, or the parties agree to the original claim, the Bond Administrator would dispose of the bond.

[15]CHOICE, *DISRUPTED: The consumer experience of renting in Australia* (2018) p13.

The review considered whether there is a more effective process for the disposal of residential tenancy security bonds that will continue to safeguard the interests of all parties to the bond.

Currently, the Bond Administrator may only dispose of a bond if the parties have agreed to the bond disposal amount or there are court orders providing the bond disposal amount. Bond disputes contribute significantly to the Magistrates Court's caseload and as a result may affect timeliness of other residential tenancy matters.

The review assessed amending the RTA to allow either a tenant or lessor to apply to the Bond Administrator for release of the security bond and then requiring the Bond Administrator to seek the views of all other interested parties before releasing the security bond. If the Bond Administrator does not receive a response, or the parties agree to the original claim, the Bond Administrator would dispose of the bond. If the claim is disputed, then dispute resolution would be undertaken between the parties.

The review recommended that the RTA be amended to enable either party to apply to the Bond Administrator for release of the security bond as follows:

- parties may apply for bond disposal either unilaterally or via a joint agreement;
- where one party applies, the Bonds Administrator notifies the other party of the claim;
- if the other party does not respond within 14 days, the bond is paid as per the claim; and
- where the bond claim is disputed, the dispute follows the chosen dispute resolution model.

Dispute resolution

Recommendation 4

That a dispute resolution model is implemented whereby the Commissioner for Consumer Protection would determine some disputes (including bond disputes) on the papers. The remainder of residential tenancy disputes would continue to be heard in the Magistrates Court.

The review considered the need to develop a residential tenancy dispute resolution system that:

- is fast, fair and delivers outcomes consistent with the law;
- is accessible across the state;

- facilitates and maintains, where possible, constructive relationships between parties;
- facilitates better compliance with the law;
- provides certainty and confidence in the market; and
- is cost effective.

Currently, residential tenancy disputes are heard exclusively by the Magistrates Court. Concerns have continued to be raised about the resolution of RTA disputes in the Magistrates Court, namely:

- the length of time taken for some matters to be resolved;
- the absence of written reasons for decisions, creating the perception of limited transparency and consistency of decision making across court locations; and
- the stress and inconvenience of attending court hearings.

In addition to maintaining the status quo, the review also considered the following options:

- transferring jurisdiction for tenancy disputes to the State Administrative Tribunal (SAT);
- mandatory mediation/conciliation conducted by Consumer Protection in the first instance, and then if not resolved, to the court or tribunal;
- dispute resolution consisting of a range of options including mediation/conciliation in the first instance, determination of prescribed disputes by the Commissioner and final adjudication by the court or tribunal.

It was determined that the costs of these options outweighed the benefits. Therefore, two alternative dispute resolution models were considered after the CRIS consultation.

The first was a comprehensive model involving mandatory mediation/conciliation by Consumer Protection, determinations by the Commissioner for Consumer Protection, with appeals of decisions, and serious matters, to be heard by the Magistrates Court. Under this model, disputes would be allocated to a dispute resolution forum based on the type of dispute. While this model would achieve the objectives of the review, it represents a substantial change to the status quo and would require significant resourcing.

The preferred option involves the Commissioner for Consumer Protection making determinations for bond disputes and other minor disputes. Appeals of Commissioner decisions and other matters would be heard by the Magistrates Court. This option is recommended as it will go a significant way towards achieving the objectives in relation to dispute resolution, but with less need for resources and less change to the status quo.

Recommendation regarding rents, bonds and charges

Frequency of rent increases

Recommendation 5

That rent increases not be permitted at less than 12 monthly intervals for both periodic and fixed term tenancy agreements.

The review considered whether to continue allowing rent increases every six months or whether to decrease the frequency of rent increases.

At present, the RTA allows rent increases at six monthly intervals provided that:

- the tenant is given at least 60 days' notice of the increase; and
- in the case of a fixed term tenancy agreement, the agreement specifies the amount of the increase or a method of calculating the agreement.

The options of limiting rent increases to not less than 12 monthly or 2 yearly intervals were presented for consideration.

The review concluded that limiting rent increases to not less than 12 monthly intervals may reduce tenants' fears of receiving retaliatory rent increases for asserting their rights. Further, this proposal would be consistent with the approach taken in other jurisdictions.

Recommendations regarding the premises

Modifications to the premises

Recommendation 6

That tenants be entitled, without consent of the lessor, to make minor modifications that do not impact on the structural integrity of the premises and that can easily be reversed. Tenants would also be entitled to make other prescribed modifications with the lessor's consent, but if a lessor wishes to withhold the consent they must obtain an order from the Commissioner confirming it would be unreasonable to make the modifications. The types of modifications that fall within both of these categories would be prescribed by regulation.

The review considered the topic of allowing tenants to make minor modifications to the rental premises without having to seek consent from the lessor because this is a key factor in making tenants feel safe, comfortable and at home in their rental property.

Currently under the RTA, lessors can either prohibit a tenant from making alterations or affixing fixtures to the premises, or allow modifications with their consent. A lessor cannot

unreasonably withhold consent to a tenant requesting modifications to the premises where the option is included in the tenancy agreement.[16]

In addition to the status quo, the review considered amending the RTA so that a tenant is entitled, without consent of the lessor, to:

- make minor modifications that do not impact on the structural integrity of the premises and can be easily reversed;
- improve disability access and ageing in place; and
- make any other modifications with the lessor's consent, which cannot be unreasonably withheld.

Under this option, a tenant would be entitled to make minor changes to the premises that can be removed or undone so that the property is restored to substantially the same condition it was in at the start of the tenancy (fair wear and tear excepted).

The review also considered amending the RTA to allow a tenant to make alterations to the premises only with the lessor's consent, and that the lessor must obtain an order from the Commissioner for Consumer Protection that withholding of consent is justifiable in the circumstances.

The review recommended a model whereby the tenant must inform the lessor of their intention to make any modifications. Certain prescribed minor modifications could be made by the tenant without consent of the lessor. Other prescribed modifications would require the lessor's consent, but the lessor must not unreasonably refuse consent. If the lessor wishes to refuse consent, he or she must obtain an order from the Commissioner confirming it would be unreasonable to make the proposed modifications.

Pets in rental premises

Recommendation 7

That tenants be allowed to keep pets in rental premises, unless the lessor applies to the Commissioner and obtains approval confirming it would be unreasonable to allow the tenant to keep a pet, or a particular category of pet(s) at the premises.

The review considered amending the RTA to allow tenants to keep pets at the premises, unless the lessor applies to the Commissioner and obtains approval confirming it would be unreasonable to allow the tenant to keep the pet at the premises.

[16] *Residential Tenancies Act 1987* (WA), section 47(2)(a).

Currently, tenants must seek their lessor's permission to keep pets on the premises. The lessor is not required to provide grounds for refusing the request and tenants have no further recourse if the request is refused. Where permission to keep a pet is granted, lessors have the right to seek a pet bond of up to $260 if the pet is capable of carrying parasites that can affect humans.[17]

The review concluded that the RTA should be amended to allow a tenant to keep a pet or pets at a rental premises. The lessor could request that the tenant first seek permission, however, the request would not be able to be unreasonably withheld. The lessor would have 14 days to respond. If a lessor does not respond within 14 days, they are taken to have consented to the request. While the lessor cannot unreasonably refuse a request, they can negotiate reasonable conditions for keeping a pet on the property and there would be grounds for refusal. The current pet bond amount will be reviewed to account for inflation and current market rates for fumigation.

[17] *Residential Tenancies Act 1987* (WA) section 29(1)(b)(ii); Residential Tenancies Regulations 1989 (WA) reg 10A.

Impact Analysis – relevant considerations

For each of the proposed reforms, an impact analysis of the potential costs and benefits to lessors, tenants and the Government has been undertaken.

In addition, many lessors, and industry groups representing them, expressed concern that the proposed reforms would result in declining investor confidence and reduced housing stock in the residential tenancy sector. However, recent economic analysis of similar proposed reforms in Queensland is relevant because it suggests that the impact of the proposed reforms on investment in the Western Australian residential tenancy sector is likely to be negligible.

The Queensland *Housing Legislation Amendment Act 2021* (Qld) (assented to on 20 October 2021) introduced reforms including the removal of "without grounds" terminations, family violence protections, minimum housing standards and allowing tenants to keep pets. The Queensland government commissioned Deloitte to undertake an economic analysis of their proposed reforms. Deloitte found that the proposed amendments would have a negligible impact on the residential tenancy sector. In particular, the analysis identified the following key points:

- The aggregate cost of the reforms would be between $16 and $107 per year per investor, most of which is attributable to introducing minimum standards.[18]
- House prices will decline by $71 to $462 in the long term. Deloitte found that a decrease in value of this magnitude is unlikely to materially influence an individual's purchasing decisions.[19]
- The increase in user cost for investors is estimated to put a slight upward pressure on rents by 0.01 per cent-0.05 per cent in the first two years of the policy before stabilising to up to 0.02 per cent in the long term.[20]
- Although there are an estimated 8.7 per cent of households in rental stress across Queensland, the negligible impact of the reform on house prices and rents is unlikely to increase this proportion.[21]

Queensland has more than double the number of rental households compared to Western Australia (566,478 Qld[22] and 245,705 in WA[23]), but there are similarities between the two states in regard to the proportion of private renters (Qld with 33 percent

[18] On this basis, Deloitte found that the impact of the proposed reforms "are negligible on the costs to investors of owning a property" Deloitte Access Economics (July 2021) 'updated economic analysis of Queensland residential renting reforms', accessed from Economic Analysis of Queensland Residential Renting Reforms (chde.qld.gov.au) p.3.
[19] Ibid p 4.
[20] Ibid.
[21] Ibid.
[22] Above n 6 .
[23] Ibid.

and WA with 32 percent).[24] The median rental values of both states are also similar (Qld $476 and WA $472).[25]

The outcomes of the economic modelling in Queensland shows that removal of "no grounds" terminations, family violence protections, minimum housing standards and allowing tenants to keep pets are not likely to have a significant economic impact. While the number of rental households varies, the other similarities between the Queensland and Western Australian rental markets suggests that the economic impact of the similar proposed reforms in this DRIS are also likely to be minimal.[26]

[24] This data is for the rest of Queensland and WA, it does not include Greater Perth and Greater Brisbane: Bankwest Curtin Economics Centre, *The Private Rental Sector in Australia* (October 2018).
[25] CoreLogic, *National rents record highest annual growth in over a decade* (July 2021) accessed from https://www.corelogic.com.au/news/national-rents-record-highest-annual-growth-over-decade#:~:text=Regional%20rents%20continued%20to%20outpace,hit%2011.3%25%20in%20June%202021.
[26] Similar reforms include: prohibiting without grounds terminations and allowing pets in rental premises. Provisions to allow for termination of a tenancy due to family violence commenced in Western Australia in 2019.

Terminology

The following is a summary of terminology used in this paper.

TERMINOLOGY	MEANING
ABS	Australian Bureau of Statistics
ACAT	Australian Capital Territory Civil and Administrative Tribunal
ACT	Australian Capital Territory
Ageing in place	Enabling an ageing tenant to remain in a tenancy even when faced with increasing need for support.
Bond	Security bond - a payment made in advance by a tenant to cover the costs for which they may be liable at the end of the tenancy.
Commissioner	Commissioner for Consumer Protection
Communities	WA Department of Communities
Community Housing	Affordable housing for people on low to moderate incomes with a housing need, managed (and possibly owned) by not-for-profit organisations.
COVID-19	Coronavirus
CRIS	Consultation Regulatory Impact Statement
DRIS	Decision Regulatory Impact Statement
Fixed term agreement	An agreement to rent for a set period of time with a defined start and end date.
Form 6	Application made to the Magistrates Court for the disposal of bond money.
Form 12	Application made to the Magistrates Court seeking a court order for resolution of a dispute that has arisen under the RTA (including bond disputes).
LED	Light-emitting diode
Modification Bond	An amount paid above the normal rental bond to cover potential costs of remedying modifications at the end of the tenancy.
NSW	New South Wales
NT	Northern Territory

No grounds termination	A termination pursuant to RTA section 64 which allows a lessor to terminate a periodic tenancy without having to specify any reason.
Pet Bond	An amount paid above the normal security bond to keep a pet that may carry parasites and result in the need to fumigate the premises.
Periodic agreement	An agreement to rent for a recurring period without a defined end date.
Public housing	Public housing owned and managed by the State Government.
Qld	Queensland
REIWA	Real Estate Institute of Western Australia
Review	Review of the Residential Tenancies Act 1987 (WA)
RTA	Residential Tenancies Act 1987 (WA)
RTMCS	Residential Tenancies Mandatory Conciliation Service
SA	South Australia
SAT	State Administrative Tribunal (WA)
Social housing	Collective term for public and community housing.
TAS	Tasmania
Tas RTC	Tasmanian Residential Tenancy Commissioner
VCAT	Victorian Civil and Administrative Tribunal
VIC	Victoria
WA	Western Australia
Without grounds termination	Same as a no grounds termination.

Security of tenure

One of the overarching policy objectives proposed by the CRIS was to improve tenants' security of tenure. Research indicates that:

- the rental sector is growing, with up to a quarter of Australians estimated to be renters by 2036;[27]
- there is an increasing pattern of long-term and lifelong renting;[28] and
- tenants are comprising an increasingly broad demographic, including vulnerable cohorts, such as families and older renters.[29]

This research indicates that tenancy is shifting from an interim housing option to a long term housing solution for many vulnerable cohorts. In particular, renting is becoming an increasingly important option for those who can no longer afford to purchase their own home and because of their stage of life, depend upon a stable rental environment for their home.[30] The CRIS noted that "security of tenure is central to providing beneficial outcomes for the sector".[31]

The CRIS examined how the current operation of the RTA may impose barriers to increased security of tenure and how measures could be introduced to facilitate better security of tenure for the benefit of tenants and lessors. It did so in two parts:

- by considering prohibiting "no grounds" terminations for periodic tenancies; and
- by considering amendments to the use of fixed term tenancy agreements to encourage longer tenures.

This chapter considers security of tenure in the same two parts. It also proposes a preferred option, which comprises reforms to both periodic and fixed term tenancy agreements.

Without grounds terminations

Issue

A "without grounds" termination notice allows a lessor and a tenant to terminate a periodic tenancy without having to specify the reason for ending the tenancy.[32] This is in contrast to other sections of the RTA which require lessors to give a reason for terminating the tenancy, such as that the tenant has breached the tenancy agreement,[33] or that the

[27] Bankwest Curtin Economics Centre, *Older Renters in the Western Australian Private Rental Sector,* BCEC Research Report, No. 19/18 (October 2018) p.ix.
[28] Australian Housing and Urban Research Institute, Final Inquiry Report – *Inquiry into the future of the private rental sector* (August 2018) p2.
[29] Above n 13 pp 9-10.
[30] Ibid p 14.
[31] Above n 13 p12.
[32] Lessors may terminate pursuant to RTA section 64 with 60 days' notice and tenants may terminate pursuant to RTA section 68 with 21 days' notice.
[33] *Residential Tenancies Act 1987* (WA) section 62.

lessor is selling the premises.[34] Similarly, either a lessor or tenant can choose to not continue a fixed term lease agreement at the end the term of the lease.

The ability to end a lease by the use of without grounds terminations by lessors is often cited as a barrier to tenants not exercising their rights under the tenancy agreement, including in seeking repairs or maintenance to the premises.[35]

Current situation

Both domestically and internationally, there is a growing shift towards prohibiting "without grounds" terminations in favour of prescribed grounds. For example, Tasmania and Victoria have removed without grounds terminations and Queensland recently enacted legislation making the same change. Internationally, New Zealand and Scotland have removed without grounds terminations as well as "many European countries, as have most of the Canadian provinces and the largest US cities".[36]

A 2018 Bankwest Curtin Economics Centre report argued that the availability of without grounds terminations may compromise tenants' willingness to assert their rights for fear of receiving a retaliatory eviction notice.[37] This finding was supported by the survey of tenants conducted by the Make Renting Fair Alliance, which found that 53 per cent of tenants felt "concerned" or "very concerned" that they would be evicted (or not have their lease renewed) if they were to request repairs.

In WA, without grounds terminations are used infrequently. For the period February 2018 to March 2019, the Bond Administrator conducted a survey of lessors and tenants at the time of security bond disposal. The survey asked who ended the tenancy and why the tenancy ended (e.g. end of fixed term/decision not to renew, termination for breach, 60 days' notice provided by the lessor). The survey received 23,445 responses and found that 418 terminations were by a lessor relying on the "without grounds" provision. This equates to less than two per cent of the terminations reported in the survey. Of the responses, 990 of the leases were entirely periodic and 4,726 were fixed term and later became periodic.

A survey conducted by the Make Renting Fair Alliance found that approximately 8 per cent of respondents had been evicted "without grounds". This includes tenants on fixed term and periodic agreements. This is similar to the national average of 10 per cent reported by CHOICE in 2018.[38] Both of these figures are likely to be less accurate than the Bond Administrator survey because they rely on tenants identifying the cause for their termination which may not be clear to them.

Communities advised that during 2018 and 2019, it issued approximately 20 "without grounds" termination notices to its tenants. These would not have been counted in the

[34] *Residential Tenancies Act 1987* (WA) section 63 – this section does not apply to fixed term tenancies during the currency of that term.
[35] Above n 13 p14.
[36] According to an open letter written by academics in 2018 discussing the removal of without grounds terminations: Ibid pp14-15.
[37] Above n 27.
[38] Above n 15, p19.

Bond Administrator survey because Communities does not require its tenants to lodge bonds. In the context of managing approximately 36,000 public housing dwellings, in addition to 5,300 properties for Government Regional Officers' Housing and 2,662 houses for Aboriginal communities in remote locations, this is an insignificant proportion.[39]

Objective

To improve security of tenure for tenants.

Options Considered

The following options were presented in the CRIS for feedback:

Table 1 – Options considered in the CRIS

Option A	**Status quo** Under this option there would be no change. Lessors would continue to be able to use section 64 of the RTA to terminate without grounds, giving tenants 60 days' notice to terminate a periodic tenancy agreement. Tenants would continue to be able to end a periodic tenancy by giving 21 days' notice.
Option B	**Replace without grounds termination with prescribed grounds for termination** The RTA would be amended to remove without grounds terminations. A number of new grounds would be inserted which a lessor may rely on to terminate a periodic tenancy agreement. The notice period would remain as 60 days.
Option C	**Retain without grounds termination but increase the notice period** This option would increase the notice period a lessor would be required to give a tenant from the current 60 days' notice to a longer period; for example, three months' or six months' notice.

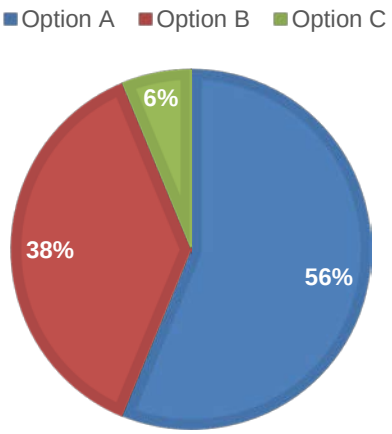
Stakeholder feedback to the CRIS

Of the 96 responses received to the question of which option is preferred, the majority (56 per cent) of respondents favoured retaining the status quo. Seventy nine per cent of respondents who favoured retaining the status quo were lessors and property managers and only two per cent were tenants.

A breakdown of the responses is provided in Chart 2 below:

[39] Department of Communities – Housing webpage. Accessed from https://www.wa.gov.au/organisation/department-of-communities/housing#:~:text=managing%20over%2036%2C000%20public%20housing,biggest%20landlord%20in%20Western%20Australia on 17 November 2021.

Chart 2: Breakdown of responses – which option do you prefer and why?



Most of the respondents supporting Option A perceived that prohibiting without grounds terminations would be too burdensome on the lessors, who they felt should retain the right to terminate tenancies at their discretion. A number of lessors said they would not terminate a "good tenant" for no reason, so without grounds terminations were necessary to terminate a problematic tenancy without the added burden of having to prove the tenant's breach. Many respondents questioned the benefit of prohibiting "without grounds" terminations because they are used so infrequently.

Tenants comprised eight per cent of the total respondents to this issue, with 87.5 per cent of tenants supporting either Option B or Option C. Some tenants submitted that removing without grounds terminations would prevent lessors from using "without grounds" terminations in retaliation where tenants have sought maintenance or repairs or otherwise exercised their rights, such as by challenging a rent increase. Some respondents who supported Option B or C were concerned that Option B would result in more court hearings, because tenants would be able to challenge a termination on specific grounds.

Tenant advocate groups Circle Green Community Legal and Shelter WA supported Option B, while property industry group REIWA supported Option A.

The Department of Communities (Communities) submitted that it needs to terminate some tenancies without grounds, particularly where there is a public interest or safety issue and there are no other viable legal options to end the tenancy. Communities submitted that these circumstances include:

- where there is ongoing disruptive behaviour but the objectionable behaviour provision[40] cannot be used because witnesses are unwilling to testify or the court date is more than 12 months away;

[40] Section 75A currently provides for the termination of social housing tenancy due to objectionable behaviour.

- in Government Regional Officer Housing where the tenant is no longer eligible due to a change of employment; and
- to move a tenant who has child sex offence convictions to a property that is not close to a school.

Possible grounds for termination

The CRIS asked respondents to identify what should be the prescribed grounds for termination if this option was implemented. The grounds which received the most support were:

- relating to tenant conduct (e.g. breach by the tenant that is not remedied, rent arrears, anti-social behaviour);
- tenant eligibility (e.g. tenant no longer an employee (if employment linked to housing, tenant no longer eligible for supported accommodation or social housing); and
- alternative use of the premises (e.g. lessor intends to sell the premises, or to move in to the premises or to refurbish or demolish the premises).

Notice period for without grounds terminations

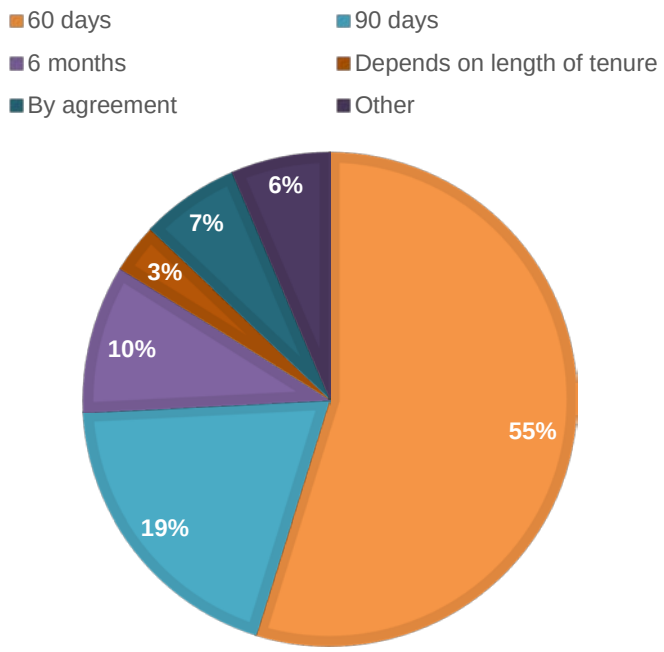
The CRIS also asked respondents what the notice period should be if Option C were implemented (i.e. without grounds terminations allowed but the notice period extended). The notice period which received most support (55 per cent) was 60 days, which is the current notice period lessors are required to give. The current notice period for tenants is a minimum of 21 days. Some lessors and property managers/agents submitted that this period is too short because it:

- does not give lessors adequate time to find a new tenant; and
- affects the lessor's ability to make financial planning decisions for the future.

While 21 days is seen as an insufficient notice period, many lessors and industry stakeholders raised concerns that extending the length of notice periods too much (e.g. to 90 days or 6 months) increases the risk that the tenant may accrue larger rent arrears or damage the premises.

A breakdown of respondents' views regarding notice periods is provided in Chart 3 below:

Chart 3: Notice periods for without grounds terminations.



Of the 31 responses received to this question, lessors and property managers/agents comprised 58 per cent and tenants comprised 6 per cent.

Reasons for issuing a without grounds termination

The CRIS also asked lessors and tenants whether they have ever used a without grounds termination or had one used against them. Of a total 14 responses, 86 per cent answered “no” to the question (nine of whom were lessors and property managers/agents, two of whom were tenants). Fourteen per cent of respondents (one lessor and one stakeholder body) submitted they have used a without grounds termination to end a tenancy.

Key reasons provided for using a without grounds termination notice included rent arrears, breakdown in the lessor-tenant relationship and the tenant not maintaining the property to an acceptable standard.

Other jurisdictions

As mentioned above, three Australian states and territories have prohibited without grounds terminations and one more is currently considering the reform, reflecting a wider national trend towards legislation that improves protections for tenants while safeguarding lessors’ interests.

In 2018, Victoria introduced legislation to abolish without grounds terminations for periodic tenancies. It also removed the lessor’s ability to terminate a fixed term tenancy

agreement due to the end of term (except at the end of the first term and only if that agreement is less than five years).[41]

Tasmania's *Residential Tenancy Act 1997* (Tas) has not permitted "without grounds" evictions since 1998.

In Queensland, the *Housing Legislation Amendment Act 2021* (Qld), which received assent on 20 October 2021, prohibits "without grounds" terminations for periodic tenancies. It does not restrict the lessor's ability to offer fixed term agreements and lessors are still permitted to terminate at the end of fixed term agreements. The Queensland Community Support and Services Committee tabled a report on the (then) Bill on 16 August 2021. The Committee's report made the following comments about proposed amendment to end tenancies: [42]

- the Committee found that the amendments "achieve an appropriate balance between the rights of renters and lessors";
- the Committee stated that it will be important for the managing department to maintain a close watching brief on the impacts, intended and otherwise; and
- the Committee made a recommendation that the managing department develop a framework for data collection about how residential tenancies are managed and ended.

The Australian Capital Territory (ACT) is considering prohibiting without grounds terminations as part of its next suite of residential tenancy reforms.

Table 2 below provides an overview of without grounds terminations in Australia.

Table 2: Without grounds terminations in Australia

Jurisdiction	Without grounds terminations prohibited	Without grounds terminations permitted
ACT	×	✓
NSW	×	✓ (for tenants who have occupied the property for less than 20 years)
NT	×	✓

[41] The commencement of the legislation was delayed until March 2021 due to COVID-19. Victorian Government, Rent Fair – rental reforms for Victorians, available at: https://www.vic.gov.au/rentfair-rental-reforms-victorians
[42] Community Support and Services Committee report on the Housing Legislation Amendment Bill 2021 (August 2021), accessed from https://documents.parliament.qld.gov.au/tableoffice/tabledpapers/2021/5721T980.pdf pp15-16.

Table 2: Without grounds terminations in Australia		
Jurisdiction	**Without grounds terminations prohibited**	**Without grounds terminations permitted**
Qld	✓	×
SA	×	✓
TAS	✓	×
VIC	✓	×
WA	×	✓

WA – without grounds terminations prohibited for residential parks long-stay tenancy agreements

One of the key amendments implemented by the *Residential Parks (Long-stay Tenants) Amendment Act 2020* (WA) is to remove provisions relating to the termination of site-only agreements without providing specific grounds. The Amendment Act introduced grounds for terminating a site-only agreement in lieu of the "without grounds provision" including:[43]

- where the park will be closed or used for a different purpose;
- where vacant possession is required for works; and
- where the long-stay site will be used for another purpose.

In addition, *Residential Parks (Long-stay Tenants) Act 2006* (WA) allows park operators to terminate for a number of reasons including serious damage to the park premises, injury to the park operator and non-payment of rent.[44]

The amendments are being implemented to address concerns that long-stay tenants in residential parks were experiencing lack of security of tenure and that park operators were using the threat of "without grounds" terminations to prevent tenants from making complaints.

[43] *Residential Parks (Long-stay Tenants) Amendment Act 2020* (WA), sections 41A – 41D.
[44] *Residential Parks (Long-stay Tenants) Act 2006* (WA), section 71 and section 39.

Impact analysis

The following table outlines potential benefits and disadvantages of the identified options.

	Potential benefits	Potential disadvantages
Option A – Status quo	**Lessors** • Maintains lessors' ability to end periodic tenancy without grounds. • No potential for decreased incentive for lessors to invest in the property market. **Tenants** • None discernible. **Government** • No cost of introducing or administering new policy.	**Lessors** • None discernible. **Tenants** • No improved security of tenure. • The threat of without grounds terminations acts as a barrier to enforcing rights. **Government** • Risk that private housing sector will not provide adequate security of tenure.
Option B – Replace without grounds termination with prescribed grounds for termination	**Lessors** • Retain the right to terminate a tenancy under prescribed grounds. **Tenants** • Improved transparency and security of tenure for tenants. • Tenants have greater confidence to enforce their rights. • Improved protection from retaliatory evictions by lessors. **Government** • May reduce number of enquiries and complaints to Consumer Protection.	**Lessors** • Reduced flexibility to terminate the lease for reasons other than breach of the agreement. • Risk that grounds for termination may not cover all circumstances. • Increased administrative burden and costs associated with potentially having to obtain court orders if required. **Tenants** • May increase use of short fixed term agreements. **Government** • Risk of increased disputes if tenants contest the grounds of the termination.

Option C – Retain without grounds termination but increase the notice period	**Lessors** • Retains option of using without grounds termination. **Tenants** • May reduce use of without grounds terminations. • Improved security of tenure for tenants. • Provides additional time for tenants to find alternative accommodation. • May reduce the number of retaliatory evictions. **Government** • May reduce the number of enquiries and complaints.	**Lessors** • May increase risk of retaliatory damage to the premises or non-payment of rent by some tenants. **Tenants** • Tenants continue to have barriers to enforce their rights. **Government** • None discernible.

Assessment against the objective

Option A

This option does not achieve the objective of improving security of tenure because tenancies will still be able to be terminated without grounds.

Although data suggests without grounds terminations are not commonly used, the existence of this option creates a barrier to tenants and the benefits of maintaining the status quo are outweighed by the costs. Option A retains the risk that tenants could be evicted (or threatened with eviction) without a reason if they seek to assert their rights, such as seeking maintenance or repairs.

Option B

Option B is recommended because it achieves the objective and its benefits outweigh its costs. The benefits of Option B are that it:

- improves tenants' security of tenure and increases tenants' confidence to exercise their rights without the fear of retaliatory action;
- encourages transparency and ongoing communication between tenants and lessors;
- maintains the lessors' right to end tenancies; and
- is consistent with the approach taken in other jurisdictions and in site-only long-stay residential park tenancy agreements in WA.

To ensure the full extent of the benefits of Option B are realised it is proposed that termination at the end of a fixed term agreement is also prohibited, other than at the end of the first fixed term of a lease agreement, so lessors do not simply substitute periodic agreements with fixed term agreements and terminate them at end of the term.

The operation of the preferred model is outlined in more detail in the following chapter "Security of tenure – preferred option".

Option C

Option C partially achieves the objective. While tenants' security of tenure would partially improve because of longer notice periods, the use of without grounds terminations remains and therefore retains the risk of tenants not exercising their rights – for example, seeking the performance of maintenance.

Fixed term tenancies

Issue

While fixed term tenancy agreements provide tenants and landlords with certainty for the period of the fixed term, some tenants want to remain in the premises for longer than the six or 12 month agreement that is usually offered to them.

A tenant can never be assured of tenure at the premises beyond the end of the fixed term period because a lessor can simply choose not to renew the tenancy agreement. This can have the effect of making tenants reluctant to enforce their rights, such as asking for repairs to the premises.

Current situation

Under the RTA, two types of residential tenancy agreements may be offered: fixed term and periodic. A fixed term tenancy is an agreement which runs a set period with a specific start and finish date. A periodic agreement has a start date but no end date. It continues with the same terms and conditions until either the tenant or the lessor gives the appropriate notice to end it.

According to data from the Bond Administrator, in WA the average length of a tenancy between 2016 and 2021 was 23 months. This indicates that a substantial proportion of tenants live in premises well beyond a six or 12 month fixed term.

However, according to a survey conducted by CHOICE in 2018 which received 1,547 responses,[45] the majority of WA tenants are currently on lease agreements that are shorter than 23 months:[46]

- 64 per cent of tenants were on a fixed term lease that was 12 months or shorter;
- 26 per cent of tenants were on rolling, periodic leases; and
- eight per cent of tenants were on leases of two years or more.

One of the overarching policy objectives of the RTA review is to improve tenants' security of tenure. While fixed term tenancy agreements give tenants certainty for the term of the lease, tenants are uncertain whether the lessor will offer to extend the lease agreement at the end of the fixed term. This may create anxiety for the tenant that if they exercise their rights, such as by requesting repairs and maintenance, their lease may not be renewed at the end of the term. According to a survey of tenants conducted by the Make Renting Fair Alliance, 53 per cent of tenants felt "concerned" or "very concerned" that they would be evicted (or not have their lease renewed) if they were to request repairs. For this reason, the lessors' ability to terminate due to the end of a fixed term agreement needs to be considered alongside other reforms to fixed term tenancy agreements.

[45] This is the number of responses across Australia.
[46] Above n 15, p13.

Objective

To improve security of tenure for tenants through longer term tenancy agreements.

Options Considered

The following options were presented in the CRIS for feedback:

Table 3 – Options considered in the CRIS	
Option A	**Status quo** Under this option there would be no change. Lessors and tenants would continue to be able to enter into both fixed and periodic tenancy agreements in all circumstances.
Option B	**Use of fixed term agreements prohibited in all circumstances** Under this option, only open ended, periodic tenancies would be allowed under the RTA. This would only be effective if no grounds terminations were removed from the RTA so that a lessor could not just terminate a periodic tenancy at will, rather a lessor would be required to use one of the specified grounds prescribed within the RTA.
Option C	**Fixed term tenancies permitted in only limited circumstances** Under this option, fixed term tenancies would only be permitted in circumstances where the premises are genuinely only available for a limited period of time, for example; if the premises are the lessor's primary residence and the lessor chooses to leave the premises while they are travelling or living elsewhere for a known period, where the lessor intends to demolish or substantially renovate the premises at a certain point in time, or where the tenancy is linked to an employment contract.
Option D	**Fixed term tenancies permitted, with tenants entitled to an option to renew for a total minimum period of five years** Under this option, fixed term tenancies would be permitted, however tenants who are granted a fixed term tenancy agreement of less than five years would be entitled under the RTA to an option to renew, for a total period of at least five years. A tenant would not be obliged to exercise the option if they did not want to, however they would be required to give notice to the lessor of their intentions. The notice period would be developed in consultation with stakeholders. The introduction of trial periods, for example, an initial six month tenancy which the lessor is not under obligation to renew, could result in an increased risk to tenants' security of tenure.

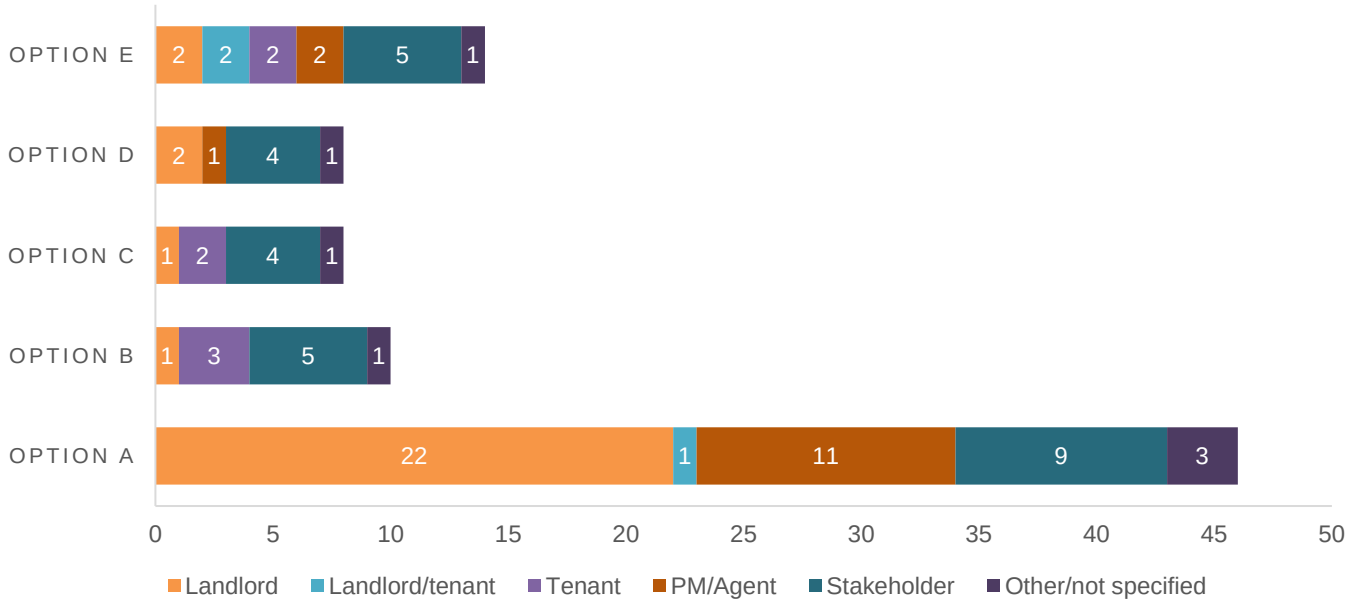
Option E	**Amend the RTA to encourage the use of longer fixed term agreements** Under this option, the RTA would be amended to encourage the use of longer fixed term agreement by allowing lessors and tenants to contract out some provisions of the Act, such as responsibility for repairs and maintenance, and add in additional terms. The terms that could be contracted out of, and those that may be added in, would be prescribed in the legislation and determined in consultation with stakeholders.

Stakeholder feedback to the CRIS

Of the 86 responses received to the question of which option is preferred,[47] the majority (54 per cent) favoured Option A - retaining the status quo. Seventy one per cent of respondents who favoured retaining the status quo were lessors and property managers. This option did not receive any support from tenants.

A breakdown of the responses is provided in Chart 4 below:

Chart 4: Breakdown of responses – which option do you prefer and why?



The most frequently submitted reasons (in order of preference) for favouring this option were:

- because parties already have the option of entering into longer term tenancies, the fact that 6-12 month tenancies are the norm indicates they are unwilling to enter into longer leases;
- fixed term tenancies provide certainty and security for both landlords and tenants; and

[47] This includes 12 respondents who selected more than one option. There were 74 respondents in total.

- short term tenancies give parties the opportunity to “trial each other” and determine whether a longer term tenancy would be workable.

REIWA submitted that there are numerous benefits to fixed term leases including that they:

- increase security of tenure for both parties;
- enable the lessor to secure finance for the property;
- are required for the lessor to secure insurance; and
- provide an opportunity for parties to determine suitability of each other before entering into a longer term agreement.

Option E was the next most supported with 16 per cent of respondents preferring this option. The predominant reason for this was that longer fixed term agreements help to provide security of tenure whilst balancing the rights of both tenants and landlords. A number of respondents selected both Option A and Option E.

Some community housing providers, such as Stellar Living, submitted that fixed term tenancy agreements are necessary for the community housing sector where a property is linked to crisis or income eligibility. In those circumstances, the term of the tenancy is determined according to the tenant’s circumstances or income. According to Shelter WA, a key issue for community housing providers and providers of short term accommodation is having the flexibility to offer tenancy arrangements that address the need for probationary terms. Further, often accommodation programs are limited by the funding cycle which makes the option for longer term tenancies difficult.

Some tenant representative bodies submitted that allowing lessors to terminate at the end of fixed term agreements is analogous to a “without grounds” termination.

Communities supported retaining the status quo because it requires the use of fixed term tenancies in several instances including where:

- applicants have a negative history as a former tenant and the fixed term tenancy is used to see if the tenant can keep their obligations before being offered a periodic tenancy;
- the property is soon to be demolished and redeveloped;
- a disability modified house is vacant without any eligible applicants. The property may be offered on a fixed term lease until there is an eligible applicant; and
- a Government Regional Officer Housing property is temporarily vacant. The property may be offered on a fixed term lease until it is required again.

Alternative proposals submitted to help facilitate longer term tenures included:

- offer an initial 12 month lease for parties to “prove themselves” with subsequent longer term options for renewal;

- offer rebates or discounts to the lessor for entering into long term agreements, such as via higher land tax discount/rebate;
- lease periods should be based on a child's schooling and developmental needs. The option to renew should be afforded to tenants until children finish school or reach 18 years; and
- introduce tick boxes on the tenancy application form and standard tenancy agreement form for periods such as six-month, 12 month, 2 year, 5 year and 10 year fixed terms so that both parties are reminded of the longer term options when filling out the forms.

Cost implications

The CRIS asked respondents what the cost implications of the different requirements may be.

Of the 11 responses received, the most frequently submitted cost implication of prohibiting fixed term tenancies was that it would result in fewer landlords providing their properties for rent and therefore increased rental prices. Communities and the Department for Planning, Lands and Heritage agreed with this position.

Other submitted cost implications included that:

- lessors selling a property which is subject to a long term fixed term lease could only sell to a property investor and would therefore have to significantly reduce the selling price; and
- lessors may not engage property managers for long term leases because the initial payment would probably increase and may be insurmountably high.

Other jurisdictions

All Australian states and territories have both fixed term and periodic tenancy agreements, and in the case of fixed term agreements - lessors and tenants can agree between themselves on the term of the lease.[48]

All states and territories require a lessor and/or tenant to give the other party a minimum period notice if they are not going to renew a fixed term tenancy agreement or to allow it to roll over into a periodic agreement. The notice periods required to be given by tenants in different jurisdictions range from 14 days' notice (NSW, NT, Qld) to 3 weeks' notice (ACT). The notice period by lessors range from 14 days' notice (NT) to 26 weeks' notice (ACT). In WA, the minimum notice period is 30 days.[49]

Termination at the end of a fixed term

Victoria is the only jurisdiction that limits the lessor's ability to terminate a fixed term tenancy agreement at the end of the fixed term. In 2018, Victoria introduced legislation

[48] In Tasmania, a fixed term lease cannot be less than four weeks: *Residential Tenancy Act 1997* (Tas), Section 10.
[49] *Residential Tenancies Act 1987* (WA), Section 70A.

requiring the lessor to have a prescribed ground to terminate a fixed term tenancy at the end of the term (other than the first fixed term). These grounds are the same as those provided to terminate a periodic agreement, such as that the lessor intends to move into the property or conduct renovations. In other words, a lessor can only terminate the first fixed term agreement "without grounds" and each subsequent termination must satisfy a prescribed ground.[50]

The legislation came into effect on 29 March 2021, making it too early for meaningful data to be available regarding the effects the changes have had on security of tenure. When the reforms were introduced, industry stakeholders suggested the reforms may result in lessors changing tenants after every fixed term lease, which would have the unintended consequence of decreasing tenants' security of tenure.[51]

The risk posed by prohibiting "without grounds" terminations for periodic tenancies but allowing lessors to terminate fixed term tenancies at the end of each term may have been borne out in Tasmania. In Tasmania, no grounds terminations are prohibited for periodic tenancies and termination at the end of fixed term tenancies is permitted without a reason. The 2018 CHOICE "Disrupted" report demonstrated that Tasmania has the lowest percentage of periodic leases in Australia (11 per cent, compared to a national average of 24.5 per cent) and the highest percentage of fixed term leases for one year or less (76 per cent, compared to a national average of 64 per cent).[52] This data suggests that prohibiting no grounds terminations while allowing short fixed term tenancies may have resulted in decreased security of tenure for tenants.

Whether to allow termination at the end of fixed term tenancies was the subject of consultation during Queensland's recent review of its *Residential Tenancies and Rooming Accommodation Act 2008* (Qld). The Queensland DRIS – "A better renting future – Safety security and certainty"[53] recommended that "end of a fixed term" should not be a valid reason to terminate a tenancy because it may create incentives for lessors to offer short fixed term agreements and end tenancy arrangements at will.[54] Tenant representative body, Tenants Queensland, stated that "end of a fixed term is without reason and maintains the impact and effect of a without grounds termination, as well as the status quo".[55]

No Australian jurisdictions currently apply the combination of:

- prohibiting no grounds terminations; and

[50] Termination "without grounds" is only available where the first fixed term is less than five years. The commencement of the legislation was delayed until March 2021 due to COVID-19. Victorian Government, Rent Fair – rental reforms for Victorians, available at: https://www.vic.gov.au/rentfair-rental-reforms-victorians
[51] For example, Richardson & Wrench, *Fairness is a two-way street,* accessed from www.randw.com.au/newsletters/fairness-is-a-twoway-street. html.
[52] Above n 15, p13.
[53] Available through the Department of Communities, Housing and Digital Economy webpage: www.chde.qld.gov.au/about/initiatives/rental-law-reform
[54] However, the Queensland the *Housing Legislation Amendment Act 2021* (Qld) continues to allow lessors to end tenancy agreements on the basis of the end of a fixed term.
[55] Report on the Housing Legislation Amendment Bill 2021 by the Community Support and Services Committee available at the following webpage: https://www.parliament.qld.gov.au/Work-of-Committees/Publications?committeeId=165

- prohibiting fixed term tenancies; or
- not including the end of a fixed term tenancy as a permitted ground for termination.

Table 4 below provides an overview of no grounds terminations and fixed term tenancies in Australia.

Table 4: Overview of no grounds terminations and fixed term tenancies in Australia

Jurisdiction	No grounds terminations prohibited	Can lessors terminate fixed term tenancy agreements at the end of the fixed term?
ACT	✗[56]	Yes
NSW	✗	Yes
NT	✗	Yes
Qld	✓	Yes
SA	✗	Yes
TAS	✓	Yes
Vic	✓	Yes, but only at the end of the first fixed term, and only where the fixed term is 5 years or less
WA	✗	Yes

Longer fixed term tenancies

In NSW and Victoria amendments to tenancy laws have been made to encourage greater use of longer term tenancy agreements.

In NSW,[57] where a tenancy agreement is longer than 20 years, the lessor and tenant may contract out of some provisions of the Act, such as responsibility for repairs and maintenance, and may add in additional terms.

Amendments made in Victoria in 2017 mean that fixed term residential tenancy agreements of more than five years are now subject to the *Residential Tenancies Act 1997* (Vic). Special terms apply to these long term agreements.[58]

[56] Removing no grounds terminations will be considered in the next suite of reforms to residential tenancy legislation in ACT.
[57] *Residential Tenancies Act 2010* (NSW) section 20.
[58] These include that the lessor can ask the tenant to top up the bond after five years, the lessor and tenant can agree to certain modifications upfront and include these in the agreement and the lessor can inspect the property once every 12 months.

Scotland – an example of a jurisdiction that has removed no grounds terminations and fixed term tenancy agreements

In December 2017 Scotland significantly reformed its residential tenancy legislation including removing "no grounds" terminations for all "private residential tenancies".[59] Under this model, "private residential tenancies" do not have a fixed end date and can only be terminated according to prescribed grounds.

In May 2019, a report was published evaluating the impact of the changes on the residential tenancy sector. The report found that introducing a "perpetual tenancy" did not result in negative impacts to the residential tenancy sector such as increased rent, homelessness or a shrinking sector. Further, the reforms resulted in tenants feeling more secure in their tenure and less fearful of homelessness.[60]

Impact analysis

The following table outlines potential benefits and disadvantages of the identified options.

	Potential benefits	Potential disadvantages
Option A – Status quo	Lessors • Status quo maintained. • No additional costs of compliance. Tenants • Status quo maintained. Government • No cost of introducing or administering new policy.	Lessors • Fixed term tenancies continue. Tenants • No improved security of tenure. • Tenants continue to have barriers to enforcing rights. Government • Risk that private housing sector will not provide adequate security of tenure.
Option B – Fixed term tenancy agreements prohibited	Lessors • Retain the right to terminate the tenancy agreement in appropriate circumstances. Tenants • Improved security of tenure for tenants if "without	Lessors • Lessors have less certainty about length of tenancy agreement and rental income.

[59] A "private residential tenancy" is a specific type of tenancy introduced in Scotland. "Private residential tenancies" apply to tenancies started on or after 1 December 2017, let as a separate dwelling, let to an individual (not a company) as a main residence, with a lease agreement in place. Some exemptions apply (e.g. holiday housing, social housing, commercial tenancies, housing provided by charities).

[60] Shelter UK, *The new private rental tenancies: evaluating changes to rental agreements in Scotland* (May 2019) p6.

	grounds" terminations for periodic tenancies is also prohibited. • Flexibility of tenure driven by tenants' needs. • Tenants may have greater confidence to enforce rights under the RTA. Government • Reduced impost on public housing.	• Lessors lose opportunity to choose not to renew agreement. • Risk that grounds for termination may not cover all circumstances. Tenants • Decreased flexibility for tenants who prefer fixed term agreements. Government • Perceived risk that removing no grounds terminations may reduce the incentive to invest. • Risk of increased disputes if tenants contest the grounds of the termination.
Option C – Fixed term tenancy agreements permitted in only limited circumstances	Lessors • Lessors retain flexibility to use fixed term agreements in prescribed circumstances. Tenants • Improved security of tenure if "without grounds" terminations for periodic tenancies is also prohibited. • Increased transparency upfront about any limited availability of the premises. Government • Reduced impost on public housing.	Lessors • Lessors lose opportunity to choose not to renew agreement unless in prescribed circumstances. Tenants • Tenants who may prefer a fixed term agreement may not be offered one. Government • None discernible.

Option D – Fixed term tenancies permitted, with tenants having a statutory right to an option to renew for a total period of at least five years	Lessors • Preserves certainty of length of tenure for lessors. Tenants • Improved security of tenure for tenants. • Retains flexibility in length of tenure for tenants. • Increased confidence to enforce rights under the RTA. Government • Reduced impost on public housing.	Lessors • May limit a lessor's flexibility in the use of the premises for the option period. • Limits flexibility in choosing not to renew a tenancy agreement. Tenants • Continued risk to security of tenure if trial periods were introduced (i.e. where a lessor could choose not to renew after initial 6 month term). Government • None discernible.
Option E – Encourage longer fixed term agreements	Lessors • Retains flexibility in the market for the use of fixed term or periodic tenancy agreements. Tenants • Improved security of tenure for tenants. • Retains flexibility in the market. Government • Reduced impost on public housing.	Lessors • None discernible. Tenants • Vulnerable tenants may be impacted by contracting out. Government • None discernible.

Assessment against the objective

The objective is to improve security of tenure for tenants through longer term tenancy agreements.

Based on the assessment against objectives and stakeholder feedback, none of the options outlined in the CRIS are recommended. The recommended option is outlined in the following chapter – "security of tenure – preferred option".

Option A

This option does not achieve the objective because tenants may continue to be offered short fixed term tenancy agreements, creating uncertainty about the length of their tenure beyond the fixed term.

Even if “without grounds” terminations are prohibited, if the status quo continues there is a risk that lessors may switch tenants to short fixed term agreements and terminate at the end of the term.

The threat of not having their lease renewed may also make tenants hesitant to exercise their rights under the RTA.

Option B

Under Option B, fixed term tenancy agreements would be abolished and all tenants would be on periodic agreements.

If Option B was introduced, and the use of “without grounds” terminations for periodic tenancies continued under the RTA, Option B would not achieve the objective of security of tenure through longer agreements because a lessor would still be able to terminate a tenancy without reason. As a result, tenants would continue to face uncertainty in their tenure. For these reasons the costs of this option outweigh the benefits and this option is not recommended.

Option C

For the same reasons discussed under Option B above, Option C would only achieve the objective if “without grounds” terminations was also abolished.

However, under Option C lessors would be unable to offer fixed term tenancy agreements in many circumstances. As with Option B, this presents a risk that lessors will miss out on the benefits of fixed term tenancy agreements, namely certainty of income for the length of term.

For these reasons the costs of this option outweigh the benefits and this option is not recommended.

Option D

Option D partially achieves the objective by giving tenants the option of a longer term tenancy should they wish to exercise the option for one, if the term of an initial lease is less than five years. The objective is also partially achieved because periodic tenancies and the use of without ground terminations would continue. If trial periods for six months are also introduced under which a lessor is under no obligation to renew, the risk of the ‘standard practice’ becoming a six month trial lease increases, which could create uncertainty for tenants and reduce achieving the objective of security of tenure.

For these reasons, it is considered that the costs of Option D outweigh the benefits.

Option E

Option E, in principle, would achieve the objective of improving security of tenure and encouraging longer tenancies by allowing the lessor to contract out of some provisions of the RTA to make entering into longer term tenancy agreements more appealing. Option E however comes with the risk that vulnerable tenants may inadvertently agree to contract out of provisions of the RTA that are important for protecting their rights.

If Option E was implemented, such risks could be mitigated by prescribing the provisions that could be contracted out of under the RTA. It may also be necessary to define and prescribe the minimum length that a long term tenancy agreement must be before a lessor and tenant can contract out of provisions of the RTA.

For these reasons, it is considered that the benefits of Option E are likely to outweigh the costs.

Security of tenure - preferred option

The preferred option to improve security of tenure for tenants is to prohibit the ability for a residential tenancy agreement to be terminated by the lessor without specifying grounds and to only allow a fixed term tenancy agreement to be terminated without grounds at the end of the first fixed term. Fixed term tenancy agreements would continue to be used for a term agreed to between the lessor and tenant. As is currently the case under the RTA, a breach of a lease agreement would be grounds for eviction.

In addition, to support the use of longer fixed term agreements under the RTA, lessors and tenants would be able to contract out of some provisions of the RTA for long term leases.

The preferred option would have the following benefits:

- improved security of tenure for tenants, whether they are on a periodic or a fixed term lease;
- provide lessors and tenants the ability to use an initial fixed term agreement to determine whether to continue the tenancy;
- encourage lessors and tenants to enter into longer term leases.

The proposed option would operate as follows:

- **prohibition of without grounds terminations -** Lessors may only terminate periodic tenancies on prescribed grounds. The list of grounds would be expanded and set out in the RTA (see below);
- **fixed term tenancies will continue but termination of fixed term tenancies restricted -** A lessor may only terminate a fixed term tenancy agreement without other grounds at the end of the first fixed term; and
- **provide for the use of longer fixed term agreements –** The RTA would be amended to allow lessors and tenants to contract out of some provisions of the RTA, such as the responsibility for repairs and maintenance.

Prohibition of no grounds terminations by the lessor (Recommendation 1)

Many lessors and industry bodies submitted that prohibiting “without grounds” terminations will not improve security of tenure for the majority of tenancies. This is because currently about two per cent of tenancies are terminated “without grounds”.

However, the impact of removing “no grounds” terminations may be more pervasive than indicated by the percentage of tenancies that have directly experienced no grounds terminations. This is because removing the possibility of no grounds terminations may reduce anxiety experienced by tenants that they could be evicted (or be threatened with eviction) without a reason.

Removing no grounds terminations is expected to have the following effects:

- creating greater certainty that tenants will not be evicted for requesting maintenance or repairs or for otherwise asserting their rights;
- reducing tenants' concern that they will have to move house, the prospect of which is stressful for 83 per cent of Australian tenants;[61] and
- creating greater stability for long term tenants, 36 per cent of whom are on periodic leases nation-wide.[62]

For these reasons, prohibiting no grounds terminations for periodic leases is recommended.

An expanded list of prescribed termination grounds is proposed for the following reasons:

- addresses lessors' concerns that they will "lose control" of their rental premises if they are not given sufficient flexibility to terminate the rental agreement;
- allows for termination of the tenancy in reasonable circumstances; and
- provides clarity to tenants about the reasons they are being evicted.

The proposed grounds for terminating a tenancy will be refined in consultation with stakeholders but are likely to include such matters as:

Tenant conduct

- the tenant not living in the premises or not using the premises for residential purposes;
- breach of the tenancy agreement that is not remedied;
- rent arrears;
- using the premises for an illegal purpose; and
- the tenant has caused substantial nuisance at the premises.

Tenant eligibility

- tenant no longer an employee (if employment linked to housing);
- tenant no longer a student (if student accommodation);
- tenant no longer eligible for supported accommodation or social housing; and
- premises no longer suits the tenants' needs (e.g. under-occupancy).

[61] Above n 15, p 5.
[62] Above n 15, p13.

Social housing

- public interest for public and community housing.

Alternative use of the premises

- lessor intends to sell the premises;
- lessor needs premises for self or family member to move in;
- lessor intends to refurbish or demolish the premises; and
- lessor intends to change the use of the premises for non-residential purposes (e.g. lease to small business).

The RTA already contains some grounds for terminating a periodic tenancy agreement. It is proposed these grounds are retained. These grounds include:

- termination by lessor upon ground of breach of term of agreement (section 62);
- termination by lessor who has entered into contract of sale (section 63);
- termination by lessor or tenant where agreement is frustrated (section 69); and
- termination of tenant's interest on ground that tenant is subject to family violence (section 71AB).

The provisions in the RTA that relate to termination of social housing agreements are also proposed to be retained, such as termination due to objectionable behaviour (section 75A).

Fixed term tenancy agreements

Keeping fixed term tenancies is considered important because it responds to feedback:

- from lessors and tenants that fixed term tenancies provide certainty of tenure for both parties;
- from industry that where the lessor is seeking finance for the rental property, lenders view fixed term tenancy agreements as an additional surety;
- from industry that lessors require fixed term tenancy agreements in place to be covered by landlord insurance;[63] and
- from lessors that they require an initial fixed term period to ascertain whether a longer term tenancy would be workable.

Termination of fixed term tenancy agreements (Recommendation 2)

In the proposed model, fixed term tenancy agreements are permitted for any duration, but termination due to the end of a fixed term tenancy agreement is only permitted at the end of the first fixed term. The lessor is required to satisfy one of an expanded list of

[63] Enquiries with NRMA, AAMI and Allianz insurance indicated that periodic tenancies are acceptable, as long as a written tenancy agreement is in place. AAMI and Allianz did not have a minimum term of the rental, NRMA had a minimum term of 12 weeks.

grounds for termination to end every subsequent fixed term agreement. This allows lessors to have the benefits of fixed term tenancies, such as certainty of income for a fixed period, while avoiding the risk of lessors offering tenants recurrent short fixed term leases with the option of terminating at the end of each one.

Allowing termination only after the first fixed term is proposed because:

- many lessors submitted that initial fixed term agreements allow tenants and lessors the opportunity to "trial each other" to ascertain whether a longer term tenancy would be workable; and
- it prevents the scenario of lessors offering rolling short fixed term agreements.

Encourage the use of longer fixed term tenancy agreements

In the proposed model, lessors and tenants would be allowed to contract out of certain provisions of the RTA if they enter into a long term fixed tenancy agreement – for example, where the agreement is longer than five years.

To mitigate the risk that vulnerable tenants may agree to removing provisions of the RTA that are important for protecting their rights, there would be restrictions placed on the terms that may be modified. Section 20 of the NSW *Residential Tenancies Act 2010* (NSW) provides that the following terms may not be excluded or modified:

- any term in the RTA relating to the payment of rates, taxes and charges by the lessor;
- the rules around rent increases;
- any rights to apply for dispute resolution; and
- the grounds for termination of the agreement.

Similar provisions may be considered in WA. There would also be provision for other terms to be prescribed in the regulations.

Social housing providers

In Tasmania and Victoria, the prohibition on no grounds terminations applies to social housing providers. Their legislation provides special termination grounds available to social housing providers. The same approach is proposed in WA, with termination grounds including:

- tenant no longer eligible for supported accommodation or social housing; and
- a broad provision which captures general "public interest" ground for termination.

Disposal of security bonds

Issue

Currently in WA, the Bond Administrator, who is required under the RTA to hold tenants' security bonds, may only dispose of a bond if the parties have agreed to the bond disposal amount or there are Magistrates Court orders providing the bond disposal amount. If the tenant does not respond to the lessor's request for disposal of the bond, the lessor must go to court.

The issue for consideration is whether there is a more effective process for the disposal of the security bond that will continue to safeguard the interests of all parties to the bond.

Current situation

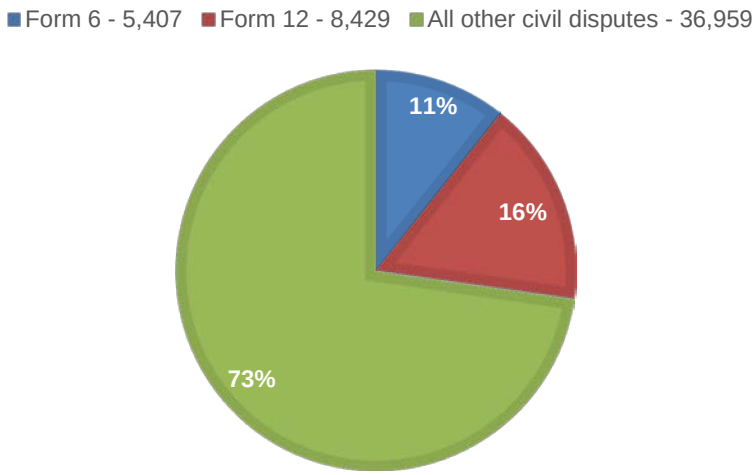
From 2017-2019, the total number of bonds disposed by court order was 17,822. This equates to an average of 8,911 per year.[64] This comprises 51 per cent of all residential tenancy disputes in the Magistrates Court. [65]

Chart 9 below shows the percentage of the following applications for civil disputes in the Magistrates Court in 2018-2019:

- form 6 applications (bond disputes);[66]
- form 12 applications (general residential tenancies disputes, some multi-issue including bonds);[67] and
- all other civil disputes (e.g. general procedure claim, minor case claim, restraining order).[68]

[64] Data received from the Bond Administrator.
[65] This includes where bond disputes were commenced via a Form 12 among other disputes. Data received from the Magistrates Court.
[66] Data received from the Magistrates Court.
[67] Data received from the Magistrates Court.
[68] Government of Western Australia Department of Justice, *Report on Civil Cases in the Magistrates Court of Western Australia 2014/15 to 2018/16,* p7.

Chart 9 – Civil disputes in the Magistrates Court in 2018 - 2019.



Bond disputes contribute significantly to the Magistrates Court's caseload and, as a result, may affect timeliness to have matters dealt with. Stakeholder feedback to the CRIS indicated that delays between lodgement and outcome is one of the main concerns. According to data from the Magistrates Court, the average time to finalise a Form 6 (bond dispute) in 2018 and 2019 was 3-4 calendar weeks.

The scheduled fee for making an application to the Magistrates Court for an order to dispose of a security bond is $71.50. Parties must also spend time attending the court, which may take some hours depending on the court list. Many stakeholders submitted that the time and inconvenience of attending the Magistrates Court is one of the main issues with it being the forum for residential tenancy dispute resolution.

While some bond disposal applications involve a dispute, other applications are made simply because one or more signatures could not be obtained. For example, where the tenant has abandoned the premises or a former tenant has moved from the premises, but their name remains on the bond record.

Of the total Form 6 (bond) applications lodged with the court in 2018 and 2019, an average of 9 per cent (495) were disputed. The remainder (4,822) were not disputed, which means that either the respondent agreed with the application or did not respond to it. This may have been because the tenant was uncontactable but may also have been for a number of other reasons such as stress/intimidation at the prospect of participating in the court process or that the respondent decided the amount of bond involved was not worth pursuing.

Objective

To ensure the RTA provides a cost effective and efficient mechanism for the disposal of the security bond that appropriately safeguards the interests of all parties to the bond.

Proposal considered

The CRIS proposed amending the RTA to allow either a tenant or lessor to apply to the Bond Administrator for release of the security bond and that the Bond Administrator

would be required to seek the views of all other interested parties before releasing the security bond. The Bond Administrator would do this by contacting all other persons whose names are on the bond record. If the Bond Administrator does not receive a response, or the parties agree to the original claim, the Bond Administrator would dispose of the bond. If the claim is disputed, then dispute resolution would be undertaken between the parties.

The CRIS proposed that in the first instance a bond dispute resolution process involving mediation/conciliation would be undertaken by Consumer Protection, and if unable to be resolved, the matter determined by the Commissioner. A party would be able to appeal a determination decision by the Commissioner.

Stakeholder feedback to the CRIS

The majority of respondents to the CRIS (76 per cent) agreed with the proposal to streamline bond disposal. Fifty responses were received, most of which were from stakeholder bodies (32 per cent) and lessors (30 per cent). The majority of lessors, tenants and stakeholder bodies supported the proposal. The only cohort which did not have a majority supporting the proposal was property managers/agents, which were evenly split for and against.

REIWA, Shelter WA and Communities[69] supported the proposal.

Circle Green Community Legal submitted an alternative proposal whereby if a lessor has not made a claim to the bond within 14 days of termination of the tenancy, any undisputed bond amount is refunded to the tenant immediately following the 14 day period.

Respondents made the following points in support of the proposal:

- the current process is cumbersome and administratively expensive, particularly in the case of abandonment;
- the existing bond disposal process is biased towards lessors because they often have the benefit of representation by property managers, who are familiar with the process;
- silence of one party should not unreasonably hold up the bond disposal process; and
- alternative dispute resolution mechanisms may help alleviate backlogs in the Magistrates Court.

Respondents raised the following concerns regarding the proposed bond disposal process:

[69] Support from Department of Communities was in principle, because it does not charge its tenants bonds.

- that the increased number of steps in the dispute resolution process may result in longer delays until resolution;
- tenants should not be able to seek bond disposal because they will seek the full bond every time; and
- the current bond disposal process is adequate.

The Bond Administrator noted that it does not have contact details for approximately 15 per cent of tenants. Often this is because tenants may come and go from a rental property without providing the Bond Administrator with contact details.

Other amendments to the RTA to safeguard the interests of the parties

The CRIS also sought feedback about whether any other amendments needed to be made to the RTA to safeguard the interests of the parties. Responses included:

- lessors should be required to provide receipts to substantiate claims on the bond money;
- fully electronic bond lodgement and disposal process should be implemented;
- the presumption should be that bond money is returned to the tenant unless there is a substantiated claim made against the tenant; and
- a specialist tenancy tribunal should be established which would determine disputes and provide written reasons.

Sixty seven per cent of respondents preferred an alternative forum for dispute resolution comprising mediation, Commissioner determinations or both. Reasons for supporting alternative dispute resolution included:

- dissatisfaction with the Magistrates Court;
- potential for quicker resolution of disputes; and
- potential for the parties to maintain better relationships.

Respondents were also concerned that alternative dispute resolution may result in increased timeframes if parties eventually proceed to the Magistrates Court and therefore also result in the potential for increased costs.

Other jurisdictions

New South Wales, Queensland, South Australia and Tasmania all have systems in place whereby one party to the bond can make a claim on the bond, and the Bond Administrator notifies the other party that the claim has been lodged. If there is no response after a period of time, or if the parties agree, the bond is dispersed per the claim and/or the agreement.

Impact analysis

The below table outlines the potential benefits and disadvantages of the proposal.

	Potential benefits	Potential disadvantages
Status quo	Lessors • No change. Tenants • No change. Government • No additional costs to government.	Lessors • No ability to apply for the bond unilaterally. • Potential delay for disposal of bond where tenant is unresponsive or uncontactable. Tenants • No ability to apply for the bond unilaterally. Government • Impost on Magistrates Court to deal with simple bond disputes continues.
Proposed option	Lessors • Improved resolution of bond disputes where the tenant is uncontactable or unresponsive. • Ability to apply for the bond unilaterally. Tenants • Tenant may apply for disposal of the bond. • Improved resolution of bond disputes where the lessor is uncontactable or unresponsive. Government • Streamlines bond disposal process. • Will reduce demand on Magistrates Court, therefore wait times for other tenancy disputes.	Lessors • Tenant will be able to apply for bond disposal. • Lessors may be unfairly prejudiced if they are uncontactable for a legitimate reason (e.g. being in hospital). Tenants • Tenant may be unfairly prejudiced if they are uncontactable for a legitimate reason (e.g. being in hospital). Government • Additional resourcing required for Bond Administrator. • In some instances the Bond Administrator does not have contact details for a tenant or self-managing lessor, which may cause delay.

Assessment against the objective

The objective is to ensure the RTA provides a cost effective mechanism for the disposal of the security bond that appropriately safeguards the interests of all parties to the bond. The proposal is supported by stakeholders and it meets the objective as it would:

- be a more cost-effective and streamlined process for lessors and tenants – tenants in particular would benefit from quicker access to the return of their bond, which they could use against the next property should they continue to rent;
- reduce the timeframe for disposing the bond where one party is uncontactable;
- allow either party to make a claim on the bond;
- reduce the number of bond disputes required to be dealt with in the Magistrates Court, thus freeing up the court for other matters;
- allow the release of bonds where one party is unresponsive or uncontactable, without having to make an application to the court as is the case currently; and
- be consistent with the approach taken in other jurisdictions.

It is estimated that the Bond Administrator requires two additional staff to implement this proposal and to process unilateral disposal applications. It is anticipated that unilateral claims could be resolved in approximately 21 days as follows:

- one to three days for the Bond Administrator to receive unilateral claim and attempt to contact the other party;
- 14 days waiting for the other party to respond; and
- one to three days for the Bond Administrator to manually dispose of the bond where one party has not responded or agrees.

Many of the 4,822[70] undisputed applications currently made to the Magistrates Court are likely to be dealt with by the Bond Administrator. The party lodging a claim for bond disposal would save the cost of a Magistrates Court application fee ($71.50) and the time, potential stress and inconvenience associated with attending court. It is also anticipated that bonds would be disposed in approximately 21 days by the Bond Administrator as compared to 3-4 calendar weeks through the court.

The benefits of this proposal are therefore considered to outweigh the costs.

[70] This estimate is based on data from the Magistrates Court, which provides that the average number of undisputed Form 6 applications in 2018 and 2019 was 4,822.

Preferred option (Recommendation 3)

It is proposed to amend the RTA to enable either party to apply to the Bond Administrator for release of the security bond as follows:

- parties may apply for bond disposal either unilaterally or via a joint agreement;
- where one party applies, the Bond Administrator notifies the other party of the claim;
- if the other party does not respond within 14 days, the bond is paid as per the claim; and
- where the bond claim is disputed, the dispute follows the chosen dispute resolution model.

Resolving residential tenancy disputes

Issue

The CRIS noted that according to data from the Magistrates Court, in 2018 and 2019 there were on average more than 9,000 Form 12 applications lodged per year. A Form 12 application is lodged when an applicant seeks a court order for resolution of a dispute that has arisen under the RTA. This equates to, on average, 25 applications per day to the Magistrates Court across the state.

In the last review of the RTA, a recommendation was made that a specialist tenancy tribunal be created and jurisdiction for resolution of disputes under the RTA be transferred to that body. Before the recommendations of the previous review could be implemented the SAT was created and the government of the day determined that RTA disputes could be heard by SAT. Due to budgetary constraints at the time as well as concerns relating to access for rural and remote stakeholders, transfer of jurisdiction never eventuated.

Current situation

Western Australia is the only state in which residential tenancy disputes are heard exclusively by the local Magistrates Court. In all other states and territories, alternative dispute resolution mechanisms exist for residential tenancy disputes or they are heard by a civil and administrative tribunal.[71]

Since the last review, and in response to the CRIS, concerns have continued to be raised about the resolution of RTA disputes in the Magistrates Court, namely:

- the length of time taken for some matters to be resolved;
- the absence of written reasons for decisions creating the perception of a lack of transparency and consistency in decision making across court locations; and
- stress and inconvenience of attending court hearings.

In 2020, the Residential Tenancies Mandatory Conciliation Service (RTMCS) was established as part of the response to the coronavirus COVID-19 pandemic, to conciliate disputes arising under the *Residential Tenancies (COVID-19 Response) Act 2020* (WA) (the RTCR Act). The service also provided support to the Residential Rent Relief Grant Scheme and now has concluded following the end of the emergency period specified in the RTCR Act.

Objective

To develop a dispute resolution system that:

- is fast, fair and delivers outcomes consistent with the law;

[71] In Tasmania, some residential tenancy disputes are first determined by the Residential Tenancy Commissioner and some disputes, such as disputes about vacation notices, are referred directly to the Magistrates Court.

- is accessible across the state;
- facilitates and maintains, where possible, constructive relationships between parties;
- facilitates better compliance with the law;
- provides certainty and confidence in the market; and
- is cost effective.

Options Considered

The following options were presented in the CRIS for feedback:

Table 12 – Options considered in the CRIS

Option A	**Status quo** Under this model there is no change to the current dispute resolution regime.
Option B	**Jurisdiction for tenancy disputes is transferred to the SAT.** Under this model, the only change to the current regime is that disputes would be heard by SAT rather than the Magistrates Court.
Option C	**Matters proceed to mediation in the first instance, and then if not resolved, to the court or tribunal.** Under this model, before matters (other than urgent matters) could proceed to a court or tribunal for final determination parties must apply to have the dispute resolved through mediation. The mediation service would be provided by Consumer Protection and the officers would be qualified in mediation and/or conciliation. Mediation would likely be offered via telephone. If parties reach agreement at mediation, a statement of the agreement would be prepared, if the parties do not reach agreement or if one or more of the parties do not agree to participate in the mediation, a certificate of non-agreement would be issued so that the matter could proceed to the court or tribunal.
Option D	**Dispute resolution consisting of a range of options including mediation in the first instance, determination of prescribed disputes by the Commissioner and final adjudication by the court or tribunal.** As per Option C, Consumer Protection would provide a mediation service staffed by qualified mediators/conciliators. If agreement is not reached at mediation or the matter is not suitable for mediation, the dispute would be referred to the Commissioner for Consumer Protection to make

determinations in prescribed disputes. The types of disputes that would likely involve the Commissioner would be disputes regarding non-payment of rent, repairs to premises, access to premises for inspections and bond disputes. Matters such as applications for termination of the tenancy would likely be referred directly to the court or tribunal.

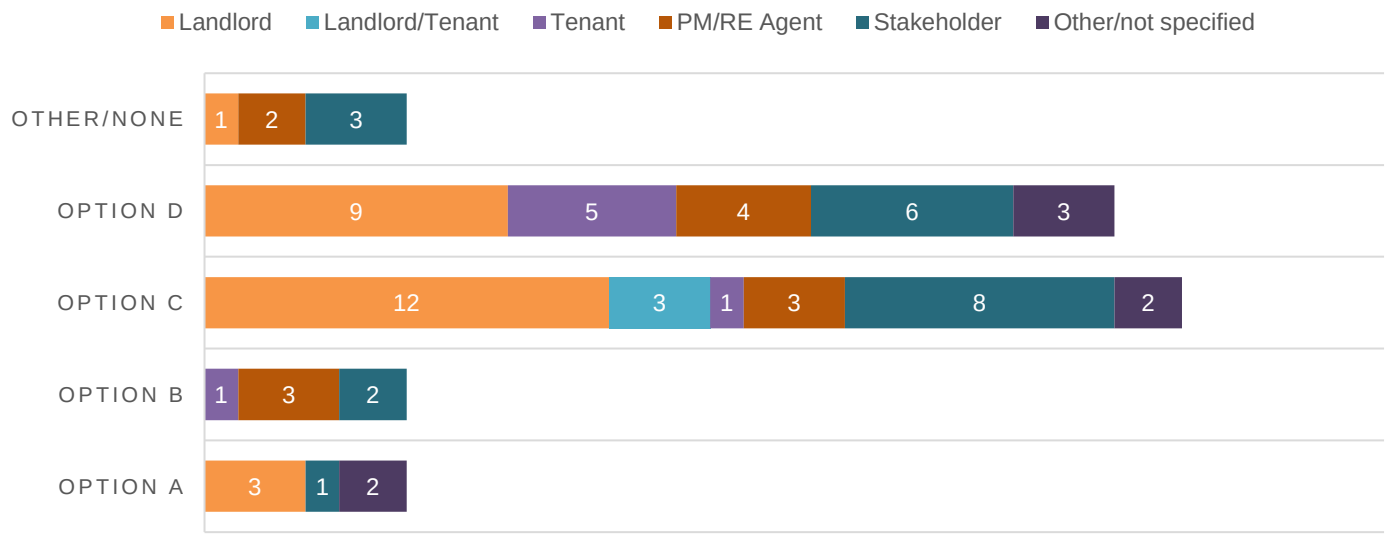
If a party is aggrieved by a determination by the Commissioner, or if the matter is one that requires immediate referral to the court or tribunal, then the court or tribunal would be the final arbiter of the matter.

Stakeholder feedback to the CRIS

Seventy-four responses were received to this issue with the majority of respondents supporting reform of the dispute resolution process (illustrated in **Chart 10** below). The breakdown of responses being that:

- 92 per cent of responses supported changing the status quo. Tenants, lessors and property managers/agents all supported this option as follows:
    - 84 per cent of lessors;
    - 84 per cent of property managers/agents; and
    - 100 per cent of tenants.
- 75 per cent of respondents supported introducing a mixed model of dispute resolution involving conciliation; and
- 76 per cent of respondents supported streamlining the bond disposal process to allow either party to apply for bond disposal unilaterally without a court order.

Chart 10: breakdown of responses to proposed dispute resolution models



Respondents expressed the following concerns with the status quo:

- perceived lack of transparency of Magistrates Court decisions;
- stress and inconvenience of attending court hearings;
- delays between filing and final resolution; and
- lack of efficacy of pre-trial conferences conducted by the Magistrates Court (in comparison to conciliations performed by SAT).

Respondents provided the following key reasons for favouring Options C and D (alternative dispute resolution models):

- the options provide an alternative to the Magistrates Court;
- the alternative dispute resolution options appear less stressful for parties than attending court;
- mediation is a good first step in the process because it will better maintain party relationships;
- alternative dispute resolution models will encourage tenants to enforce their rights without feeling intimidated by the court environment; and
- the Magistrates Court would be freed up to hear other matters.

Some respondents submitted concerns that any alternative dispute resolution process (including mediations and determinations) conducted by Consumer Protection would be biased towards the tenant. This concern was echoed by REIWA in supplementary submissions it made following the early operation of the RTMCS, where it called for conciliations to be conducted by an independent agency.

Some property managers and agents submitted that mediations should not be mandatory because once a dispute reaches the court stage, they have already exhausted their ability to negotiate with the tenant.

Some respondents raised specific concerns about Option D, which involves both mediation and Commissioner determinations. These concerns included that:

- Option D introduces extra steps in the process before parties may go to court. This may result in parties waiting longer for resolution of their dispute; and
- Consumer Protection does not have the judicial experience required to write acceptable Commissioner determinations.

Transfer of jurisdiction to SAT

Option B (transfer of jurisdiction to the SAT without a mixed model of dispute resolution) received support from eight per cent of respondents.

SAT was also proposed as an alternative option to the Magistrates Court in combination with a mixed model (Option C or D). When proposed in this way, SAT was preferred by 61 per cent of respondents including REIWA, Circle Green Community Legal, the Make Renting Fair Alliance and Shelter WA.

Some stakeholders supported transferring jurisdiction to the SAT based on the view that it would result in publication of written decisions, which would assist parties to better understand and apply the RTA, and would increase consistency of decision making across similar disputes. Currently, the SAT is not required to provide written reasons unless the decision is reserved or reasons are requested by a party.[72]

Other concerns raised about transferring jurisdiction to SAT included that SAT is:

- unable to hear interstate disputes;[73] and
- not easily accessible for regional parties.

Alternative options

Alternative suggestions for reform included establishing a dedicated residential tenancy tribunal which would provide greater specialisation than currently offered by the Magistrates Court. Industry stakeholders such as REIWA, the Property Investors Council of Australia and Harcourts Realty suggested a tribunal of that kind could operate primarily online.

Other jurisdictions

In all other states and territories, residential tenancy disputes are either heard by the local civil and administrative tribunal or they are referred to an alternative dispute resolution forum.[74] Queensland and Tasmania have alternative dispute resolution mechanisms that are similar to those proposed in the CRIS.

Queensland

In Queensland, the Residential Tenancies Authority (Qld RTA) offers a free voluntary conciliation service for all residential tenancy disputes except urgent matters and matters deemed unsuitable for conciliation.

Of all eligible applications for dispute resolution received in 2018-2019 (25,153), 30 per cent (7,590) proceed to a teleconference conciliation, with the remainder being processed by an intake conciliator. Intake conciliators process simple disputes quickly,

[72] *State Administrative Tribunal Act 2004* (WA), sections 76 and 78.
[73] This is because in 2018, the High Court of Australia held that a tribunal cannot hear a dispute between individuals who reside in different states, because it is not a chapter III court under the Constitution of Australia: *Burns v Corbett* (2018) 353 ALR 386.
[74] With the exception of Tasmania, where some disputes are referred to the Magistrates Court.

either resolving them via a short “shuttle” conciliation process, referring parties to other services and information, or assisting self-resolution.

Where the intake conciliator deems the dispute complex, the intake conciliator schedules a teleconference conciliation and the dispute is referred to dedicated teleconference conciliators. On average there are 16 conciliators who conduct teleconferences.

Parties cannot be compelled to participate in conciliation, but for most matters to progress to QCAT for determination, parties must have a certificate of unresolved dispute from Qld RTA.

Data from the Qld RTA indicates:

- 74 per cent resolution where the parties participated in conciliation; and
- on average, the Qld RTA resolves disputes within three weeks of the date of lodgement.

In 2018-2019 the Qld RTA most commonly resolved disputes about the bond (58 per cent), followed by repairs (8.5 per cent) and ending a tenancy (3.6 per cent).

Tasmania

In Tasmania, the Residential Tenancy Commissioner (Tas RTC) has authority to make determinations in relation to prescribed disputes including bond disputes,[75] a lessor’s failure to undertake repairs[76] and an allegation by a tenant in relation to unreasonable rent increase.[77]

Parties provide evidence to the Commissioner, who assesses the evidence and provides a written determination. For simple disputes, these determinations can follow a template and comprise one to two pages in length.

All other disputes, and appeals from decisions of the Tas RTC, are heard by the Tasmanian Magistrates Court.

Data from the Tas RTC demonstrates indicates:

- nearly 90 per cent of all bond claims are paid within 30 days; and
- the appeal rate to the Tasmanian Magistrates Court from Commissioner determinations is less than one per cent.

[75] *Residential Tenancies Act 1997* (Tas), section 29G.
[76] *Residential Tenancies Act 1997* (Tas), section 36A.
[77] *Residential Tenancies Act 1997* (Tas), section 23.

Impact analysis

The below table outlines the costs and benefits of the proposed options.

	Potential benefits	Potential disadvantages
Option A – Status quo	**Lessors** • No change. **Tenants** • No change. **Government** • No change.	**Lessors** • Risk of continued delays and perceived inconsistency of decision making in the Magistrates Court. • Risk of stress and inconvenience when attending court. **Tenants** • Risk of continued delays and perceived inconsistency of decision making. • Risk of stress and inconvenience when attending court. • Risk of power imbalance between tenant and landlord in litigation process. **Government** • No opportunity to minimise disputes in the Magistrates Court and streamline the dispute resolution process.
Option B – Jurisdiction for tenancy disputes is transferred to SAT	**Lessors** • Potential for less disputes pursued as parties will have greater knowledge of reasons for decisions. • Potential improved consistency of decision making. **Tenants** • Potentially less disputes pursued as parties will have greater knowledge of reasons for decisions.	**Lessors** • Loss of physical access to the courts for lessors in regional areas. **Tenants** • Loss of physical access to the courts for tenants in regional areas. **Government** • May result in an increased cost to government because the cost of dealing with tenancy disputes in SAT may be greater than the

	• Potential improved consistency of decision making. **Government** • Potential for reduced disputes and less non-compliance.	costs of the Magistrates Court. • SAT orders cannot be enforced by SAT – requires additional step of seeking court order.
Option C – Matters first proceed to mediation, then if not resolved, to the court or tribunal	**Lessors** • Potentially quicker resolution of some disputes than going through court. • More likely to be content with a self-determined outcome. • Helps preserve relationship between lessors and tenants. **Tenants** • Potentially quicker resolution of some disputes than going through court. • More likely to be content with a self-determined outcome. • Helps preserve relationship between lessors and tenants. • Potentially less intimidating and stressful experience than attending court. • Helps alleviate power imbalance between tenant and landlord. **Government** • Reduces burden on Magistrates Court/SAT in only having to respond to some disputes.	**Lessors** • Overall timeframe to resolve disputes may take longer if matter is unresolved and proceeds to Magistrates Court/SAT. **Tenants** • Overall timeframe to resolve disputes may take longer if matter is unresolved and proceeds to Magistrates Court/SAT. **Government** • Cost to government of establishing and maintaining conciliation service. • Possible increased cost per matter in Magistrates Court/SAT because the disputes that they will hear will be more urgent or complex.

	• Reduced burden on Magistrates Court/SAT may result in shorter timeframes for other civil and criminal matters.	
Option D – Dispute resolution consisting of a range of options including mediation in the first instance, determination of prescribed disputes by the Commissioner and final adjudication by the court or tribunal	**Lessors** • More likely to be content with a self-determined outcome for conciliated disputes. • Helps preserve relationship between lessors and tenants. **Tenants** • More likely to be content with a self-determined outcome for conciliated disputes. • Helps preserve relationship between lessors and tenants. • Potentially less intimidating and stressful experience than attending court. • Helps alleviate power imbalance between tenant and landlord. **Government** • Reduces burden on the Magistrates Court/SAT in only having to respond to serious and urgent disputes. • Reduced burden on the Magistrates Court/SAT may result in shorter timeframes for other civil and criminal matters.	**Lessors** • Overall timeframe to resolve disputes may take longer if matter eventually proceeds to the Magistrates Court/SAT or if the alternative dispute resolution services are inadequately resourced and do not function as intended. **Tenants** • Overall timeframe to resolve disputes may take longer if matter eventually proceeds to the Magistrates Court /SAT. **Government** • Cost to government of establishing and maintaining conciliation and Commissioner determination service. • Possible increased cost per matter in the Magistrates Court/SAT because the disputes that they will hear will be more urgent or complex.

Assessment against the objective

Option A

Under Option A, the status quo would be maintained and residential tenancy disputes would continue to be heard in the Magistrates Court. Option A is not recommended because it does not meet the objective. Stakeholder feedback has demonstrated a perception that Option A:

- delivers inconsistent outcomes;
- does not preserve relationships between the parties;
- lacks transparency due to its lack of written reasons; and
- is stressful and intimidating to vulnerable parties.

The advantages of Option A are that it is cost-effective for government and parties, and it is accessible state-wide, however the benefits of maintaining the status quo are considered to be outweighed by the costs.

Option B

Option B proposed that the residential tenancy jurisdiction be transferred from the Magistrates Court to SAT. This could occur either as part of a mixed model or as a transfer of all disputes. Option B is not recommended because:

- the SAT is not easily accessible for regional parties;
- SAT would require significant additional funding to accommodate the residential tenancy jurisdiction, and would likely cost more per dispute than the Magistrates Court;
- SAT orders cannot be enforced by SAT and would need to be enforced in a court of competent jurisdiction, creating confusion and complication for parties;
- SAT does not have jurisdiction to hear interstate disputes which would have to be determined by a court; and
- application fees are higher in SAT than in the Magistrates Court.

For these reasons, it is considered the costs of Option B outweigh the benefits and it does not meet the objective.

Option C

Option C proposed that Consumer Protection conduct mandatory conciliation for all residential tenancy disputes except those deemed urgent. Urgent matters, and those unresolved at conciliation, would be heard by the Magistrates Court or SAT.

While Option C would achieve some aspects of the objective, such as maintaining constructive relationships between the parties, Option C is not recommended due to the following factors:

- Option C would result in increased cost to government of establishing and maintaining the service;
- without adequate resourcing, timeframes for resolution may be longer than currently experienced in the court system; and
- a dispute may take longer than the current timeframe to resolve if parties cannot reach agreement at conciliation and the dispute then then proceeds to the court.

Option D

Option D proposed a tiered dispute resolution process involving both conciliations and determinations by the Commissioner for Consumer Protection.

Option D is not recommended due to the risk that implementing Commissioner determinations as an 'escalation' step for unsuccessful conciliations will result in a lengthier overall dispute resolution process, especially if parties eventually appeal their dispute to the Magistrates Court.

As the costs of the above options outweigh the benefits, two alternative models for dispute resolution were considered.

Comprehensive model

Mixed model involving Commissioner determinations and conciliation

An alternate model to the above options has been identified. The comprehensive dispute resolution model is similar to Option D, except that Commissioner determinations are not the "escalation" step from conciliation. Under the comprehensive model, disputes would be referred to either conciliation, determination by the Commissioner or to the Magistrates Court, depending on the type of dispute.

This option has the following benefits:

- bond disputes would be resolved quickly and efficiently via Commissioner determinations;
- it avoids having Commissioner determinations as an 'escalation' for unsuccessful conciliations (as proposed in Option D) which would likely result in a lengthier overall dispute resolution process; and
- the model retains conciliation as part of the dispute process for more complicated bond disputes and other disputes during the tenancy, thereby increasing the chance of preserving the tenancy through conciliation, increased satisfaction of self-determined outcomes and greater flexibility of outcomes than court.

Residential Tenancy Mandatory Conciliation Service

The comprehensive model also builds on the successful introduction of the Residential Tenancies Mandatory Conciliation Service (RTMCS) in 2020. The RTMCS conciliated complex disputes during the COVID-19 pandemic which involved a moratorium on evictions and rent increases, and a requirement for lessors and tenants to reach rent repayment agreements for deferred rent. As the end of the emergency period approached, the RTMCS received increasingly complex cases that took longer to resolve and required multidisciplinary support.

Despite the difficulty of the circumstances it was operating in, the RTMCS has demonstrated successful outcomes. Over the course of its operation, the RTMCS received 4,004 submissions. Of the submissions it accepted (80 per cent) it achieved agreement in 76 per cent of cases.[78]

The vast majority (81 per cent) of the applications received were disputes about paying rent. The next highest category of application was termination of tenancy agreements (seven per cent).

A customer satisfaction survey of conciliation participants, which received 350 responses,[79] found that the majority of participants (71 per cent) were satisfied with the

[78] This includes formal and informal agreements, consent orders and agreements in part.
[79] Of the respondents, 31 per cent were lessors, 37 per cent were property managers/agents and 30 per cent were tenants.

conciliation outcome. It also found that 61 per cent of participants would use the RTMCS if it were available after the COVID-19 period.

While industry stakeholders initially supported introducing the RTMCS as an alternative to the courts, as the end of the emergency period approached the following concerns were expressed:

- the timeframes associated with the service were unacceptable;
- there was a perception that the conciliation process was biased towards tenants and property managers were treated unfairly; and
- a high proportion of repayment agreements were breached by tenants, resulting in a debt to lessors.

The time taken for the RTMCS to resolve disputes peaked in February 2021 at 72 days, when demand for the service was particularly high due to the approaching end of the moratorium on evictions on 28 March 2021. Following the end of the emergency period, demand on the service eased and the average timeframe for resolution when the service closed on 27 August 2021 was 41 days.

The concerns over the process and outcomes should also be seen within the COVID-19 context. The COVID-19 emergency period and rental moratorium posed challenges for all parties that may have affected parties' ability to maintain repayment agreements and their perception of the service.

Operation of the comprehensive model

A process flowchart of the comprehensive model is provided at **Appendix 1**. The model would operate as follows:

- The Commissioner for Consumer Protection would determine bond disputes on the papers;
- Mandatory conciliation would be conducted by conciliation officers from Consumer Protection for the following types of dispute:
    - terminations pursuant to RTA section 62 (i.e. breach notice); and
    - other disputes arising during the tenancy (e.g. rent arrears, utilities charges, orders for possession).
- The Magistrates Court would retain jurisdiction for serious disputes and complex disputes, for example:
    - terminations pursuant to RTA section 73 (where tenant causing serious damage);
    - section 74 (where lessor or tenant would otherwise suffer undue hardship);

- section 75A (social housing tenancy termination due to objectionable behaviour);
- section 75 (breach by lessor);
- disputes where the quantum involved is more than the bond; and
- bond disputes, where it is one of multiple disputes.

- The Magistrates Court would also hear disputes that were unresolved or unsuitable for conciliation and appeals from Commissioner determinations. Parties would be able to appeal Commissioner determinations if they are dissatisfied with a decision.

Resourcing and timeframes

Based on efficiency data from Qld RTA and Tas RTC and the number of disputes currently heard in the Magistrates Court, it is estimated that the comprehensive model would require:

- Eight FTE to issue Commissioner determinations for 5,407 bond disputes per annum. Determinations are estimated to be resolved within 30 days; and
- Ten FTE to conciliate 4,681 complex disputes per annum. Conciliations are expected to be conducted within 21 days.

Under this model, the Magistrates Court would hear approximately 3,319 complex or serious disputes per annum. This includes disputes that were not resolved at conciliation and Commissioner determinations that were appealed.

Impact analysis

The below table outlines the potential benefits and disadvantages of the comprehensive model.

	Potential benefits	Potential disadvantages
Comprehensive model	**Lessors** • Likely quicker dispute resolution by the Commissioner. • More likely to be content with a self-determined outcome for conciliated disputes. • Helps preserve relationship between lessors and tenants. • Increased transparency of decision making for Commissioner determinations	**Lessors** • Overall timeframe to resolve disputes may take longer if matter eventually proceeds to the court. • Potential for perception that Consumer Protection is biased towards tenants. **Tenants** • A dispute may take longer than the current timeframe to resolve

	Potential benefits	Potential disadvantages
	because written reasons will be provided. **Tenants** • Likely quicker dispute resolution by the Commissioner. • More likely to be content with a self-determined outcome for conciliated disputes. • Helps preserve relationship between lessors and tenants. • Potentially less intimidating and stressful experience than attending court. • Helps alleviate power imbalance between tenant and landlord. • Increased transparency of decision making for Commissioner determinations because written reasons will be provided. **Government** • Reduces burden on the Magistrates Court in only having to respond to serious disputes. • Reduced burden on the Magistrates Court may result in shorter delays for all civil and criminal matters. • Combination of conciliation and Commissioner determinations streamlines dispute resolution process.	if parties cannot reach agreement at conciliation and the dispute then proceeds to the court. **Government** • Cost to government of establishing and maintaining conciliation and Commissioner determination service. • Possible increased cost per matter in the Magistrates Court because the disputes that it will hear will be more complex.

Preferred dispute resolution model (Recommendation 4)

Commissioner determinations and Magistrates Court

It is acknowledged that the comprehensive model represents a substantial change to the status quo for residential tenancy dispute resolution and would require a significant increase in resources to operate. This preferred model is proposed because it is expected to achieve the objective, but with less impost on resources and less change to the status quo than the comprehensive model.

In this model, bond disputes and other specified matters[80] would be resolved via Commissioner determinations and all other disputes would be heard by the Magistrates Court.

This option is recommended for the following reasons:

- the model retains the benefits of the comprehensive model outlined above. This includes more convenient and less stressful resolution of bond disputes than currently achieved through court; and
- because a conciliation component is not included, this model avoids the additional cost and process of conciliations and could be implemented at a lesser cost.

The disadvantages of this model (when compared to the comprehensive model) are that:

- the preferred model loses the opportunity for all of the benefits of conciliation outlined above. For example, party satisfaction and preservation of lessor and tenant relationships. It also fails to capitalise on the successful implementation of the RTMCS; and
- many disputes would still be heard in the Magistrates Court. This fails to address stakeholder dissatisfaction with the status quo and preference for a mixed model of dispute resolution.

Operation of the preferred model

A process flowchart of the preferred model is provided at **Appendix 2**. The model would operate as follows:

- The Commissioner for Consumer Protection would determine bond disputes and other specified disputes on the papers (where the bond dispute is not one of multiple disputes relating to the tenancy).
- The Magistrates Court would retain jurisdiction for all other disputes.
- Parties are given seven days to appeal a decision of the Commissioner to the Magistrates Court.

[80] For example, applications relating to pets and modification of premises

- De-identified reasons of the Commissioner would be published by Consumer Protection to provide greater transparency around its decision making.

The types of dispute that the Commissioner determines could be prescribed in regulations. Through this mechanism, the scope of the Commissioner's authority could be modified as experience demonstrates what types of dispute are best suited to determinations, as has been the case with the Tasmanian RTC.[81]

Resourcing and timeframes

Based on efficiency data from Qld RTA and Tas RTC and the number of disputes currently heard in the Magistrates Court, it is estimated that the preferred model would require eight FTE to issue Commissioner determinations for 5,407 bond disputes. Determinations are estimated to be resolved within 30 days.

Under this model, the Magistrates Court would hear approximately 8,000 disputes. These would comprise all residential tenancy disputes other than discrete bond disputes, as well as appealed decisions of the Commissioner.

Impact analysis

The below table outlines the potential benefits and disadvantages of the preferred model.

	Potential benefits	Potential disadvantages
Preferred model	**Lessors** • Convenience of not having to attend court location for bond disputes. • Increased transparency of decision making because written reasons will be provided for determinations, thereby mitigating perceptions of bias. **Tenants** • Convenience of not having to attend court location for bond disputes. • Increased transparency of decision making because written reasons will be provided.	**Lessors** • A dispute may take longer if a party seeks to appeal a determination in the court. • Potential for perception that Consumer Protection is biased towards tenants. **Tenants** • A dispute may take longer if a party seeks to appeal a determination in the court. **Government** • Cost to government of establishing and maintaining the Commissioner determination service. • Possible increased cost per matter in the Magistrates Court

[81] Since its inception, the Tasmanian RTC has increased the scope of determinations it makes on a number of occasions. For example, in 2011 the Commissioner was given additional authority to determine disputes in relation to residential tenancy databases and in 2013 the Commissioner was given additional authority to determine disputes in relation to bonds.

	Potential benefits	Potential disadvantages
	• Potentially less intimidating and stressful experience than attending court. • Helps alleviate power imbalance between tenant and landlord. **Government** • Reduces burden on the Magistrates Court in dealing with bond disputes. • Reduced burden on the Magistrates Court may result in shorter delays for other civil and criminal matters. • More flexible minor dispute resolution, with Commissioner determinations able to be resolved on the papers with no physical attendance by the parties required.	because the disputes that they will hear will be more complex.

Frequency of rent increases

Issue

Western Australia is out of step with many other Australian states and territories that have moved to increase the interval permitted between rent increases. The review considered if the RTA should continue to permit rent increases every six months or if the period should be increased.

Current situation

The RTA permits rents to be increased every six months provided that:

- the tenant is given at least 60 days' notice of the increase; and
- in the case of a fixed term tenancy agreement, the agreement specifies the amount of the increase or a method of calculating the agreement.

If a lessor proposes to increase the rent after renegotiating a lease with the same tenants at the same premises, the rent increase cannot commence until 30 days after the start of the new agreement. This provision was introduced in 2013 to prevent lessors from using a series of fixed term agreements of less than six months duration each, and then increasing the rent at the commencement of each new agreement.

Objective

To ensure the frequency of rent increases is not excessive for tenants, while maintaining the flexibility for lessors to adequately recover costs and make a reasonable return on their investment.

Options considered

The options in Table 5 were presented in the CRIS for feedback.

Table 5 – Options considered in the CRIS

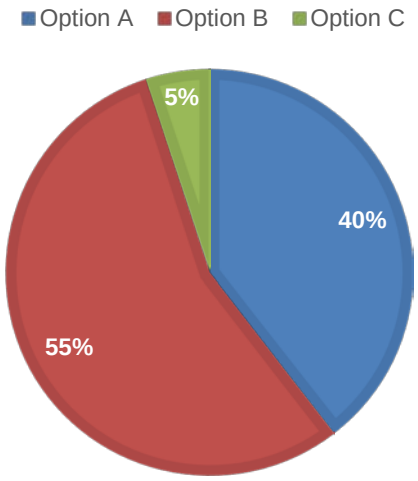
Option A	**Status quo** Under this option there would be no change to the current laws. Lessors will continue to be allowed to increase the rent every six months provided a tenant is given at least 60 days' notice of the proposed increase.
Option B	**Allow for rent increases at not less than 12 monthly intervals** Under this option, a fixed term tenancy agreement would still need to allow for a rent increase during the term, but in both fixed term and periodic agreements, rent increases could not occur more frequently than at 12 monthly intervals.

Option C	**Allow for rent increases at not less than 2 yearly intervals** Under this option a lessor would not be able to increase the rent more frequently than at two yearly intervals, unless the lessor has undertaken substantial improvements in the amenity of the premises during this period.

Stakeholder feedback to the CRIS

One hundred and nineteen people responded to the CRIS in relation to the frequency of rent increases. Most respondents to this issue (55 per cent) supported Option B, reducing the frequency of rent increases to once every 12 months. Forty per cent supported making no change (Option A). A breakdown of the responses to the question of which option is preferred is provided in Chart 5.

Chart 5: Breakdown of responses– which option do you prefer and why?



Seventy two per cent of the respondents who supported Option A were lessors or property managers/real estate agents. Two tenants supported Option A, but also identified as having been lessors. Key points made in support of Option A were:

- the residential tenancy market has natural cycles that should be left to dictate rental prices; and
- extending the frequency of rent increases would result in the lessor no longer being able to increase rent in line with rates and other expenses. This would reduce the profitability of the lessor's rental property.

The respondents that supported Option B comprised 41 per cent lessors or property managers/real estate agents and 41 per cent tenants. Key points made in support of Option B were that:

- it is considered to be the fairest option for both lessors and tenants; and
- it helps address the power imbalance between both parties.

The strongest opposition to Option B came from the community housing sector. Concern was expressed that community housing organisations largely calculate rents based on incomes, with a high percentage of Centrelink recipients who have their benefits indexed in line with the Consumer Price Index (CPI), calculated twice a year. Communities submitted similar concerns and added that administering rent increases for public housing once every 12 months would be operationally difficult.

In support of Option B, the Peel Community Legal Centre submitted that it has seen new rentals offered at unusually decreased rates, only to later be re-adjusted to reflect the economy stabilising. When this happened, tenants who were paying significantly reduced rents were caught off guard as rents were increased to reflect the "normal circumstances" rent.

Similarly, the Gosnells Community Legal Centre submitted that tenants may be afraid to assert their rights under the RTA, fearing that if they do so, they will be evicted or have their rent increased in retaliation. The current climate of six-monthly permissible rent increases allows this fear to occur more often. If rent increases were limited to a period of two-year intervals, tenants could more confidently assert their rights without the fear of retaliation in the form of rent increases.

Option C received minimal support. However, there were submissions that expressed that removing the threat of rent increases would allow tenants to assert their rights confidently, without fear of retaliatory rent increase from the lessor.

A summary of key points made by stakeholder groups on all options can be found in **Appendix 3**.

Reducing frequency of rent increases

Stakeholders submitted alternative proposals for consideration in achieving the objective without having to reduce the frequency of rent increases. These proposals included:

- introducing a cap on the quantum of rent increases;
- giving tenants the opportunity to vacate the premises before a rent increase takes effect without penalty; and
- tenants and lessors negotiating the frequency and quantum of rent increases as part of the tenancy agreement, and to increasing the notice period of rent increase from 60 days to (for example) 90 or 120 days.

Cost implications

There was no strong consensus in response to the call for submissions on cost implications of the three options. There were however, concerns from property managers/real estate agents and housing authorities that by lengthening the period between rent reviews there is the potential for the lessor to be negatively impacted financially. Additionally, feedback from a lessor and Communities expressed concern that longer periods between rent reviews could create larger rent increases when they did occur.

Period of notice

Seventy per cent of respondents submitted that, irrespective of which rent increase frequency is pursued, 60 days is the most appropriate notice period. This was considered to strike an appropriate balance between the needs of both the tenant and the lessor.

Circle Green Community Legal submitted that the current 60 day notice period is not long enough for either the matter to be negotiated or successfully resolved through the Magistrates Court process and that this period should be extended, however a suggested timeframe was not provided.

Other jurisdictions

The law in relation to when rents can be increased varies across all Australian states and territories. Table 6 below outlines the frequency in relation to periodic agreements

Table 6: Allowable rent increases for periodic agreements across Australia

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
12 monthly intervals with 60 days' (8 weeks') notice	✓	✗	✗	✗	✓	✓	✓	✗
Six monthly intervals with 30 days' notice	✗	✗	✓	✗	✗	✗	✗	✗
Six monthly intervals with 60 days' notice	✗	✗	✗	✓	✗	✗	✗	✓
No limit on frequency but minimum of 60 days' notice	✗	✓	✗	✗	✗	✗	✗	✗

In all states and territories, during a fixed-term tenancy agreement, rent can only be increased if the terms of the agreement stipulate that an increase may occur. In both South Australia and Tasmania, this is all that the tenancy agreement must detail. In all other jurisdictions, a fixed term tenancy agreement must also specify either the amount of any proposed rent increase or a method of calculating the increase (for example, CPI). In the Northern Territory, the lessor needs to give a tenant 30 days' notice of a proposed rent increase during a fixed term tenancy agreement. In all other states and territories, the notice period is 60 days or two months.

Table 7 below outlines the frequency of rent increases permitted during a fixed-term tenancy agreement in each of the states and territories.

Table 7: Allowable rent increases for fixed term agreements across Australia

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
No minimum interval	✗	✓[82]	✗	✗	✗	✗	✗	✗
Six monthly intervals	✗	✗	✓	✓	✗	✗	✗	✓
12 monthly intervals	✓	✓[83]	✗	✗	✓	✓	✓	✗

Impact analysis

The following table outlines potential benefits and disadvantages of the identified options.

	Potential benefits	Potential disadvantages
Option A - No change	**Lessors** • No change - lessors are able to increase rents every six months. **Tenants** • No change.	**Lessors** • No change. **Tenants** • Tenants remain vulnerable to frequent rent increases. • Risk of "retaliatory" rent increases.

[82] For a tenancy agreement less than 2 years.
[83] For a tenancy agreement longer than 2 years.

	Potential benefits	Potential disadvantages
	Government • No change.	**Government** • No change.
Option B – Rent increases at not less than 12 monthly intervals	**Lessors** • Retain option to increase rent but not less than every 12 months. • Reduced administration due to interval between increases. **Tenants** • Tenants have longer periods of certainty of rent. • Reduced impact of rent increases during periods of economic boom. **Government** • May reduce risk of private tenants impacted by frequent rent increases having to seek public housing.	**Lessors** • Reduced flexibility to increase rent in line with changing market conditions. • Potential administrative impacts for suppliers of public housing and some suppliers of community housing. **Tenants** • May result in larger rent increases for tenants at each new interval. **Government** • None discernible.
Option C – Rent increases at not less than 2 yearly intervals unless substantial improvement to the premises.	**Lessors** • Retains option to increase rent. • Reduced administration due to interval between increases. **Tenants** • Longer periods of certainty of rent. • Reduced impact of rent increases during periods of economic boom. • Reduced risk of tenant fear of receiving a retaliatory rent increase. **Government** • May reduce risk of private tenants impacted by frequent rent increases having to seek public housing.	**Lessors** • Less flexibility to increase rent in line with changing market conditions. **Tenants** • Tenant may be forced to pay increased rent for improvements to the premises they did not ask for. • May result in larger rent increases for tenants at each new interval. **Government** • None discernible.

Assessment against the objective

The objective is to ensure that the frequency of rent increases is not excessive for tenants, while maintaining the flexibility for lessors to adequately recover costs and make a reasonable return on their investment. Below is an assessment of each of the options in relation to the objective.

Option A

While most lessors were satisfied with six monthly rent increases, many tenants and tenancy advocate groups felt that six monthly rent increases places undue stress on tenants and creates a climate of fear that a retaliatory rent increase may occur. The benefits of maintaining the status quo under Option A are considered to be outweighed by the costs and therefore do not achieve the objective.

Option B

Support for Option B indicated that it may decrease tenants' fear of receiving retaliatory rent increases for asserting their rights. Further, increasing the frequency of rent increases to 12 months would be consistent with the approach taken in other jurisdictions.

Stakeholders not supporting Option B indicated the potential for tenants to receive larger rent increases at each new interval. Some stakeholders raised the potential cost to tenants in social housing of losing the ability to have their rent regularly indexed according to their benefits. Similarly, Communities expressed concern in their submission that Option B, if applied to them, would cause significant operational issues in relation to their methodology of calculating market rents for public housing.

However, social housing rent is usually calculated as a percentage of income of the tenant and so long as the percentage of income in rent charged does not change (the subsidised rent), there is not a change in rent paid. It is common for the subsidised rent to be calculated twice a year. This is an administrative procedure and is not affected by rules regarding the frequency of rent increases. That is, the dollar value of the rent could be adjusted more than once each year at any time the tenant's income has increased but the percentage of income could only be increased annually.

The benefits of Option B are considered to outweigh the costs. Option B achieves the objective and strikes a balance between ensuring that the frequency of rent increases are not excessive for tenants, while maintaining the flexibility for lessors to adequately recover costs and make a reasonable return on their investment.

Option C

While Option C provides the potential for tenants to assert their rights confidently without fear of retaliatory rent increase from the lessor, it may result in larger rent increases on a biannual basis. This option was considered by some stakeholders as also delaying the lessors' ability to pass on increased costs to the tenant and has the potential to reduce

lessor willingness to invest in residential real estate. On balance, the costs of Option C are considered to outweigh the benefits.

Preferred option (Recommendation 5)

It is proposed that the RTA be amended to allow for rent increases at not less than 12 monthly intervals (Option B). Fixed term tenancy agreements would still allow for rent increases during the term, but in both fixed term and periodic agreements, rent increases would not occur more frequently than 12 monthly intervals.

Modifications to the premises

Issue

Tenants are increasingly renting for longer periods and throughout different life stages. Providing tenants with the ability to make minor modifications to the rental premises without having to seek consent from the lessor is a key factor in allowing tenants to feel safe, comfortable and at home in their rental property.

Current situation

Currently under the RTA, lessors can either prohibit a tenant from making alterations or affixing fixtures to the premises, or allow modifications, but only with the lessor's consent. A lessor cannot unreasonably withhold consent to a tenant requesting modifications to the premises where the option is included in the tenancy agreement.[84]

Some tenants made submissions to the review that their lessor refused their requests to make minor modifications without valid reasons. A survey of 890 WA tenants conducted by the Make Renting Fair Alliance found that 31.5 per cent of responding tenants were unable to make modifications to their home.

Three broad categories of modifications that a tenant may wish to make are:

- **to allow for disabilities or ageing in place:** Older tenants or tenants with a disability may need to affix mobility aids to the walls, or install a ramp at the front door;
- **to make the premises feel more like home:** Tenants who are in longer-term tenancies may wish to make the premises feel more like a home by making changes such as changing the colour of the walls, installing a vegetable garden or hanging picture hooks;
- **to make the premises more energy efficient or safe:** Tenants may wish to make the premises more energy efficient by installing efficient appliances or safe by installing security devices.

The RTA currently provides tenants who have been victims of family and domestic violence with the right to change the locks or to make prescribed security upgrades to the premises without requiring the prior permission of the lessor. In addition, recent changes to the RTA allow tenants to affix furniture to the wall for safety of children or persons with a disability, with the lessor being able to refuse consent only in limited circumstances.[85]

[84] *Residential Tenancies Act 1987* (WA), section 47(2)(a).
[85] *Consumer Protection Legislation Amendment Act 2019* (WA), section 67.

Objective

To set clear parameters for modification of the premises that appropriately balance the interests of tenants and lessors.

Options considered

The following options were presented in the CRIS for feedback:

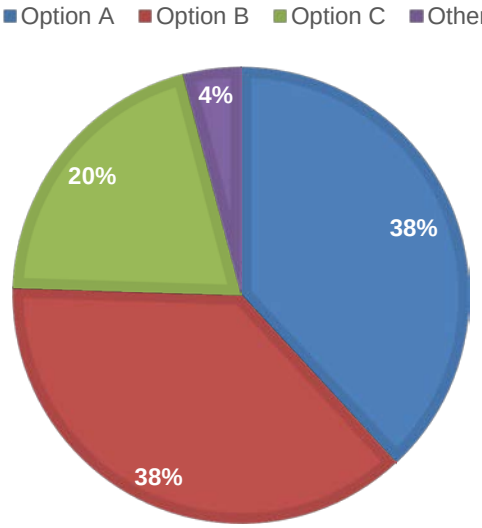
Table 8 – Options considered in the CRIS	
Option A	**Status quo** Under this model there is no change to the current legislative regime. A lessor will continue to be able to stipulate in a residential tenancy agreement that the tenant is either prohibited from making any alterations to the premises, or may only make alterations with the lessor's consent, which cannot be unreasonably withheld.
Option B	**Amend the RTA so that a tenant is entitled, without consent of the lessor, to make minor modifications that do not impact the structural integrity of the premises and can be easily reversed, or to improve disability access and ageing in place, and to make any other modifications with the lessor's consent, which cannot be unreasonably withheld.** Under this option, a tenant would be entitled to make minor changes to the premises that can be removed or undone so that the property is restored to substantially the same condition it was in at the start of the tenancy (fair wear and tear excepted). A tenant would also be entitled to make modifications needed to improve disability access or ageing in place. Any modifications beyond this would continue to require the consent of the lessor, but the lessor cannot unreasonably withhold their consent.
Option C	**Amend the RTA so that a tenant may make alterations to the premises only with the lessor's consent, but that the lessor must obtain an order that withholding of the consent is justifiable in the circumstances.** Under this option, if a lessor wants to withhold consent, they must obtain an independent order, possibly from the Commissioner for Consumer Protection, to withhold the consent. There may be a cost to the lessor for the making of an application.

Stakeholder feedback to the CRIS

The majority of respondents to the CRIS favoured either retaining the status quo or introducing Option B, which would allow tenants to make minor modifications to the premises without the lessor's consent. Of the respondents who supported tenants making modifications, the types of modification that received most support were those required to accommodate disabilities or ageing in place rather than for amenity.

A nearly equal number of respondents supported either retaining the status quo (Option A) or allowing the tenant to make minor modifications without the consent of the lessor (Option B), with 38 per cent each. The breakdown of support for Options A, B and C is provided by Chart 6 below:

Chart 6: Breakdown of stakeholder responses to CRIS question – which option do you prefer and why?



The majority of respondents who favoured Option A were lessors, comprising 73 per cent of the total responses. In order of preference, the most commonly submitted reasons for favouring Option A were:

- modifications require a skilled person to perform correctly and should therefore not be attempted by tenants;
- there is a substantial risk that tenants will fail to return the property to its original condition;
- there is no guarantee of the quality of the modifications; and
- the current bond would not cover returning the property to its original condition.

Some respondents proposed that if modifications were allowed without the lessor's consent, a "modification bond" should be introduced, which would cover the cost of remedying the modification at the end of the tenancy. There were some concerns that without this bond in place, lessors would suffer a financial burden to restore the property back to its original condition at the end of the tenancy, and further, that lessors would pass any additional costs on to the tenant in the form of higher rents. Some tenant advocate groups speculated that older tenants, or tenants with a disability, may be discriminated against in the application process due to their likelihood to request modifications.

The majority of respondents who favoured Option B were tenants and tenant representative bodies, comprising 44 per cent and 29 per cent of the total responses respectively. In order of preference, the most commonly submitted reasons for favouring Option B were:

- people with disabilities or elderly people should be able to make modifications to a premises to allow for accessibility and safety; and
- it is unreasonable for tenants to be required to obtain consent from the lessor to make minor modifications.

An unintended consequence of Options B and C noted in submissions was an increased burden on the dispute resolution forum that would hear applications if consent is refused.

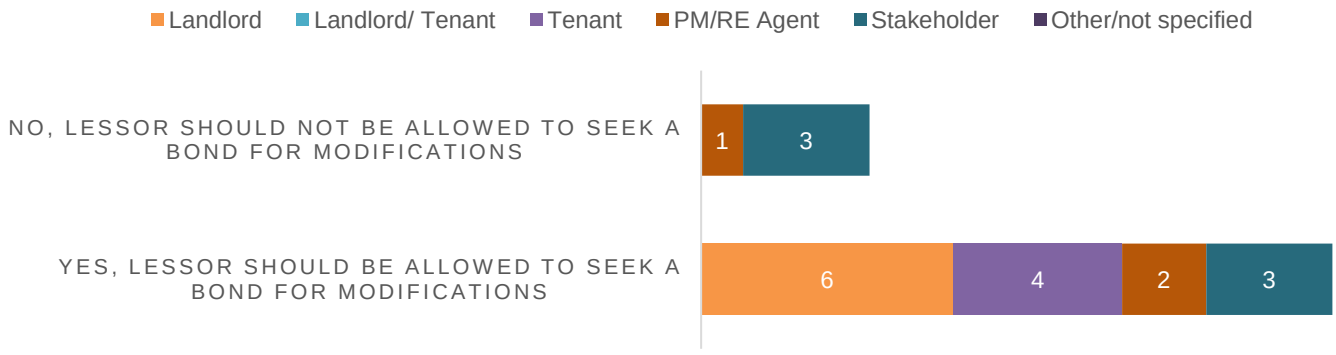
Circle Green Community Legal, the Make Renting Fair Alliance and Shelter WA all favoured Option B.

REIWA and Communities supported Option A.

Bond

The majority (79 per cent) of respondents submitted that a lessor should be allowed to seek a bond for modifications (chart 7 below). Fifty four per cent of respondents in favour of a bond for modifications were lessors and property managers/agents, and 27 per cent were tenants. However, this question only received 19 responses.

Chart 7: Stakeholder responses – should a lessor be allowed to seek an additional bond to cover reversal of modifications?



Most respondents submitted that the quantum of an additional bond should be equivalent to two weeks' rent maximum.

Other jurisdictions

There are two Australian jurisdictions which permit tenants to make modifications to the rental premises without the consent of the lessor: Victoria and the Australian Capital Territory (ACT).

Victoria

In Victoria, there are three tiers of modifications: "prescribed modifications", which may be made without the lessor's consent,[86] "other modifications" which require the lessor's consent, but that consent must not be unreasonably withheld,[87] and major modifications which require the lessor's consent.[88]

Examples of "prescribed modifications" that do not require the lessor's consent include:

- picture hooks or screws for wall mounts, shelves or brackets on all surfaces except exposed brick or concrete walls;
- LED light bulbs which do not need new light fittings;
- low flow shower heads; and
- removable safety devices such as alarm systems or security cameras (some rules apply).

Some of these are only permitted without consent where the property is not on the Victorian Heritage Register.

Examples of "other modifications", that require the lessor's consent, but for which consent must not be unreasonably withheld include:[89]

- flyscreens on doors and windows;
- a vegetable or herb garden;
- painting of the premises;
- disability-related modifications;
- modifications that do not penetrate or permanently change surfaces, fixtures or the structure of the property;
- modifications that are needed to make sure the tenant is not too hot or cold in the property; and
- modifications that are needed to reduce energy and water bills.

Any other modifications not listed under section 64(1B) are major, and the lessor has a right to refuse consent.

[86] *Residential Tenancies Act 1997* (Vic), section 64(1)
[87] *Residential Tenancies Act 1997* (Vic), section 64(1B).
[88] *Residential Tenancies Act 1997* (Vic), section 64(1A).
[89] *Residential Tenancies Act 1997* (Vic), section 64(1B).

Australian Capital Territory

In the ACT, a lessor cannot refuse consent for a "special modification" unless they seek orders from the ACT Civil and Administrative Tribunal (ACAT) permitting the refusal.[90]

"Special modifications" are modifications made for the following reasons:[91]

- for the safety of people on the property (e.g. furniture anchors or child safety gates);
- to assist a tenant who has a disability (e.g. access ramps, safety rails) – the tenant must provide a written recommendation of a health practitioner in support of their request;
- to improve the energy efficiency of the property;
- to allow access to telecommunication services;
- for the security of the property or people on the property (e.g. deadlocks or alarms); or
- "minor modifications".

"Minor modifications" are changes that can be removed or undone so that the property is restored to substantially the same condition it was in at the start of the tenancy, allowing for fair wear and tear.

Key parameters in ACT and Victoria

The key provisions governing tenants' ability to make modifications to premises in the ACT and Victoria are provided in Table 9 below:

Table 9: Minor modifications to premises – key provisions in Victoria and ACT.

[90] *Residential Tenancies Act 1997* (ACT), section 71AB.
[91] *Residential Tenancies Act 1997* (ACT), section 71AA.

	Victoria	ACT
Types of modifications	Three tiers of modification type: • prescribed modifications that do not require lessor's consent; • other modifications that require the lessor's permission, but that permission should not be unreasonably withheld; and • major modifications that require the lessor's consent.	Two tiers of modification type: • "special" or "minor" modification that lessor cannot refuse without an order of ACAT; and • major modifications that require the lessor's consent.
Acceptable reasons a lessor can refuse modifications	(applicable to second tier modifications) • the modifications would significantly change the property; • the modifications would result in additional maintenance costs for the lessor if the changes were not reversed when the tenant leaves; • any action required to reverse the modifications is not reasonably practicable; and • the property is about to be sold or vacated and the tenant has been given a valid notice to vacate.	• the lessor would suffer significant hardship if the modification were made; • the special modification would be contrary to law; • the special modification is likely to require modifications to other residential properties or common areas (e.g. in apartment buildings); or • the special modification would result in additional maintenance costs for the landlord.
Who applies to tribunal where modifications refused	Lessor may refuse second tier "other" modification and onus is on the tenant to apply to the Victorian Civil and Administrative Tribunal (VCAT) for order that lessor's refusal was unreasonable.	If lessor wishes to refuse a "special" or "minor" modification the onus is on the lessor to apply to ACAT for an order permitting the refusal.
Extra bond	Lessor may request extra bond from the tenant to cover the cost of restoring the modification. Some rules apply.	Lessor cannot request extra bond from the tenant to cover the cost of restoring the modification.

	Victoria	ACT
Requirement at the end of the tenancy	Unless the lessor and tenant agree otherwise, the tenant must either: • restore the property to the condition it was in immediately before the changes were made; or • pay the lessor the cost of restoring the property.	Unless the lessor and tenant agree otherwise, the tenant is responsible for removing the modification at the end of the tenancy.
Conditions placed on the modifications	The lessor/tribunal may place conditions on modifications to the premises. For example, that the work must be conducted by a contractor.	The lessor/tribunal may place conditions on modifications to the premises. For example, that the work must be conducted by a contractor.

Impact analysis

The following table outlines potential benefits and disadvantages of the identified options.

	Potential benefits	Potential disadvantages
Option A – Status quo	**Lessors** • No additional costs. • No change to lessor's control over property. • No decreased incentive for lessors to invest in the property market. **Tenants** • No change. **Government** • No additional costs associated with introducing and administering a new policy.	**Lessors** • Non discernible. **Tenants** • Restrictions on tenants' ability to make minor modifications continues - may result in tenants having to move to find a premises that meets their needs (e.g. modifications to support disability). **Government** • Risk that private rental market will not provide for tenants with certain needs, including disability and ageing requirements.

Option B – Tenant may make minor modifications and modifications necessary to improve disability access or ageing in place without the lessor's consent	**Lessors** • Lessors retain control over property unless modification relates to specific need or are minor in nature. • May reduce tenancy turnover because tenants may be more willing to stay in the property. • Modified/improved properties may be a better rental prospect. **Tenants** • Tenants may modify premises to meet ageing and disability access requirements. • No consent required for minor modifications. **Government** • Reduced risk of vulnerable tenants not having housing that meets their disability and ageing needs. • Consistent with general government initiatives to support ageing in place and improve energy efficiency. • Where a tenant can make modifications to accommodate disability/ageing in their premises, demand on other housing options is reduced.	**Lessors** • Lessor's asset at risk if modifications not reversed or cause damage to the premises. • Lessor may incur additional cost in having to remediate poor workmanship. • Lessor will be required to substantiate why certain modifications refused. **Tenants** • Increased right to make modifications applies in limited circumstances – either where they are minor in nature or relate to a disability or ageing requirement. • Potential for additional screening on tenants may cause discrimination against some tenants. • Potential for increased rent. • Lessors may be less willing to lease their principal place of residence, leading to fewer rental vacancies. **Government** • Potential for increased complaints and costs to deal with disputes where lessors withhold consent for tenant to modification to the premises or disputes arise over making good at the end of the tenancy. Applications could be heard in the Magistrates Court or determined by the Commissioner for Consumer Protection on the papers.
Option C –Tenant may make alterations to the premises only with the lessor's consent, but the lessor must obtain	**Lessors** • Lessors may withhold consent in some circumstances, for example,	**Lessors** • Requiring an order may impose administrative and associated costs on lessors.

an order that withholding of the consent is justifiable in the circumstances	where the premises contain asbestos. • Ensures that lessors are aware of modifications that are proposed to be made to the premises. **Tenants** • Increases the ability of tenants to make the rental premises their home. **Government** • Reduced risk of tenants not be being able to make reasonable modifications. • Consistent with general government initiatives to support ageing in place and improve energy efficiency. • Where a tenant can make modifications to accommodate disability/ageing in their premises, demand on other housing options is reduced.	• Lessor required to substantiate that withholding consent is justifiable for certain modifications. **Tenants** • Delay in waiting for outcome of lessor seeking order if they wish to refuse consent. • Increased costs – potential for increased rent or security bond. • Tenant may still be prohibited from making modifications. • Potential for additional screening on tenants may cause discrimination against some tenants. **Government** • Increased costs to government in assessing applications by lessors to withhold consent. Applications could be heard in the Magistrates Court or determined by the Commissioner for Consumer Protection on the papers.	

Assessment against the objective

The objective is to set clear parameters for modification of the premises that appropriately balance the interests of tenants and lessors.

Option A

Option A does not achieve the objective because lessors may refuse the tenant's request to make minor modifications to the premises, even where modifications are permitted under the tenancy agreement.

This means that in many cases tenants are unable to make modifications relating to disability, ageing in place, energy efficiency, or to make the rental premises their home. This situation does not adequately address the interests of tenants.

Option B

Option B is recommended because it would achieve the objective and its benefits outweigh its costs. Clear parameters could be set in regulations that would prescribe the types of modifications that could be allowed without the lessor's consent or that would require the lessor's consent, but consent could not be unreasonably withheld. The benefits of Option B would be that it:

- is consistent with both safety and family and domestic violence modifications;
- achieves a balance between the interests of lessors and tenants: lessors retain control over the property unless the modification relates to specific need or is minor in nature, while allowing tenants to modify rental premises to be appropriate to their needs and circumstances;
- responds to stakeholder feedback that tenants should be entitled to make a rental premises their home, helping to create stable long-term tenancies;
- provides lessors with the right to refuse modifications where there is a genuine reason for refusal;
- allows ageing tenants and tenants with disabilities to make modifications accommodating their circumstances helps address the disadvantage these groups may face in finding suitable rental premises; and
- supports overall policy objectives around facilitating ageing in place and energy efficiency in residences.

Option C

Option C would not achieve the objective because it does not appropriately balance the interests of tenants and lessors.

Lessors would incur the administrative burden of having to seek an order to refuse a tenant's application to make modifications. Some tenants may still be reluctant to request modifications because the lessor's permission would still have to be sought. This situation does not adequately address the interests of tenants or lessors.

Under Option C, there would be an additional burden placed on the Commissioner or the Magistrates Court, depending on which forum is granted jurisdiction to issue orders. This would result in increased costs to government.

Preferred option (Recommendation 6)

Operation of the proposed model

The proposed model would operate as follows:

- The tenant must inform the lessor of their intention to make any modifications. They may do so via a form similar to the one currently used for notification of intention to affix furniture to the walls.[92]
- Certain "prescribed minor modifications" can be made by the tenant without consent of the lessor. An example list of prescribed modifications is provided at

[92] Government of Western Australia Department of Mines, Industry Regulation and Safety webpage, Request to affix furniture – Form 24, accessed from https://www.commerce.wa.gov.au/publications/request-lessor-affix-furniture-form-24

Appendix 4, but the following modifications are examples of prescribed modifications:

  - picture hooks or screws for wall mounts, shelves or brackets on all surfaces except exposed brick or concrete walls;
  - LED light bulbs which do not need new light fittings;
  - low flow shower heads; and
  - removable safety devices such as alarm systems or security cameras.

- There are limited grounds on which a lessor may refuse this category of modifications. Only the following grounds for refusal, which are currently in place when a tenant applies to affix furniture to the wall, are permitted:

  - affixing an item to the wall, floor or ceiling would disturb material containing asbestos; or
  - the premises are entered in the Register of Heritage Places compiled under the *Heritage of Western Australia Act 1990* (WA), section 46; or
  - the premises is a lot in a scheme under the *Strata Titles Act 1985* (WA), and the by-laws for the scheme prohibit affixing the item to the wall, floor or ceiling of the premises.

- "Other prescribed modifications" require the lessor's consent, but the lessor must not unreasonably refuse consent. An example list of "other prescribed modifications" is provided at **Appendix 5** and includes:

  - modifications required to accommodate for a disability or ageing in place;
  - any modifications that do not penetrate or permanently change surfaces, fixtures or the structure of the property;
  - flyscreens on doors and windows;
  - a vegetable or herb garden; and
  - painting of the premises.

- The lessor will be given 14 days to make an application to the Commissioner to refuse "other prescribed modifications".[93]

- The Commissioner may make an order permitting the lessor to refuse consent (or impose conditions on consent) if certain conditions are met, for example:

  - the lessor would suffer significant hardship if the modification were made;
  - the modification would be contrary to law;

[93] It is anticipated that applications about minor modifications would be straightforward and could be dealt with by the Commissioner on the papers.

- the modification is likely to require modifications to other residential properties or common areas (e.g. in apartment buildings);
- the modification would result in additional maintenance costs for the lessor;
- the modification would be unsafe or would render the premises unsafe;
- action required to reverse the modifications is not reasonably practicable; or
- the property is about to be sold or vacated and the renter has been given a valid notice to vacate.

These circumstances are a combination of those provided in Victoria and ACT.

Lessors will be able to impose a reasonable condition on consent, for example, requiring the proposed modification to be completed by a contractor. If the tenant wishes to challenge conditions, they may do so through the Commissioner.

Unless the lessor and tenant agree otherwise, before the end of a tenancy agreement, a tenant who has modified the property must either:

- restore the property to the condition it was in immediately before the changes were made, allowing for fair wear; or
- pay the lessor an amount equal to the reasonable cost of restoring the property.

Bond

An additional bond covering reversing modifications made during the tenancy is not proposed for the following reasons:

- imposing an additional bond is an unreasonable imposition on vulnerable tenants when they have already agreed to restore the premises to its original condition or pay for the restoration;
- the current bond is likely to cover restoration of premises (see below discussion); and
- if the amount required to restore the premises exceeds the bond, the lessor may apply to the court for redress.

In 2018-2019 financial year, 51 per cent of bond disposals were split between the lessor and the tenant, with an average amount of $423 paid to the lessor and $1,203 refunded to the tenant. In 16 per cent of cases the full bond was disposed to the lessor and in 7 per cent of cases the bond was disposed by court order.[94]

[94] Above n 13, p 43.

This suggests that in the majority of instances (77 per cent of bond disposals) the current amount of bond was more than adequate to compensate the lessor for any amounts owing to them. On this basis it is reasonable to assume that there should be sufficient bond remaining (if required) to restore any minor modifications made to the premises.

Risk to lessors

In response to the CRIS, lessors and industry stakeholders expressed concern that allowing modifications without consent exposes lessors to risk that their rental premises will be damaged by poor workmanship and the cost of restoring the premises to its original condition may exceed the bond. These concerns can be addressed by safeguards such as requiring modifications to be completed by qualified tradespeople in appropriate circumstances and existing RTA obligations which require tenants to repair any damage to the property at the end of the tenancy.

Retaliatory action by the lessor

The *Housing Legislation Amendment Act 2021* (Qld) (assented to on 20 October 2021) provides strengthened provisions to reduce the risk that lessors may issue retaliatory eviction notices or rent increases. These provisions will allow the tenant to apply to the tribunal to set aside the lessor's action if the tenant reasonably believes the action was taken to intimidate or punish the tenant.[95]

Although it is unlikely that WA lessors would take retaliatory action in response to tenants making minor modifications to the premises (or otherwise exercising their rights) a similar provision is proposed.

Dispute resolution

It is proposed that the following applications relating to minor modifications to premises would be referred to the Commissioner for Consumer Protection for determination:

- applications from lessors to refuse consent for "other prescribed modifications"; and
- applications from tenants where they believe conditions imposed by a lessor are unreasonable.

Referring disputes about minor modifications to the Commissioner would likely increase demand for the service. As indicated above, establishing clear parameters for the types of modifications that can be made, and appropriate grounds for refusing modifications, will provide guidance for lessors and tenants and assist in reducing the risk of disputes arising.

If the Commissioner determination dispute resolution model is not adopted, the Magistrates Court supports undertaking jurisdiction for disputes relating to minor modifications.

[95] *Housing Legislation Amendment Act 2021* (Qld), section 246A(2).

Pets in rental premises

Issue

Tenants who currently have pets or wish to have a pet often face limited choice in the number of rental premises available or face uncertainty if they move to another rental property. Tenants can be faced with the significant emotional stress of having to abandon a much loved pet in order to secure housing.

Current situation

Currently, in WA tenants must seek their lessor's permission to keep pets on the premises. The lessor is not required to provide grounds for refusing the request and tenants have no further recourse if the request is refused.

Where permission to keep a pet is granted, lessors have the right to seek a pet bond if the pet is capable of carrying parasites that can affect humans. The bond is usually collected prior to the commencement of the tenancy agreement and cannot be charged where a tenant requires an assistance dog.[96] The pet bond can be no more than $260.[97]

In 2018, 3,182 private renters in Australia were surveyed on their experience of renting.[98] Of the respondents with a pet, 42 per cent said having a pet limited the availability of rental properties. Seven and a half per cent indicated that they were unable to rent within their preferred location as a result of having a pet and nine per cent had to compromise on the type of dwelling they rented. Six per cent admitted to not being truthful about having a pet in order to access a dwelling.

Research undertaken in Australia in 2021 found that progression to pet-inclusive housing policies is critical to enable people living with pets in unsafe and precarious living situations such as domestic violence, or homelessness, to transition to safer housing.[99]

Objective

To identify the most appropriate regulation of pets in rental premises.

Proposal considered

The CRIS proposed amending the RTA to allow tenants to keep pets at the premises, unless the lessor applies for and obtains approval confirming it would be unreasonable to allow the tenant to keep the pet at the premises. Lessors would retain the ability to charge a pet bond to meet the cost of fumigation of a premises where a pet has been kept that is capable of carrying parasites that can affect humans. The CRIS proposed

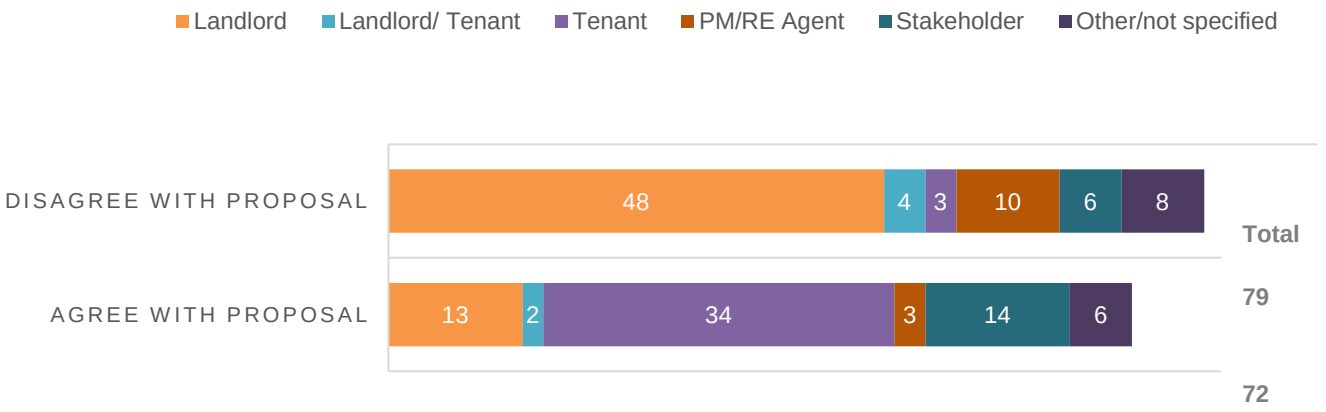
[96] RTA provides references to pets do not include assistance dogs as defined under the *Dog Act 1976* (WA), section 8(1).
[97] Residential Tenancies Regulations 1989 (WA), reg 10A.
[98] Bankwest Curtin Economic Centre, *The Private Rental Sector in Australia, Public Perceptions of Quality and Affordability* – (October 2018) p15.
[99] AHURI Final Report No. 350 (2021) *Housing and housing assistance pathways with companion animals: risks, costs, benefits and opportunities*.

that the existing pet bond could also be used to cover potential damage resulting from tenants keeping a pet at the property.

Stakeholder feedback to the CRIS

Feedback to the CRIS was almost evenly divided between those who agreed with the proposal to allow pets without consent of the lessor (48 per cent) and those who disagreed (52 per cent). Chart 8 below illustrates the breakdown of responses.

Chart 8: Breakdown of respondents who agreed and disagreed with the proposal.



Key industry tenancy groups such as Circle Green Community Legal, Shelter WA, WACOSS and the Make Renting Fair Alliance all supported the proposal. Key points made by these stakeholders included:

- the proposal will provide options for individuals escaping from family and domestic violence who are worried about having to leave their pets behind; and
- research has linked pet ownership to higher levels of social connections, facilitating engagement with neighbours.

Commonly submitted reasons from other respondents who supported the proposal included:

- tenants should be able to feel at home in the house they live;
- there are links between pet ownership, greater levels of social connection and the contribution to the mental and physical well-being of people;
- permitting tenants to keep pets encourages longer term tenancies; and
- under the current rules, there are very few housing options available to tenants wishing to keep pets.

Key property management bodies such as REIWA, the Carpet Cleaning Association and property managers/ real estate agents did not support the proposal. Key points made by these bodies included:

- having pets in a rental premises will damage the premises;
- prospective tenants will not want to rent a property where pets have been kept; and
- the current pet bond is not sufficient to cover fumigation and damage.

Other commonly submitted reasons for not supporting the proposal included:

- it is the lessor's right to determine if pets should be permitted;
- not all properties are suitable for keeping pets;
- concerns regarding pets causing damage to the premises; and
- risk of serious health conditions and those with allergies.

A detailed summary of points made by key stakeholder groups is at **Appendix 6**.

Stakeholders suggested that changes to the RTA are required to reduce the risk a lessor might face from allowing a tenant to keep pets at the premises. These suggested changes can be grouped into the following categories:

Pet Bond

- Feedback to the CRIS suggested the quantum of the pet bond should be increased and its purpose should be expanded to cover damage, not just fumigation

Cleaning and repairs

- Inclusion of a specific clause that ensures repairs are carried out prior to vacating.
- A requirement that when tenants have had a pet in a rental property, the carpets are inspected and certified as meeting Australian standard AS/NZS 3733:2018 for cleanliness.
- Inclusion of a pet damages clause that operates during the term of a tenancy that requires obvious and noted damages by a pet to be rectified by the tenant seven days from the date of inspection.

Management of pets

- The tenant must fully accept the risk of having a pet on the premises and be prepared to pay any costs associated with keeping the pet.
- Inclusion of a nuisance clause requiring the tenant to control the pet.

- If the tenant has a history of keeping a pet, then the pet should have a reference from the previous lessor.

- Development of an approved procedure in instances of pet abandonment.

Insurance

- Protection for the lessor might be a suitable insurance policy, paid for by the tenant.

Other jurisdictions

Currently, the ACT, Victoria and Queensland are the only Australian jurisdictions that default to permitting a tenant to keep a pet. The ACT places the onus on the lessor to seek approval to exclude a pet, whereas in Victoria the onus is on the tenant to seek permission. Queensland recently introduced similar legislation, with lessors only permitted to refuse the tenant's request for a pet in limited circumstances.[100] In New South Wales, South Australia and WA, the lessor may decide whether or not pets are allowed. The current arrangements for the ACT, Victoria, Qld and WA are outlined below in Table 10.

Table 10 Current jurisdictional arrangements for pets in rental premises

	ACT	Victoria	QLD	WA
Does the tenant have the right (default) to keep a pet?	✓[101]	✓[102]	✓[103]	✗[104]
Can a lessor refuse a request to keep a pet without grounds?	✗[105]	✗[106]	✗	✓
Can conditions be imposed if a pet is allowed?	✓	✓[107]	✓[108]	✓
Are there grounds for refusal?	✓[109]	✓[110]	✓	✗

[100] The provisions will commence on proclamation on a date yet to be set.
[101] The lessor can advertise that a pet may be permitted upon request. In this situation, the tenant is required to seek permission from the lessor. The lessor has 14 days to respond. If a lessor does not respond within 14 days, they are taken to have consented to the request.
[102] The tenant is required to seek permission from the lessor. The lessor has 14 days to respond. If a lessor does not respond within 14 days, they are taken to have consented to the request.
[103] Pets are only permitted at lessor discretion and may be negotiated when entering into a tenancy agreement.
[104] Pets are only permitted with lessor approval.
[105] If a lessor wants to refuse they must apply to the Australian Capital Territory Civil and Administrative Tribunal (ACAT) for an order permitting the refusal.
[106] If the lessor does not agree that a pet should be kept at the premises, they must apply to the Victorian Civil and Administrative Tribunal **(**VCAT**).**
[107] The rental provider can try to negotiate conditions for keeping a pet on the property. For example, they might say the pet is not allowed inside. If the renter does not agree to the conditions and the rental provider wants to exclude the pet, they must apply to VCAT.
[108] If a lessor permits a pet then conditions may also be included in the agreement, for example the pet must be kept outside.
[109] Grounds on which lessors in the ACT can refuse pets - *Residential Tenancies Act 1997* (ACT), section 71AF.
[110] Grounds on which lessors in Victoria can refuse pets - *Residential Tenancies Act 1997* (Vic), sections 71D & 71 E.

	ACT	Victoria	QLD	WA
Pet bond	✗	✗	✗	✓[111]

Public Housing

Communities policies allow pets in public housing under the following conditions:

- Dogs and cats can be kept, provided the property has a separate, non-communal yard.
- It is the tenant's responsibility to ensure the yard is enclosed and kept clean, tidy and free of animal waste.
- The tenant must ensure that their pet does not damage the property or disturb the neighbours.
- Tenants must consult with the local council about any specific rules in their suburb.
- Cats and dogs must be kept in accordance with relevant Acts, Regulations and local government by-laws.[112]

Communities supports the proposal, provided there are no unforeseen negative impacts on public housing.

Impact analysis

Extensive international evidence and emerging evidence in Australia indicates widespread social, health and economic benefits of companion animal ownership for individuals and communities. Pet ownership is associated with lower blood pressure and cholesterol levels, faster heart attack recovery, lower mental stress, reduced asthma risk in children and enhanced outcomes for dementia patients and older persons. Health economists have quantified these at national levels, suggesting substantial on average reduction of lifetime personal and service costs.[113]

Openly providing pet-friendly housing also directly addresses issues with illegal pet keeping. When pets are kept illegally lessors are unable to regulate or monitor animal practices, for example, requiring bonds or including property cleaning and maintenance requirements in rental agreements.[114]

Research has found that property damage by households with pets is no more likely than for households without pets. Researchers found that pet-friendly housing spent less time on the market than non-pet-friendly housing.[115]

[111] If the tenant is permitted to keep pets capable of carrying parasites, which can affect humans, a pet bond can be charged.
[112] Housing Authority Rental Policy Manual, February 2021.
[113] Above n 102.
[114] Ibid.
[115] Ibid.

The following table outlines potential benefits and disadvantages of the identified options.

	Potential benefits	Potential disadvantages
Proposed option	Lessors • Increased likelihood of long-term tenants. • Potential for larger tenant pool. • Contribution to positive and more transparent relationship with tenant. • Regulates and provides a framework for a situation that already occurs. Tenants • Increased options of premises for tenants with existing pets. • Opportunity to have a pet. • Positive mental and physical gains. • Decreased risk of tenants with pets experiencing discrimination. Government • Improved social, health and economic benefits.	Lessors • May incur additional costs if they apply for approval to refuse tenant's request to keep a pet. • May increase the possibility of damage and increased wear and tear to the property. • Amount of existing bond may not cover potential damage. Tenants • Potential for increased rents. Government • Risk that some lessors may remove properties from rental market. • Potential for increased disputes and compliance costs to deal with disputes.

Assessment against the objective

The objective was to identify the most appropriate regulation of pets in rental premises. This proposal appropriately balances the interests of lessors in protecting their property from potential damage with the recognition that keeping pets provides well-known benefits to social and mental well-being of tenants.

This proposal is unlikely to have a significant negative impact on stakeholders or government. Lessors may incur some costs if they choose to enforce conditions or to apply for approval to refuse a tenant's request to keep a pet.

While concerns were raised about potential increased costs to lessors for damage to property caused by pets, or in insuring against such risk, there was evidence to support that property damage by households with pets is no more likely than for households without pets, and in most instances if there is damage, it is likely to be covered under a normal security bond. Feedback and research supports the position that making it easier for tenants to keep pets has benefits for both lessors and tenants.

Preferred option (Recommendation 7)

It is proposed that the RTA be amended to allow tenants to keep pets at a rental premises, unless the lessor applies to and obtains approval from the Commissioner confirming it would be unreasonable to allow the tenant to keep a pet, or a particular category of pet(s) at the premises. The CRIS stated that Consumer Protection would proceed with this recommendation unless stakeholder feedback provided substantive evidence of unintended consequences from this course of action.

While 52 per cent of respondents did not support the proposal, substantive evidence of unintended consequences was not established. Evaluating approaches in other jurisdictions and taking into consideration feedback to the CRIS, it is considered the benefits of allowing pets outweighs the costs.

Operation of the policy proposal

Issues raised in relation to the proposal during consultation included:

- unreasonably withholding consent;
- identifying reasonable grounds for refusal;
- dealing with disputes; and
- the pet bond.

These can be addressed in the operation of the policy process as follows.

The RTA would be amended so that a tenant may keep a pet at a rental premises. The lessor can request that the tenant first seek permission, however, the request cannot be unreasonably withheld.

The lessor would have 14 days to respond. If a lessor does not respond within 14 days, they are taken to have consented to the request. While the lessor cannot unreasonably refuse a request, they can negotiate reasonable conditions for keeping a pet on the property and there would be grounds for refusal. Reasonable conditions a lessor may impose and grounds for refusal operate in other jurisdictions, and include the number of pets and that the pet must stay outside or in a particular part of the property. Grounds

for refusal include that the rental property is unsuitable for the proposed pet or the pet poses an unacceptable risk to health and safety.

Appendix 7 outlines conditions and grounds for refusing permission to keep pets in other jurisdictions.

Establishing clear parameters for the application of appropriate conditions and grounds for refusing a specific pet, or a particular category of pet(s), would provide guidance for both lessors and tenants, and assist in reducing the risk of disputes arising. If however, the tenant does not agree to the conditions, or the lessor wants to exclude a pet from the premises, the lessor must apply for an order from the Commissioner to enforce the proposed conditions or permit refusal.

If the tenant is permitted to keep pets capable of carrying parasites that may affect humans, then lessors would retain the ability to charge a pet bond. The current pet bond was prescribed in 2013 and is $260. This amount will be reviewed to account for inflation and current market rates for fumigation.

While the CRIS proposed that a pet bond could be charged to cover any potential damage resulting from tenants keeping a pet at the property, there was little evidence to support that the change was necessary. Research undertaken in Australia in 2021 found that property damage by households with pets is no more likely than for households without pets.[116]

In 2018-2019 financial year, 51 per cent of bond disposals in WA were split between the lessor and the tenant, with an average amount of $423 paid to the lessor and $1,203 refunded to the tenant. In 16 per cent of cases the full bond was disposed to the lessor and in seven per cent of cases the bond was disposed by court order.[117] This suggests that in the majority of instances (77 per cent of bond disposals) the current amount of bond was sufficient to compensate the lessor for any amounts owing to them. On this basis it is reasonable to conclude that there should be sufficient bond remaining (if required) to fix any damage that may be made to the premises as a result of keeping a pet.

A tenant would be responsible for any damage to the premises caused by the pet, other than fair wear and tear. All other laws that apply to keeping pets would continue to apply.

Dispute resolution

It is proposed that applications relating to pets would be referred to the Commissioner for Consumer Protection for determination because they are expected to be straightforward, and consistent with other minor disputes, one that the Commissioner could determine on the papers.

Referring disputes about pets to the Commissioner would likely increase demand for the service but establishing clear parameters for the appropriate grounds for refusing pet(s)

[116] Above n 102.
[117] Above n 13, p 43.

will provide guidance for lessors and tenants and assist in reducing the risk of disputes arising.

If the Commissioner determination dispute resolution model is not adopted, the Magistrates Court supports undertaking jurisdiction for disputes relating to pets.

Implementation and evaluation

Implementation

New legislation

The recommendations for change will be implemented through amendments to the RTA, which will require approval of the Parliament. Other changes will be implemented through amendments to the *Residential Tenancies Regulations 1989* (WA).

Consumer Protection will coordinate drafting of the amendments to legislation. Key stakeholders will be consulted about policy parameters during the drafting process.

Resourcing

Implementing the reforms is likely to require a higher level of resourcing in the first year compared to following years due to:

- the establishment costs of setting up new processes and staff;
- initial IT infrastructure costs;
- the requirement for advice and assistance to parties who are unfamiliar with the changes; and
- increased pressure on dispute resolution services.

Transitional issues

Transitional issues will be considered and appropriate lead in times will be determined in consultation with stakeholders.

Community education campaign

A community education campaign targeting landlords, tenants, property industry and tenant advocacy groups will be implemented in conjunction with the proposed legislation. The campaign will highlight the rights and responsibilities of lessors and tenants under the amended laws. Media such as social and mainstream news media, the Department's website, syndicated newspaper columns and direct contact with landlords and tenants will be used as part of the campaign.

Evaluation

Compliance with the amended laws will be regularly monitored following implementation of the legislation and responded to as required. Market intelligence will also be gathered to identify the number and nature of enquiries and complaint trends pre and post implementation of the legislation.

This information and feedback from stakeholders will be used to identify any issues in the sector that may require addressing. The evaluation process will include consideration of the following market intelligence collected by the Department:

- number and nature of calls received by the Department from lessors, tenants and property managers/agents;

- outcome of phone enquiries;
- number of applications for dispute resolution made per year;
- percentage of bonds disposed by order and percentage disposed unilaterally;
- analysis of advice line and complaint trends pre and post legislative reforms;
- analysis of any changes/trends over time; and
- analysis of media coverage following changes to the legislation.

The Department will also consult with key stakeholders, relevant government agencies, industry associations and the Property Industry Advisory Committee appointed by the Minister for Commerce.

Appendices

Appendix 1 – Dispute resolution

Comprehensive residential tenancy dispute resolution model

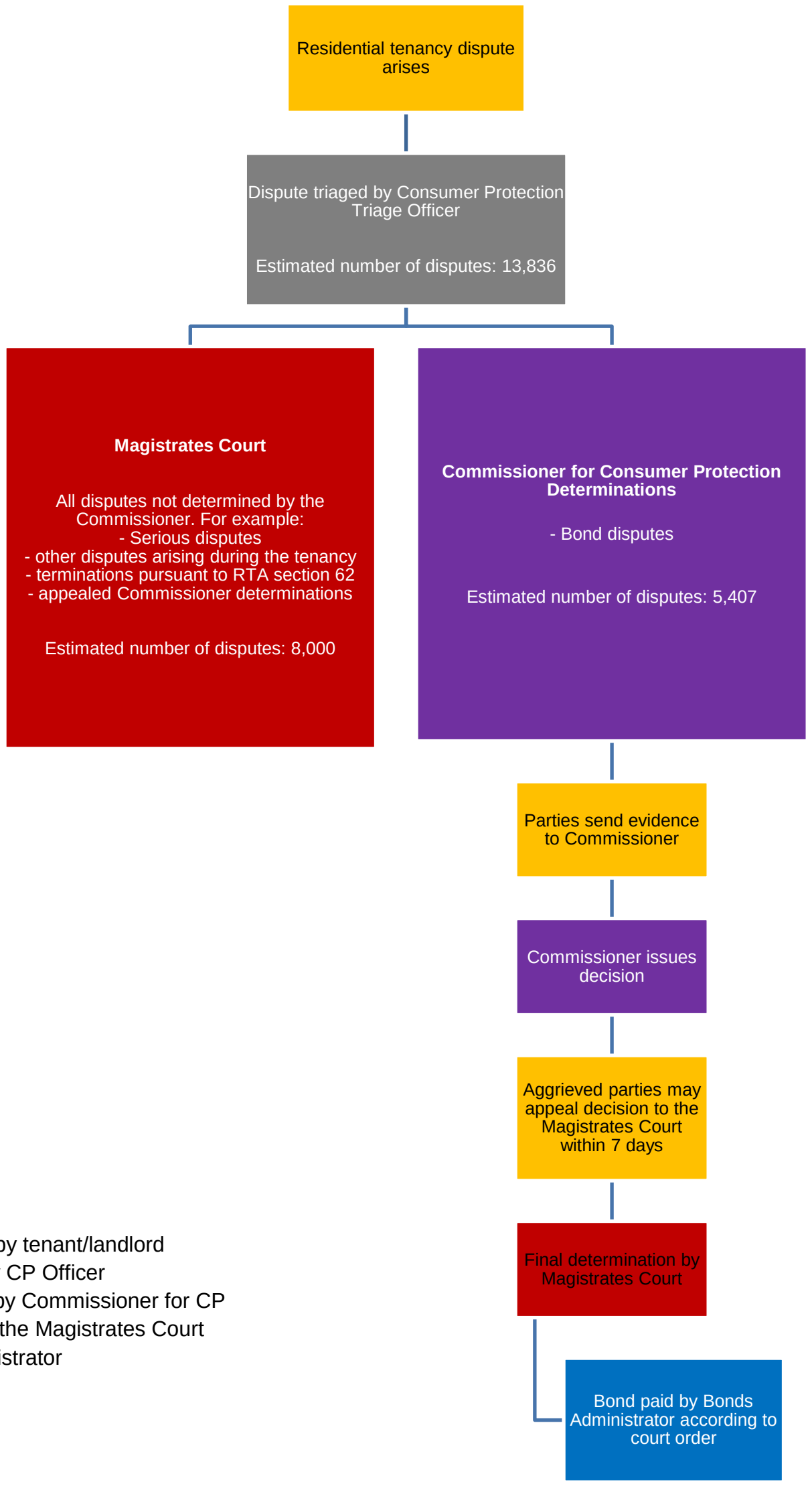
- Magistrates Court for serious and complex disputes, disputes unresolved/unsuitable for conciliation and appealed Commissioner determinations
- Commissioner for Consumer Protection determinations for bond disputes (where it is the only dispute relating to the tenancy)
- Conciliations conducted by Consumer Protection for all other disputes

Yellow processes – conducted by tenant/landlord
Grey processes – conducted by CP Officer
Purple processes – conducted by Commissioner for CP
Green processes – conducted by CP Conciliation
Red processes – conducted by the Magistrates Court
Blue processes – Bond Administrator

Appendix 2 – Dispute resolution

Preferred model - Commissioner determinations and Magistrates Court

- Commissioner for Consumer Protection determines bond disputes (where it is the only dispute relating to the tenancy)
- Magistrates Court for all other disputes
- No conciliation component



Yellow processes – conducted by tenant/landlord
Grey processes – conducted by CP Officer
Purple processes – conducted by Commissioner for CP
Red processes – conducted by the Magistrates Court
Blue processes – Bonds Administrator

Appendix 3 – Frequency of rent increases

Summary of key points made by stakeholder groups on all options

Circle Green Community Legal

Option C was preferred as it was considered the best option to ensure rental stability for tenants, possibly operating as a "handbrake" or "buffer" on rental spikes in times of rapid market shift. Circle Green Community Legal made the following points in support of Option C:

- the level of concern amongst tenants about unexpected or exorbitant rent rises is very high across the board; and
- unreasonable and frequent rent increases can force tenants to leave their homes to find more affordable premises, which can be very disruptive and stressful. This situation is exacerbated where the shortfall in public housing forces some disadvantaged tenants into the private rental market.

In the event that Option C is not possible, Circle Green Community Legal expressed their support for Option B. It was considered that this option would bring WA into line with most other Australian jurisdictions and a number of international jurisdictions.

REIWA

REIWA strongly supported retaining Option A for the following reasons:

- the WA economy can experience significant shifts in a short timeframe that impact the rental market. It is important to allow the market to respond to these changes naturally;
- when entering a fixed term tenancy, tenants negotiate the term of the lease and the timing and amount of rent increases. Therefore there is no "set review period" that should be extended. This arrangement works well and should not be changed;
- if Options B or C were implemented, the result would be larger rent increases on an annual or biannual basis; and
- Option C would leave the WA private rental market in an inelastic state, unable to adapt to changing economic factors. This will reduce lessors' willingness to invest in residential real estate.

Shelter WA, Stellar Living and Foundation Housing

Shelter WA and Stellar Living supported Option A. This option is considered necessary to enable community housing providers to continue six monthly rent reviews. Rent reviews are done six monthly because clients are often on income support payments that are indexed in line with CPI twice per year.

Shelter WA supported Option C for private residential tenancy agreements.

Department of Communities

Communities submitted that if Option B were implemented, it would experience significant operational issues due to the method and cycle used by Communities to update public housing market rents each year. This is understood to be an administrative issue that can be addressed in developing implementation details of the proposal.

Appendix 4 – Modifications to the premises

Possible prescribed minor modifications, based on examples from Australian jurisdictions

The tenant will not require consent from the lessor to make the following modifications:

- non-permanent window film for insulation, reduced heat transfer or privacy
- a wireless doorbell
- curtains (but the tenant must keep the original curtains)
- adhesive child safety locks on drawers and doors
- pressure mounted child safety gates
- a lock on a letterbox
- picture hooks or screws for wall mounts, shelves or brackets on all surfaces except exposed brick or concrete walls
- LED light bulbs which do not need new light fittings
- low flow shower heads (the tenant must keep the original shower head)
- blind or cord anchors
- removable safety devices such as alarm systems or security cameras as long as they:
    - do not impact the privacy of neighbours
    - can easily be removed from the property
    - are not hardwired to the property
- hardware mounted child safety gates on walls other than exposed brick or concrete walls.

Appendix 5 – Modifications to the premises

Other prescribed modifications, based on examples from Australian jurisdictions.

A tenant requires the consent of the lessor to make these changes, but that consent must not be unreasonably withheld:

- modifications required to accommodate a disability or ageing in place
- picture hooks or screws for wall mounts, shelves or brackets on exposed brick or concrete walls
- hardware mounted child safety gates on exposed brick or concrete walls
- wall anchors to secure items of furniture on exposed brick or concrete walls
- draught proofing in a property without open flued gas heating. This includes installing:
    - weather seals
    - caulking or gap filling around windows, doors, skirting and floorboards
- a security system if an invoice with the name of the installer is provided to the lessor at time the consent is requested. The system must be installed by suitably qualified person and must not impact on the privacy of neighbours
- flyscreens on doors and windows
- a vegetable or herb garden
- a secure letterbox
- painting of the premises
- modifications to secure external gates

Any changes that:

- do not penetrate or permanently change surfaces, fixtures or the structure of the property
- are needed for health and safety
- give the tenant access to phone, internet or television services
- are needed to make sure the tenant is not too hot or cold in the property
- are needed to reduce energy and water bills.

Appendix 6 – Pets

Summary of points made by key stakeholder groups

Circle Green Community Legal

Agrees with the proposal that the RTA be amended to allow tenants to keep pets at the premises, unless a lessor applies for and obtains approval to refuse consent to a pet. Does not agree with the proposal that lessors should retain the ability to charge a pet bond.

REIWA

Expressed the view that many lessors do not want pets at their property due to concerns that include:

- physical damage to the fixtures and fittings;
- damage to the grounds surrounding the premises; and
- prospective tenants not wanting to rent a property where pets have been kept.

Shelter WA

Supports the proposal, noting the need for a provision that enables the lessor to have some level of flexibility. Shelter WA also noted the need for consideration in the context of the existing *Strata Titles Act 1985* and the ability for strata complexes to have by-laws prohibiting pets in a strata complex. Stated that consideration is needed about which legislative framework will take precedence.

Also expressed the need for a commensurate pet bond to ensure that damage from pets in a property can be appropriately recouped by the lessor. Proposed that an appropriate amount be determined in consultation with stakeholders.

Make Renting Fair Alliance

Expressed that the law should be changed in WA allowing tenants to have pets unless there is a legitimate reason not to. For example, if the property owner is allergic and intends to live in the property at some point. Pets should be allowed with appropriate protections through the property condition report and bond.

Department of Communities

Supports tenants having the ability to keep pets at the premises where it is appropriate. The proposal is considered to assist in providing increased options for individuals escaping from family and domestic violence who are worried about having to leave their pets behind.

The housing type needs to be suitable for the pet(s) in question. Compliance with state, local council and strata laws (for example, around restricted dog breeds) is also a consideration.

Noted that the onus to demonstrate why pets are not allowed will shift to lessors. Also noted that there is a risk the proposal will see landlords wanting to increase rents, in case the pet bond and normal security bond are insufficient to cover damage or wear and tear associated with the pet. Also emphasised the importance of clearly delineating between the treatment of pets and assistance animals (not just guide dogs for those who are vision impaired) to ensure those who have increased support needs are not disadvantaged.

WACOSS

Supported the proposal, outlining that research has linked pet ownership to higher levels of social connections, as it facilitates contact with neighbours and triggers conversations. 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. Not aware of any evidence indicating that keeping pets in a rental property generates the need for more repairs or cleaning that cannot be covered by a standard bond.

Carpet Cleaners Association

Believes the proposed changes would lead to serious issues arising when some people abuse the system. The association recommended that sufficient monetary penalties would be needed to ensure tenants wanting to keep pets have a vested interest in compliance, and if not compliant, there will be enough compensation to the lessor to cover any costs incurred. A typical pet bond in many cases will not cover the potential costs involved in creating a safe environment for the next tenant to move in.

Uniting WA

Disagrees with the specific proposal put forward, although does agree that tenants should have the right to keep pets in rental accommodation. Expressed concern that applying for approval to confirm the property is not suitable could be very onerous for lessors, particularly those who may have a higher volume of assets. If the proposal is pursued, then allowances will need to be given to specific dwelling types that are excluded from the requirement of seeking approval.

Appendix 7 – Pets

Other jurisdictions - conditions and grounds for refusing permission to keep pets

	ACT	Victoria	Qld
Conditions for keeping pets	The lessor may impose a reasonable condition on the consent of keeping a pet or with the prior approval of the Australian Capital Territory Civil and Administrative Tribunal (ACAT). Under section 71AE(4)(a)(i) and (ii) of the *Residential Tenancies Act 1997* (ACT) a reasonable condition could be about: • the number of animals kept on the premises; or • the cleaning or maintenance of the premises; or • with the prior approval of ACAT. A tenant may apply to ACAT to resolve a dispute about whether a condition imposed is a reasonable condition.[118] Under section 71AF(1)(b) a lessor may apply to ACAT for an order	The *Residential Tenancies Act 1997* (Vic) does not cite conditions of keeping a pet. Lessor can negotiate conditions for keeping a pet on the property (e.g. the pet is not allowed inside). Any agreed conditions should be put in writing. If a tenant does not agree to the conditions and the lessor wants to exclude the pet, they must apply to the Victorian Civil and Administrative Tribunal (VCAT).	Under the *Housing Legislation Amendment Act 2021* (Qld) the lessor may impose reasonable conditions for keeping pets including that:[119] • the pet must stay outside or be restricted to a particular part of the property; • the tenant must arrange for the premises to be professionally fumigated at the end of the tenancy if the pet is capable of carrying parasites that could infest the premises; and • the tenant have the carpets professionally cleaned at the end of the tenancy for relevant pets allowed inside the premises.

[118] Approval is a case-by-case process, where ACAT considers the circumstances of the tenant and landlord, the nature of the property and the type of pet. If necessary, ACAT can consider the refusal before a tenant signs the residential tenancy agreement.
[119] *Housing Legislation Amendment Act 2021* (Qld), section 184F(2).

	ACT	Victoria	Qld
	approving a condition on the lessor's consent to the tenant's application.		
Grounds for refusing pets	The lessor may apply to ACAT for an order approving the lessor's refusal of the tenant's application to keep an animal on the premises, in accordance with section 71AF(1)(a). Under section 71AF (3) ACAT may approve a refusal in the following circumstances: • the property is unsuitable for the animal; • keeping the animal would result in unreasonable damage to the property; • keeping the animal would be an unacceptable risk to public health or safety; • the lessor would suffer significant hardship; and • keeping the animal would be contrary to a law of the territory.	Under section 71D(1) a lessor may apply to VCAT to refuse consent to keep a pet on rented premises. Under section 71E(2), in determining an application, the VCAT may have regard to the following matters: • the type of pet the tenant wants to keep; • the character and nature of the premises, including appliances, fixtures and fittings; • whether refusing consent is permitted under any Act; • any prescribed matters; and • any other matter VCAT considers relevant.	The grounds for refusing pets are contained in proposed section 184E of the Act and include: • keeping the pet would exceed a reasonable number of pets being kept at the premises; • the property is unsuitable to keep the requested pet because of a lack of appropriate fencing, open space or another thing necessary to humanely accommodate the pet; • keeping the pet on the property would pose an unacceptable risk to health and safety; and • keeping the pet is likely to result in damage that could not practically be repaired for a cost less than the rental bond for the premises.

Government of Western Australia

Department of Mines, Industry Regulation and Safety

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