



Government of **Western Australia**
Department of **Commerce**
Consumer Protection

CONSULTATION

Improving the interaction between
Residential Tenancy Laws and
Family Violence Restraining Orders

Options Paper

October 2016

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MESSAGE FROM THE MINISTER

Improving the *Residential Tenancies Act 1987* for victims of family violence

I am pleased to release this Options Paper on improving the interaction between the *Residential Tenancies Act 1987* and family violence restraining orders. This discussion paper is an important aspect of the Government's family and domestic violence reform plan titled "Freedom from Fear: Working towards the elimination of family and domestic violence in Western Australia – Action Plan 2015". Another vital aspect of the reform plan is the Restraining Orders and Related Legislation Amendment (Family Violence) Bill 2016 which I introduced into Parliament on 14 September 2016.

Family violence is a significant issue affecting communities not only in this state but across Australia. According to the report of the Western Australian Ombudsman into issues associated with violence restraining orders tabled in November 2015,¹ during the 18 month investigation period of the report, Western Australian Police attended 75,983 incidents of domestic violence.² In November 2015, there was a 40 percent increase in domestic assaults from the same time in the previous year, increasing to 1,219 assaults for the month.³ It is widely accepted that this number greatly underrepresents the extent of family violence in our community because as few as 20 percent of victims will actually report an incident to police or other authorities.

The Western Australian Government has committed to taking decisive action in an effort to address this very complex issue, with a goal to improving safety for victims of family violence and holding the perpetrators of violence accountable for their actions.

As part of the Government's commitment to tackling this issue, in 2013 I asked the Law Reform Commission of Western Australia to investigate the benefits (or otherwise) of having separate family and domestic violence orders and to have provisions for these contained in separate legislation. In 2014, I tabled in Parliament the Commission's report titled *Enhancing Family and Domestic Violence Laws*. The report contained 73 recommendations covering a range of issues, including new definitions for family violence, the creation of a new category of restraining order to respond to family violence and changes to bail and sentencing provisions.

One of the recommendations in the report was for the Department of Commerce to undertake a review of the interaction between the *Residential Tenancies Act 1987* and family violence orders to consider whether any reforms are necessary to better accommodate the parties' circumstances where family violence occurs in a tenancy setting.

This Options Paper is the Government's response to this recommendation.

¹ Ombudsman Western Australia, *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities* November 2015, accessed at <http://www.ombudsman.wa.gov.au/Publications/Documents/reports/FDVROs/FDVRO-Investigation-Report-191115.pdf>

² *Ibid.*, 63.

³ Andrew O'Connor, 'Perth crime continues to rise, as domestic violence, thefts spike' 6 January 2016, ABC News online <http://www.abc.net.au/news/2016-01-06/perth-crime-surge-continues-as-people-property-targeted/7070626>

The importance of home

When a victim of family violence is forced to leave the home, the ramifications for the victim and children that may be affected are far ranging. Not only is there a risk of homelessness, but the disruption to location can lead to loss of employment; disruption to education for children; risk of exposure to further violence if homeless; and impacts to physical and mental health.

The aim of the amendments canvassed in this Options Paper is to support a victim of family violence to remain in the home, wherever it is appropriate and safe to do so, rather than further victimising them by forcing them to leave their home.

Role for stakeholders

The *Residential Tenancies Act 1987* needs to be amended to produce better outcomes for victims of domestic violence. Key stakeholders have an important role to play in assisting to address this very complex community issue by working with the Government to shape the required reforms to achieve the best possible outcomes in a manner that works consistently and coherently with other laws, and at the same time, do not unreasonably burden landlords.

I therefore encourage stakeholders to provide input to the review.

Hon. Michael Mischin MLC

MINISTER FOR COMMERCE

How to Have Your Say

Making a submission

You are invited to make a submission to this consultation. There is no specified format for submissions. You are welcome to:

- write a short letter outlining your views; or
- respond to questions included in this paper.

Where to send submissions

Submissions can be mailed to:

Residential Tenancies (Family Violence) Review

Department of Commerce

(Consumer Protection Division)

Locked Bag 14

Cloisters Square WA 6850

Or emailed to: consultations@commerce.wa.gov.au

Submissions close

The closing date for submissions is: 16 December 2016.

How input will be used

The information gathered from this consultation process will assist in developing proposals for consideration by the Government.

Information provided may become public

After the consultation period concludes, all responses received may be made publicly available on the Department of Commerce website. Please note that because your feedback forms part of a public consultation process, the Government may quote from your comments in future publications. If you prefer your name to remain confidential, please indicate that in your submission. As submissions made in response to this paper may be subject to freedom of information requests, please do not include any personal or confidential information that you do not wish to become available publicly.

Introduction

The purpose of this Options Paper is to seek stakeholder feedback into preferred drafting options to amend the *Residential Tenancies Act 1987* (the RT Act) so that victims of family violence are able to achieve better outcomes from the justice system in relation to their tenancy agreements.

Family violence is behaviour which results in physical, sexual and/or psychological damage, forced social isolation, economic deprivation, or behaviour that causes the victim to live in fear.⁴ Family violence knows no boundaries. Factors such as age, gender, socio-economic status, religion, cultural background and educational level do not protect someone from being a victim of family violence just as they do not determine who might be a perpetrator of violence.

Family violence affects everyone in the family. Children are particularly vulnerable whenever family violence occurs. Exposure to family violence causes serious emotional, psychological, social and behavioural harm to children.⁵

Quite apart from the physical and emotional toll that family violence inflicts upon victims and their friends and families, family violence and sexual assault perpetrated against women costs the community. Nationally this figure is \$13.6 billion each year and is likely to rise to \$15.6 billion by 2021 if extra steps to reduce the incidence of family violence are not taken.⁶

Both Federal and State governments are committed to bringing an end to the increased incidence of family violence within our community. The Commonwealth, along with state and territory governments, have developed *The National Plan to Reduce Violence against Women and their Children 2010 – 2022*.⁷ The Western Australian Government's framework to implement this national plan at a local level is outlined in *Western Australia's Family and Domestic Violence Prevention Strategy to 2022*.⁸ Supplementary to this, the Western Australian Government has developed the *Freedom from Fear: Working towards the elimination of family and domestic violence in Western Australia Action Plan 2015*⁹ (the Action Plan).

Referral to the Law Reform Commission of Western Australia

⁴ Department for Child Protection and Family Support 'Reporting Family and Domestic Violence: Resource for Journalists'

https://www.dcp.wa.gov.au/CrisisAndEmergency/FDV/Documents/Reporting%20family%20and%20domestic%20violence_Resource%20for%20Journalists.pdf p 4.

⁵ Ibid p6.

⁶ Department of Social Services (Cth) <https://www.dss.gov.au/our-responsibilities/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children-2010-2022>, p1.

⁷ Department of Social Services (Cth) <https://www.dss.gov.au/our-responsibilities/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children-2010-2022>.

⁸ Department for Child Protection (WA) <https://www.dcp.wa.gov.au/Documents/WA%20FDV%20Prevention%20Strategy%20to%202022.pdf>.

⁹ Department for Child Protection and Family Support <https://www.dcp.wa.gov.au/CrisisAndEmergency/FDV/Documents/2015/FFFActionPlan2015.pdf>.

In August 2013, the Hon. Michael Mischin MLC, Attorney General and Minister for Commerce, asked the Law Reform Commission of Western Australia (LRCWA) to:

- investigate and consider the benefits (or otherwise) of having separate family and domestic violence legislation including the outcomes and effectiveness of separate legislation;
- provide advice on the utility and legal consequences of separating family and domestic violence restraining orders from the *Restraining Orders Act 1997*;
- provide advice on the provisions which should be included in family and domestic violence legislation if it were to be developed (whether in a separate Act or otherwise); and
- report to the Government on the adequacy thereof and on any desirable changes to the existing law of Western Australia and the practices in relation thereto.

Although the LRCWA was not specifically tasked to comment on the relationship between restraining orders and the RT Act, the LRCWA noted in its discussion paper and final report that the issue had been raised by a sufficient number of stakeholders that it warranted inclusion in the Report. Recommendation 33 of the Report states:

That the Department of Commerce undertake a review of the interaction of the *Residential Tenancies Act 1987 (WA)* and family and domestic violence protection orders to consider whether any reforms are necessary or appropriate to accommodate the circumstances of tenants who may be subject to or protected by a family and domestic violence protection order.¹⁰

Implementing the Law Reform Commission of WA's recommendations

The Government has clearly stated its intention to progress (where relevant and appropriate), the recommendations arising out of the Report.¹¹

On 8 March 2015, the Government announced that it would overhaul current restraining order legislation as part of a comprehensive reform package to provide better protection to victims of family violence in Western Australia. This objective was realised when on 14 September 2016, the Attorney General introduced into Parliament the Restraining Orders and Related Legislation Amendment (Family Violence) Bill 2016 (the ROAR Bill). The ROAR Bill seeks to introduce a new definition of family violence and implement a new category of restraining order that is specifically targeted at family violence in order to improve the overall legal response to family violence.

In working towards the implementation of recommendation 33 of the Report, the Department of Commerce – Consumer Protection Division (Consumer Protection) has examined:

- the LRCWA report and some of the submissions made by stakeholders to that inquiry;
- tenancy and family and domestic violence laws throughout Australia;
- the Freedom from Fear Action Plan 2015 of the Western Australian Government;

¹⁰ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws* (Project No. 104) June 2014, 109.

¹¹ Department for Child Protection and Family Support
<https://www.dcp.wa.gov.au/CrisisAndEmergency/FDV/Documents/2015/FFFActionPlan2015.pdf> p13.

- the Council of Australian Governments' (COAG) work on the issue of family and domestic violence; and
- the final report of the 2016 Victorian Royal Commission into Family Violence.

What the research says

According to Homelessness Australia, in 2011-2012, 34 percent of people assisted by specialised homelessness service required assistance due to family violence.¹² In real numbers, this represents over 7200 people.

According to the website of the Australian Institute of Health and Welfare:¹³

People who leave their home because of domestic and family violence often experience severe social and personal disruption, poorer housing conditions and financial disadvantage (Spinney & Blandy 2011).

In recognition of this, federal and state/territory governments have introduced programs which aim to break the link between domestic and family violence and homelessness by focusing on ways in which those victims of domestic and family violence can safely remain in their family home.

Giving victims of family violence the ability and right to remain safely in their home, where appropriate, is a key aim for both state and federal governments. Fundamental to this aim is ensuring that the law and legal system in relation to family violence and residential tenancy work effectively together at the point at which they intersect. This means giving courts the power to make orders in respect of residential tenancy agreements, such as removing the perpetrator or victim from an existing tenancy agreement while allowing the other party to continue, terminating an agreement in its entirety, or allocating liability for outstanding rent and damages.

¹² Homelessness Australia 'Homelessness in Western Australia'
[http://www.homelessnessaustralia.org.au/images/publications/Infographics/WA - updated Jan 2014.pdf](http://www.homelessnessaustralia.org.au/images/publications/Infographics/WA_-_updated_Jan_2014.pdf)

¹³ <http://www.aihw.gov.au/homelessness/domestic-violence-and-homelessness/>.

1. Termination of a tenancy agreement based on family violence

Current provisions of the *Residential Tenancies Act 1987*

The grounds for terminating a tenancy agreement are set out in section 60 of the RT Act (**Appendix 1**).

If family violence occurs and one or both of the parties needs to end their obligations under a tenancy agreement, the current mechanisms for terminating a tenancy agreement are often insufficiently flexible to respond effectively to the complexities of family violence. The following scenarios illustrate the difficulty that can be faced from both the victim's and the perpetrator's perspectives.

Example A: A victim of family violence is named on a tenancy agreement but, for their ongoing safety, needs to end the tenancy agreement and find alternative premises:

- If the tenancy agreement is periodic (i.e. open dated, with no fixed term), the victim can give 21 days' notice to end the tenancy agreement.¹⁴ During the 21 days, the victim is still required to pay rent for the existing premises. At the same time the victim must raise the upfront costs to move into new premises. For many victims it is not possible to meet both expenses.
- If the tenancy agreement is for a fixed term, the victim must either seek the agreement of the lessor to terminate the tenancy agreement early,¹⁵ unilaterally break the lease early and remain liable for rent and other expenses until the premises are re-let, or apply to the court for an order terminating the tenancy agreement on the grounds that they are experiencing hardship.¹⁶ None of these options is certain as to their outcome. Furthermore, as per the above, the victim remains liable for expenses at the former premises while at the same time having to raise the upfront costs to move into new premises.

Example B: A victim of family violence who is named as a tenant on a tenancy agreement in conjunction with the perpetrator; the victim wants to remain at the premises but have the perpetrator removed from the lease:

- The only mechanism currently available under the RT Act for the victim to have the perpetrator's name removed from the agreement is for the victim to terminate the whole agreement. While it is possible for a lessor to immediately enter into a new agreement with the victim, there is no certainty that the lessor will do so. For many tenants who are victims of violence, the most certain outcome is to leave the lease agreement as it is, with the perpetrator's name included.

Example C: A perpetrator is excluded from the premises by a restraining order.

- If the perpetrator's name remains on the tenancy agreement, they remain liable, for the term of the agreement, for rent and any damage that may be caused to the premises despite not being allowed the use of the premises. If they seek to have their name removed from the agreement then, as per above, this would result in the whole

¹⁴ *Residential Tenancies Act 1987*, section 68.

¹⁵ *Residential Tenancies Act 1987*, section 60(g).

¹⁶ *Residential Tenancies Act 1987*, section 74.

agreement being terminated and no certainty for the victim that the lessor will enter into a new agreement with them alone.

Other jurisdictions

Each state and territory adopts a slightly different approach to the termination of a tenancy agreement where family violence has occurred. The provisions from legislation in the other jurisdictions that address this issue are contained in **Appendix 2**.

Proposal for amendment

The proposal is to amend the RT Act to give the Magistrate's Court the power, upon receipt of an application from a tenant or resident¹⁷ who is a victim of family violence, to make an order to terminate the tenancy agreement and make any of the following orders:

- requiring the lessor to enter into a new tenancy agreement with the protected tenant for the remainder of the term of the tenancy; or
- an order for possession of the premises on a date specified by the court.

If an order is made requiring the lessor to enter into a new agreement with the protected tenant, it is proposed that the terms of the new agreement be the same as the former agreement, including amount of rent, save for any amendments to the terms that may be made by the court.

Parties to an application made under this proposed provision would include:

- the applicant tenant;
- the lessor; and
- any other tenants or resident/s at the premises (for example, in a share house there may be other tenants that had no involvement in the family violence).

Questions

1.1	<p>When deciding whether to require a lessor to enter into a tenancy agreement with the applicant, what factors, if any, should the court be required to take into account? For example:</p> <ul style="list-style-type: none">• the ability of the applicant (and any proposed co-tenants) to maintain their obligations under the new agreement;• any reasonable objections of the lessor;• the views of any co-tenants;• any eligibility criteria (e.g. public housing or community housing eligibility criteria);• relative hardship of the applicant and the lessor. <p>Are there any other factors to be listed?</p> <p>Should this list be exhaustive or should the court be given discretion to consider any other factors that may be relevant in the particular case?</p>
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¹⁷ A resident is a person who lives at the premises but is not named on the lease. For example, in the case of a couple, sometimes only one partner is named on a lease document.

Questions	
1.2	<p>Who should be entitled to make an application under this provision? For example:</p> <ul style="list-style-type: none"> • a person protected by a restraining order only if they are listed as a tenant on the tenancy agreement; • a person who acts as guardian in relation to a child; or • the Housing Authority in respect of a social housing tenancy agreement. <p>Why?</p>
1.3	<p>When should a person be able to make an application under this provision? For example,</p> <ul style="list-style-type: none"> • only when a final restraining order is granted; • when an interim restraining order is granted; • if family violence can be proven to have occurred/be occurring, whether or not an application has been made for an interim or final restraining order. <p>Why?</p>
1.4	<p>Are there any other issues in relation to termination of a tenancy agreement that need to be raised?</p>

2. Recognising certain persons as tenants

On 1 July 2013, the RT Act was amended to include section 59C; Recognition of certain persons as tenants, as follows:

- (1) A person who is not a tenant but who is occupying residential premises to which a residential tenancy agreement applies may apply to a competent court to be recognised as a tenant under the agreement or to be joined as a party to any proceedings before the court relating to the premises, or both.
- (2) An application by a person to be recognised as a tenant may be made at the same time as any other application or during proceedings before the court or independently of any such other application or proceedings.
- (3) On application by a person under this section the court may make either or both of the following orders —
 - (a) an order recognising the person as a tenant under a residential tenancy agreement and in that case the person is to be taken, for the purposes of this or any other Act and of the agreement, to be a tenant under the agreement;
 - (b) an order joining the person as a party to proceedings.
- (4) In making an order referred to in subsection (3)(a) the court may order that the tenancy be continued on such of the terms and conditions of the residential tenancy agreement as it thinks are appropriate having regard to the circumstances of the case.

Section 59C allows a resident of premises, who is not named as a tenant on a residential tenancy agreement, to be recognised as a tenant. The purpose of this provision was originally to allow persons who had been residents of premises at the time of a named tenant's death would be able to remain on as tenants rather than face the prospect of eviction.¹⁸

Although section 59C was initially inserted for a different purpose, it was recognised during debate on the Residential Tenancies Amendment Bill 2011 that this provision would also be useful where family violence has occurred in a residential tenancy setting.¹⁹ Prior to the implementation of section 59C, if only the perpetrator was named on a residential tenancy agreement, it would not be possible for a magistrate to exclude the perpetrator from the premises and allow the victim to remain, as the victim essentially had no legal right to the premises.

Section 59C can operate so that the victim of the violence can apply to the Magistrate's Court to be recognised as a tenant on the residential tenancy agreement therefore granting them a legal interest in the premises. Once this occurs, it is open to a magistrate to allow the victim to remain in the home and include an exclusion from the premises clause in a restraining order made against the perpetrator.

While section 59C has benefits for victims of violence, it also has a significant limitation in that it cannot be used to remove the perpetrator's name from the lease. As already noted, this means that the perpetrator remains liable for the premises even though they may be legally excluded from the premises. For the victim, it can mean that it is more difficult to send a clear message to the perpetrator that they cannot come to the premises. It also means the victim remains linked to the perpetrator via the tenancy agreement.

Proposal for amendment

There is no proposal at this stage to amend section 59C.

Questions	
2.1	Should section 59C of the RT Act be retained so that it can continue to operate as a standalone provision for its original intended purpose, but also in conjunction with the other proposed amendments outlined in this paper? If no, why not?

3. Assigning liability for outstanding rent, damages and other charges; disposal of security bond

Joint tenants under a residential tenancy agreement are jointly and severally liable for all debts to the lessor arising under a residential tenancy agreement. If damage to the premises or rent arrears is caused directly by acts of family violence, holding the victim liable for these costs serves only to further victimise them.

¹⁸ Department of Consumer and Employment Protection *Review of the Residential Tenancies Act 1987 (WA) – Policy Position Paper (January 2008)*, p151.

¹⁹ The Hon Troy Buswell MLA, Legislative Assembly Hansard, 6 September 2011, p6810b-6840a [http://www.parliament.wa.gov.au/Hansard/hansard.nsf/0/b243dee7a69868cd48257906001df4f7/\\$FILE/A38+S1+20110906+p6810b-6840a.pdf](http://www.parliament.wa.gov.au/Hansard/hansard.nsf/0/b243dee7a69868cd48257906001df4f7/$FILE/A38+S1+20110906+p6810b-6840a.pdf)

Section 17A of the RT Act provides a mechanism for one co-tenant to sue another co-tenant for their portion of any amount that was payable to the lessor under a residential tenancy agreement. This is not considered to be a satisfactory resolution of the issue noted above for two reasons, namely:

- the debt must be fully paid to the lessor before an application can be made to recover some or all of the amount from a co-tenant; and
- it requires a victim to make a further application to the court against the perpetrator.

Other jurisdictions

New South Wales, South Australia and Victoria all have provisions in their legislation that address this issue. The relevant provisions are contained in **Appendix 3**.

Proposal for amendment

It is proposed that the RT Act be amended to enable a Magistrate, when determining an application to terminate a residential tenancy agreement due to family violence, to also assign liability for rent and damages owed to the lessor as at the date the agreement is terminated.

It is noted that it will not always be possible for a lessor to provide the court with particulars of damage and costs of repair at the same time as a decision is being made regarding termination of a tenancy agreement. The court has a general power to adjourn proceedings under section 20(h) of the RT Act. This would allow the court to give parties the time to gather the appropriate information. All parties would also need to be given an opportunity to respond to any claims for unpaid rent or damages that are raised by the lessor.

It is also proposed to give the court the power to determine the disposal of the security bond in accordance with allocation of liability for the debt. For example, if it is established that the victim and the perpetrator of the violence both contributed to the security bond, and the perpetrator is found to be liable to the lessor for unpaid rent and/or damage to the premises, the court would be able to order that the perpetrator's share of the security bond be paid to the lessor while the victim's share of the security bond be transferred to the new agreement with the lessor or disposed of to the victim, whichever is appropriate in the circumstances. It should be noted that if the perpetrator's share of the security bond is insufficient to meet the unpaid rent and damages to the premises, the lessor would need to pursue the perpetrator for the balance of the debt.

It is important to note that the proposed changes will not affect the amount that the lessor is entitled to claim as damages. The lessor will still be able to claim the full amount for unpaid rent and damage to the premises, and will still have available all the current processes for pursuing an unpaid debt through the court system. The proposed changes simply determine who is liable to the lessor for the debt.

<i>Questions</i>	
3.1	Is it necessary to give the court the power to make an order granting the lessor access to the premises to make an assessment of damages for the purpose of this provision, or are existing right of entry provisions in section 46 of the RT Act sufficient?
3.2	Are there any other issues in relation to assignment of liability under the agreement and disposal of security bond that need to be raised?

4. Listing on a tenancy database

Residential tenancy databases (RTDs) are electronic databases operated by private companies. Information about tenants and their rental history is collected and listed on RTDs. Most real estate agents subscribe to one or more RTD and use them to screen prospective tenants. RTDs enable agents and property owners to assess risk when reviewing a prospective tenant.

On 1 July 2013, nationally consistent provisions regarding when a tenant can be listed on an RTD commenced in Western Australia. Section 82E of the RT Act provides that a person can only be listed if:

- the tenant was named on a residential tenancy agreement that has ended;
- the tenant breached a provision of the agreement; and
- as a consequence of that breach, the tenant owes the lessor an amount that is greater than the security bond or a court has made an order terminating the agreement.

Being listed on a RTD can have long term ramifications for an individual's ability to obtain a future residential tenancy agreement. For many, RTD listings may result in long periods of homelessness and/or tenuous security of tenure.

As currently drafted, section 82E could be used to list a victim of family violence, even if they were seeking to have the tenancy agreement terminated under the proposed new provisions. This outcome would be entirely contrary to the efforts of governments to support victims of family violence to obtain secure and stable accommodation.

Some jurisdictions have amended their residential tenancy laws to give the court the power to make an order prohibiting a listing of a tenant on a RTD if the court is satisfied that the victim of the family violence did not themselves cause or reasonably cause a breach of the residential tenancy agreement, and the nature of any breach of the agreement resulted from an act of family violence against the tenant.²⁰

Other jurisdictions

Queensland's and South Australia's legislation contains provisions that deal with this issue. The relevant provisions are contained in **Appendix 4**.

Proposal for amendment

It is proposed to amend the RT Act to include the power for the court to prohibit the listing of a tenant on a RTD by a lessor, a property manager or an RTD operator if the court is satisfied that:

- the tenant has not themselves caused a breach of the agreement; or
- any breach of the agreement was the result of family violence against the tenant.

²⁰ See for example Residential Tenancies (Domestic Violence Provisions) Amendment Bill 2015 (SA), cl 7; *Residential Tenancies Act 1997* (Vic), section 439E.

Questions	
4.1	Is it necessary to give the court any further guidance when making a decision under this proposed provision? If so, what should that guidance be?
4.2	Are there any other issues in relation to listing on an RTD that need to be raised?

5. Changing locks and making alterations to the premises to enhance security

Physical safety in the home is fundamental to long term security of tenure. Often this requires a change of locks to the premises to ensure the perpetrator cannot access the premises with existing keys. It may also require the additional of other security measures, such as security cameras, sensor lights and alarms, securing external sheds and external roof entrances, or changing remote garage door codes.

Section 45(b) of the RT Act prohibits a lessor or tenant from altering, removing or adding locks without the consent of the other party either at the time or immediately before making the changes. Section 59F(1) of the RT Act provides that it is an offence to breach section 45(b) without “reasonable excuse.”

Arguably, changing the locks immediately following removal of a perpetrator of violence from the home without first seeking the approval is probably a “reasonable excuse” and therefore not in violation of section 59F(1) of the RT Act. This viewpoint, however, is not settled.

In some jurisdictions the residential tenancy laws specifically allow for the changing of locks in either an emergency²¹ or where the premises are the subject of an exclusion provision in an order.²²

All of these examples still require the tenant to meet the cost of the new locks and to give the lessor or property manager a key to the new locks as soon as possible after the locks are changed.

In addition to the issue of changing of locks, the Victorian Royal Commission into Family Violence addressed the issue of not prohibiting the tenant from making other alterations to the premises at their own cost, such as installing security cameras.

Section 47 of the RT Act addresses the issue of whether a tenant is allowed to make alterations or affix fixtures to premises with the consent of the lessor. This section allows a lessor to nominate one of two options:

- the tenant shall not affix fixtures or make alterations to the premises under any circumstances; or
- the tenant may affix fixtures or make alterations, but only with the lessor’s consent.

²¹ *Residential Tenancies and Rooming Accommodation Act 2008* (Qld), section 211.

²² *Residential Tenancies Act 1997* (Vic), section 70A.

Where a lessor allows the tenant to make alterations with their consent, the RT Act also provides that the lessor shall not unreasonably withhold that consent.²³ If a tenant makes alterations to the premises, they must restore the premises to their former condition or compensate the lessor if removing a fixture damages the premises.²⁴

The Royal Commission report highlights that if a lessor refuses to give consent, or elects not to allow any modifications to the premises under any circumstances, this has the potential to undermine the ability of victims to remain safely in their home.²⁵

Other jurisdictions

Most of the other states and territories have provisions in respect to the changing of locks and security devices. These relevant provisions are contained in **Appendix 5**.

Proposal for amendment

It is proposed to amend the RT Act to make clear that a tenant who has been subjected to family violence may alter the locks to any external doors and windows of the premises without first obtaining the permission of the lessor. In conjunction with this amendment, it is proposed to require the tenant to provide the lessor with a copy of the key as soon as practicable after the locks have been changed.

In relation to making alterations or affixing fixtures, it is proposed to amend the RT Act to allow a tenant who is protected by a restraining order to affix such fixtures and make such alterations to the premises as are necessary to improve the security of the premises provided that:

- the cost of making the alterations is borne by the tenant;
- installation of fixtures such as security cameras and other security devices is undertaken by a qualified tradesperson; and
- the tenant restores the premises to their original condition at the end of the tenancy agreement if they choose to take the alterations, such as security cameras, with them to new premises or the lessor requires them to do so.

It is also proposed to prohibit a lessor or property manager from giving a copy of a key for any newly installed locks to a perpetrator who has been excluded from the premises. This provision is proposed so as to give certainty to a lessor or property manager who may be faced with demands from a perpetrator whose name remains on a tenancy agreement that they be given access to the premises.

²³ *Residential Tenancies Act 1987* (WA), section 47(2)(a).

²⁴ *Residential Tenancies Act 1987* (WA), section 47(2)(c).

²⁵ *Royal Commission into Family Violence* (Vic): *Report and recommendations*, 125.

Questions	
5.1	Is it necessary to impose a timeframe, such as seven days, for a tenant to provide a key to the lessor?
5.2	Should any permission for a victim of family violence to make alterations to premises be limited to security devices, for example, security cameras, alarms, security screens? Why or why not? If your answer is yes, what devices should be permissible?
5.3	Are there any other issues in relation to altering locks and making alterations to premises that need to be raised?

Next steps

Following receipt of submissions from stakeholders, Consumer Protection will develop recommendations regarding amendment of the RT Act to the Minister for Commerce and the Government for their approval.

APPENDIX 1 - Residential Tenancies Act 1987 (WA) section 60

How residential tenancy agreements are terminated

Despite any Act or law to the contrary, a residential tenancy agreement shall not terminate or be terminated except in one of the following circumstances —

- (a) where the lessor or tenant gives notice of termination under this Act and —
 - i. the tenant delivers up vacant possession of the premises on or after the expiration of the period of notice required under this Act; or
 - ii. a competent court, upon application by the lessor, terminates the agreement under section 71;
- (b) in the case of a tenancy for a fixed term, where the lessor or tenant gives a notice of termination under section 70A and —
 - i. the tenant delivers up possession of the premises on or after the day on which the term of the agreement expires in accordance with that section; or
 - ii. a competent court, upon application by the lessor, terminates the agreement under section 72;
- (c) where a competent court terminates the agreement under section 73, 74, 75A or 75;
- (d) where a person having superior title to that of the lessor becomes entitled to possession of the premises;
- (e) where a mortgagee in respect of the premises takes possession of the premises in pursuance of the mortgage;
- (f) where the tenant abandons the premises;
- (g) where the tenant delivers up vacant possession of the premises pursuant to an agreement in writing between the lessor and the tenant to terminate the residential tenancy agreement;
- (h) where the agreement terminates by merger;
- (i) where every tenant dies.

APPENDIX 2 - State and Territory provisions on termination of a tenancy agreement due to family violence

STATE OR TERRITORY	LEGISLATION	RELEVANT PROVISIONS
ACT	<i>Residential Tenancies Act 1997</i> , section 85	<p>(1) This section applies if—</p> <ul style="list-style-type: none"> (a) the tenant, or a co-tenant, (the removed person) has given an undertaking to a court to leave the premises; or (b) a court has made an order, other than an interim order, to remove the removed person from the premises. <p>(2) An occupant (the occupant) of the premises, other than the removed person, may apply to the ACAT to be the tenant or co-tenant under the residential tenancy agreement for the premises instead of the removed person.</p> <p>(3) To remove any doubt, the application may be made by the occupant even though the occupant is not a tenant or co-tenant under the residential tenancy agreement.</p> <p>(4) The ACAT may make an order substituting the occupant as the tenant, or co-tenant, if—</p> <ul style="list-style-type: none"> (a) the grounds of the application are proved; and (b) the lessor has been given an opportunity to be heard on the application.
NSW	<i>Residential Tenancies Act 2010</i> , sections 79 and 100	<p>Section 79</p> <p>(1) On the making of a final apprehended violence order that prohibits a co-tenant or a tenant from having access to the residential premises, the tenancy of that co-tenant or tenant under the residential tenancy agreement is terminated. Such a termination does not affect the tenancy of any co-tenant not subject to the order.</p> <p>(2) The Tribunal may, on application by a remaining occupant or co-tenant, make an order recognising the remaining occupant as a tenant under the residential tenancy agreement, if the tenant, or a co-tenant or a former tenant or co-tenant is prohibited by a final apprehended violence order from having access to the residential premises.</p> <p>(3) An order under this section may vest a tenancy over the residential premises in an occupant on such of the terms of the previous residential tenancy agreement as the Tribunal thinks appropriate having regard to the circumstances of the case.</p> <p>(4) An application for an order under this section may be made at the same time as any other application or during proceedings before the Tribunal or independently of any such other application or proceedings.</p>

STATE OR TERRITORY	LEGISLATION	RELEVANT PROVISIONS
		<p>(5) A Tribunal may not make an order under this section in respect of a social housing tenancy agreement unless the remaining occupant meets any applicable eligibility requirements of the social housing provider for tenancy of the premises.</p> <p>Section 100</p> <p>(1) A tenant may give a termination notice for a fixed term agreement on any of the following grounds:</p> <ul style="list-style-type: none"> (a) – (c) (omitted) (d) that a co-tenant or occupant or former co-tenant or occupant is prohibited by a final apprehended violence order from having access to the residential premises. <p>(2) The termination notice must specify a termination date that is not earlier than 14 days after the day on which the notice is given.</p> <p>(3) The termination notice may specify a termination date that is before the end of the fixed term of the residential tenancy agreement.</p> <p>(4) The tenant is not liable to pay any compensation or other additional amount for the early termination of the agreement.</p>
NT	<i>Domestic and Family Violence Act, section 23</i>	<p>(1) This section applies if:</p> <ul style="list-style-type: none"> (a) the defendant and protected person live together or previously lived together in premises; and (b) the defendant or protected person is a tenant of the premises or both of them are tenants of the premises (regardless of whether anyone else is a tenant of the premises); and (c) either: <ul style="list-style-type: none"> i. a court DVO includes a premises access order for the premises; or ii. the protected person no longer wishes to live in the premises. <p>(2) The court may make the following orders in the DVO:</p> <ul style="list-style-type: none"> (a) an order terminating the tenancy agreement; (b) an order creating a new tenancy agreement (the replacement agreement): <ul style="list-style-type: none"> i. for the benefit of the protected person and anyone else who was a party to the terminated agreement other than the defendant; or ii. (ii) with the agreement of the protected person, for the benefit of the defendant and anyone else who

STATE OR TERRITORY	LEGISLATION	RELEVANT PROVISIONS
		<p>was a party to the terminated agreement.</p> <p>(3) The orders may be made only if:</p> <ul style="list-style-type: none"> (a) the court is satisfied: <ul style="list-style-type: none"> i. the domestic relationship between the protected person and defendant has broken down permanently; and ii. there is no reasonable likelihood of them living in the premises free of domestic violence; and iii. the protected person or defendant (as appropriate) will be able to comply with the replacement agreement; and iv. it is appropriate in the circumstances to make the order; and (c) the landlord consents to the orders or, if the landlord refuses consent, the court is satisfied the refusal is unreasonable; and (d) the protected person consents to the orders. <p>(4) The landlord and anyone else having an interest in the premises are entitled to appear and be heard in relation to the matter.</p> <p>(5) The replacement agreement must have the same conditions as the terminated agreement other than the names of the tenants.</p> <p>(6) If the terminated agreement is for a fixed term, the date of expiry of the replacement agreement must be the same as that of the terminated agreement.</p> <p>(7) Part 12 of the <i>Residential Tenancies Act</i> applies to the terminated agreement as if the tenants had given up vacant possession of the premises.</p>
QLD	<i>Residential Tenancies and Rooming Accommodation Act 2008</i> , sections 245, 321 and 323	<p>Section 245</p> <p>(1) This section applies to—</p> <ul style="list-style-type: none"> (a) the domestic associate of the tenant occupying the premises with the tenant; and (b) a cotenant whose domestic associate is the other, or another, cotenant. <p>(2) The person may apply to a tribunal for an order to be recognised as the tenant, or a cotenant, under the agreement instead of the person's domestic associate because the person's domestic associate has committed domestic violence against the person.</p> <p>(3) The tribunal may make the order if it is satisfied the person has established the ground of the application.</p> <p>(4) In deciding the application, the tribunal must have regard to the following issues (the domestic violence issues)—</p>

STATE OR TERRITORY	LEGISLATION	RELEVANT PROVISIONS
		<p>(a) whether the person has applied for a protection order against the person's domestic associate;</p> <p>(b) if an application was made—whether a domestic violence order was made and, if made, whether it is in force;</p> <p>(c) if a domestic violence order has been made—whether a condition was imposed prohibiting the person's domestic associate from entering, or remaining, on the premises.</p> <p>(5) Subsection (4) does not limit the issues to which the tribunal may have regard.</p> <p>(6) If the tribunal makes the order, it may make any other order it considers appropriate.</p> <p>(7) A person in whose favour an order is made under subsection (3) is taken to be the tenant, or a cotenant, under the agreement on the terms the tribunal orders.</p> <p>(8) The tribunal may not make an order under subsection (3) without giving the lessor an opportunity to be heard on the application.</p> <p>(9) In this section—</p> <p>domestic associate means a person in any of the following relationships—</p> <p>(a) an intimate personal relationship;</p> <p>(b) a family relationship;</p> <p>(c) an informal care relationship.</p> <p>Section 321</p> <p>(1) The domestic associate of the tenant occupying the premises with the tenant may apply to a tribunal for a termination order because the tenant—</p> <p>(a) has intentionally or recklessly caused, or is likely to intentionally or recklessly cause, serious damage to the premises; or</p> <p>(b) has committed domestic violence against the domestic associate.</p> <p>Section 323</p> <p>(1) This section applies if—</p> <p>(a) the domestic associate of the tenant, or an occupant of the premises, makes an application to a tribunal for a</p>

STATE OR TERRITORY	LEGISLATION	RELEVANT PROVISIONS
		<p>termination order for damage or injury; and</p> <p>(b) the applicant believes on reasonable grounds the tenant is likely to cause further damage or injury for which a termination order could be sought.</p> <p>(2) The applicant may apply to a tribunal for an order to restrain the tenant from causing the further damage or injury.</p>
SA	<i>Residential Tenancies Act 1995, section 89A</i>	<p>Termination based on domestic abuse</p> <p>(1) The Tribunal may, on application by a tenant or a co-tenant, terminate a residential tenancy from a date specified in the Tribunal's order if satisfied—</p> <ul style="list-style-type: none"> (a) that an intervention order is in force against a person who resides at the residential premises for the protection of— <ul style="list-style-type: none"> i. the applicant; or ii. a domestic associate of the applicant who normally or regularly resides at the residential premises; or (b) that a person who resides at the residential premises has committed domestic abuse against— <ul style="list-style-type: none"> i. the applicant; or ii. a domestic associate of the applicant who normally or regularly resides at the residential premises. <p>(2) The Tribunal may, on application by the South Australian Housing Trust, a subsidiary of the South Australian Housing Trust, or a community housing provider registered under the <i>Community Housing Providers National Law</i> , terminate a residential tenancy from a date specified in the Tribunal's order if satisfied—</p> <ul style="list-style-type: none"> (a) that an intervention order is in force against a tenant for the protection of a person who normally or regularly resides at the residential premises; or (b) that a tenant has committed domestic abuse against a person who normally or regularly resides at the residential premises. <p>(3) For the purposes of an application under this section, the applicant, the landlord and any tenant or co-tenant under the residential tenancy agreement are parties to proceedings concerning the tenancy dispute.</p> <p>(4) The Tribunal may, on application by a party to proceedings under this section, make 1 or more of the following additional orders:</p> <ul style="list-style-type: none"> (a) subject to this section, an order requiring the landlord to enter into a new residential tenancy agreement with the applicant or a co-tenant under the terminated agreement (or both) for the remainder of the term of the tenancy; (b) an order that the landlord may enter the residential premises at a time determined by the Tribunal to inspect the premises before a determination is made under this section; (c) an order for possession of the premises on a date specified by the Tribunal;

STATE OR TERRITORY	LEGISLATION	RELEVANT PROVISIONS
		<p>(d) if the Tribunal is satisfied that—</p> <ul style="list-style-type: none"> i. the applicant did not cause or reasonably cause a breach of the residential tenancy agreement; or ii. the nature of any breach of the residential tenancy agreement resulted from an act of abuse or domestic abuse against the applicant, <p>an order that the landlord, landlord's agent or a database operator must not list the applicant's personal information in a residential tenancy database under section 99F(1).</p> <p>(5) The Tribunal must not make an order under subsection (4)(a) requiring the landlord to enter into a new residential tenancy agreement with a co-tenant who is—</p> <ul style="list-style-type: none"> (a) the person referred to in subsection (1)(a) against whom an intervention order is in force; or (b) the person referred to in subsection (1)(b) whom the Tribunal is satisfied has committed domestic abuse against an applicant or a domestic associate of the applicant who normally or regularly resides at the residential premises, if the landlord indicates, as part of proceedings before the Tribunal, that the landlord considers it would be unreasonable for such an order to be made. <p>(6) Before making an order under subsection (4)(a), the Tribunal must be satisfied—</p> <ul style="list-style-type: none"> (a) that any tenant or co-tenant under the new residential tenancy agreement could reasonably be expected to comply with the obligations under the agreement; and (b) in a case where the landlord is the South Australian Housing Trust or a subsidiary of the South Australian Housing Trust—that any tenant under the new residential tenancy agreement meets the eligibility requirements of the Trust; and (c) in a case where— <ul style="list-style-type: none"> i. the landlord is a community housing provider registered under the <i>Community Housing Providers National Law</i> ; and ii. the residential premises constitute community housing within the meaning of that Law, that any tenant under the new residential tenancy agreement meets the eligibility requirements for such community housing and any membership or other requirements of the landlord associated with occupation of those premises. <p>(7) If the landlord or any co-tenant objects to an application for the making of an order under subsection (1) or (4)(a), the Tribunal must not make the order unless satisfied that the hardship likely to be suffered by the applicant or a domestic associate of the applicant who normally or regularly resides at the residential premises would, if the order were not made, be greater than any hardship likely to be suffered by the objector as a consequence of the making of the order.</p> <p>(8) A new residential tenancy agreement entered into by order of the Tribunal under subsection (4)(a) must be on the same terms and conditions as the terminated tenancy agreement, subject to any changes determined by the Tribunal.</p>

STATE OR TERRITORY	LEGISLATION	RELEVANT PROVISIONS
		<p>(9) In considering an application under this section, the Tribunal must have regard to such of the following orders and proceedings (if any) as are relevant to the application:</p> <ul style="list-style-type: none"> (a) an order, injunction, undertaking, plan, recognisance or other form of obligation imposed or agreement made under the <i>Family Law Act 1975</i> of the Commonwealth; (b) an order made under the <i>Children's Protection Act 1993</i>; (c) an order made under the <i>Intervention Orders (Prevention of Abuse) Act 2009</i>; (d) a pending application for an order referred to in paragraph (a), (b) or (c); (e) any other relevant legal proceedings.
TAS	<i>Family Violence Act 2004</i> , section 17	<p>(1) If the person against whom an FVO is to be made is a tenant of residential premises occupied by an affected person, a court may make an order under section 16 to –</p> <ul style="list-style-type: none"> (a) terminate the residential tenancy agreement ("the original agreement"); and (b) establish a new residential tenancy agreement ("the replacement agreement") for the benefit of the affected person and any other party who was party to the terminated agreement other than the person against whom the FVO is made. <p>(2) A replacement agreement is to have the same terms and conditions, other than the names of the tenants, as the original agreement.</p> <p>(3) Where the original agreement was for a fixed term, the date of expiry of the replacement agreement is to be the same as that of the original agreement.</p> <p>A Where a court has made an order terminating a residential tenancy agreement and establishing a new residential tenancy agreement and a security deposit has been paid as required under the <i>Residential Tenancy Act 1997</i> in respect of the original agreement, the court may make an order stating that the deposit in respect of the original agreement is the security deposit in respect of the replacement agreement.</p> <p>B If an order is made under subsection (3A) –</p> <ul style="list-style-type: none"> (a) the owner of the residential property may not require any further security deposit in respect of the replacement agreement; (b) no disbursement or refund of the security deposit is payable under the <i>Residential Tenancy Act 1997</i> on the termination of the original agreement; and (c) on the termination of the replacement agreement, the security deposit is to be disbursed or refunded as if it

STATE OR TERRITORY	LEGISLATION	RELEVANT PROVISIONS
		<p>were the termination of the original agreement.</p> <p>(4) Before an order is made under this section, any person having an interest in the residential premises is entitled to appear and be heard in relation to the matter.</p>
VIC	<p><i>Residential Tenancies Act 1997</i>, sections 233A & 233B</p>	<p>Section 233A</p> <p>(1) In this section—</p> <p>"final order" means—</p> <p>(a) a final order within the meaning of the <i>Family Violence Protection Act 2008</i> ; or</p> <p>(b) a final order within the meaning of the <i>Personal Safety Intervention Orders Act 2010</i> .</p> <p>(2) This section applies if —</p> <p>(a) a tenant is excluded from rented premises under an exclusion condition included in a final order; and</p> <p>(b) a protected person under the final order—</p> <p>i. is also a party to the tenancy agreement for the rented premises; or</p> <p>ii. has been residing in the rented premises as the protected person's principal place of residence but is not a party to the tenancy agreement.</p> <p>(3) The protected person may apply to the Tribunal for an order—</p> <p>(a) terminating the existing tenancy agreement; and</p> <p>(b) requiring the landlord of the premises to enter into a tenancy agreement with the protected person and other persons (if any) specified in the application.</p> <p>(4) For the purposes of proceedings in relation to an application for an order under subsection (3), each of the following persons is a party to the proceeding—</p> <p>(a) the protected person;</p> <p>(b) the landlord;</p> <p>(c) the excluded tenant;</p> <p>(d) any other existing tenants.</p> <p>Section 233B</p> <p>(1) On receipt of an application under section 233A(3) , the Tribunal may make an order terminating the existing tenancy agreement and requiring the landlord to enter into a new tenancy agreement with the protected person and other persons (if any) specified in the application if the Tribunal is satisfied that—</p> <p>(a) the protected person and other persons (if any) could reasonably be expected to comply with the duties of a</p>

STATE OR TERRITORY	LEGISLATION	RELEVANT PROVISIONS
		<p>tenant under a tenancy agreement to which this Act applies;</p> <ul style="list-style-type: none"> (b) the protected person or the protected person's dependent children would be likely to suffer severe hardship if the protected person were compelled to leave the premises; (c) the hardship suffered by the protected person would be greater than any hardship the landlord would suffer if the order were made; (d) it is reasonable to do so given the length of the exclusion under the final order and the length of the existing tenancy agreement; and (e) it is reasonable to do so given the interests of any other tenants (other than the excluded tenant) under the existing tenancy agreement and, in particular, whether the other tenants support the protected person's application. <p>(2) If the Tribunal makes an order under subsection (1) the new tenancy agreement must—</p> <ul style="list-style-type: none"> (a) be subject to the same rent and frequency of rent payments as the existing tenancy agreement; (b) if the existing tenancy agreement is a fixed term agreement, run for a term not longer than the remainder of that fixed term; and (c) otherwise, be on the same terms and conditions as the existing tenancy agreement, subject to any changes the Tribunal determines. <p>(3) If the Tribunal makes an order under subsection (1) the existing tenancy agreement is terminated on the signing of the new tenancy agreement.</p>

APPENDIX 3 - State and Territory provisions on the assignment of liability for debt

STATE OR TERRITORY	LEGISLATION	RELEVANT PROVISIONS
NSW	<i>Residential Tenancies Act 2010</i> , section 100(1)(d) and (4)	<p>(1) A tenant may give a termination notice for a fixed term agreement on any of the following grounds:</p> <p style="padding-left: 40px;">(d) that a co-tenant or occupant or former co-tenant or occupant is prohibited by a final apprehended violence order from having access to the residential premises.</p> <p>(4) The tenant is not liable to pay any compensation or other additional amount for the early termination of the agreement.</p>
SA	<i>Residential Tenancies Act 1995</i> , sections 89A(10), (11) and (12)	<p>(10) If a residential tenancy is terminated under this section because of an intervention order in force against a co-tenant under the residential tenancy agreement, or because a co-tenant under the agreement has committed domestic abuse, the Tribunal may order the co-tenant to make a payment of compensation to the landlord for loss and inconvenience resulting, or likely to result, from the termination of the tenancy or from any additional order made under subsection (4).</p> <p>(11) If the Tribunal finds, in relation to a residential tenancy that is terminated under this section, that 1 or more, but not all, of the co-tenants under the residential tenancy agreement are responsible for damage to the residential premises or ancillary property, the Tribunal may determine that the responsible co-tenant or co-tenants are liable (to the exclusion of other co-tenants) for making any payment of compensation ordered under section 110(1)(c).</p> <p>(12) If 1 or more, but not all, of the co-tenants under a residential tenancy agreement are liable under subsection (10) or (11) for making a payment of compensation, the following provisions apply:</p> <p style="padding-left: 40px;">(a) the Tribunal may give a direction under section 110(1)(i) that the bond (if any) be paid to the landlord and any co-tenant who is not liable for making the payment in such proportions as the Tribunal thinks fit; and</p> <p style="padding-left: 40px;">(b) a direction under paragraph (a) may not operate to limit the amount of bond payable to a landlord under section 110(1)(i).</p>
VIC	<i>Residential Tenancies Act 1997</i> , section 233C	<p>(1) If the Tribunal decides to make an order under section 233B, the Tribunal may determine the liabilities of the excluded tenant, the protected person or any other tenants under the existing tenancy agreement in relation to a bond paid for the rented premises and any other existing liabilities under the existing tenancy agreement,</p>

STATE OR TERRITORY	LEGISLATION	RELEVANT PROVISIONS
		<p>including, for example—</p> <ul style="list-style-type: none"> (a) liabilities relating to damage caused to the rented premises; and (b) liabilities relating to outstanding utility charges. <p>(2) To remove doubt, the termination of a tenancy agreement under section 233B does not give rise to a right to claim compensation on the part of any party to the agreement for early termination of the agreement.</p> <p>(3) For the purpose of making a determination under subsection (1), the Tribunal may adjourn the hearing to allow an inspection of the rented premises in accordance with section 86(1)(g).</p>

APPENDIX 4 - State and Territory provisions on tenancy database listings

STATE OR TERRITORY	LEGISLATION	RELEVANT PROVISIONS
QLD	<i>Residential Tenancies and Rooming Accommodation Act 2008</i> , section 461	<p>(1) A person (the tenant) who has been listed on a tenancy database may apply to a tribunal for an order under this section.</p> <p>(2) The tribunal may order a person to take stated steps to—</p> <ul style="list-style-type: none"> (a) have the tenant's name or other personal information about the tenant omitted from the database; or (b) have stated changes made to the personal information about the tenant that is included in the database. <p>(3) The tribunal may make the order only if it is satisfied—</p> <ul style="list-style-type: none"> (a) the database includes personal information about the tenant that is incorrect or misleading; or (b) the inclusion of the tenant's name or other personal information about the tenant in the database is unjust in the circumstances, having regard to— <ul style="list-style-type: none"> (i) the reason for the listing; (ii) the tenant's involvement in the acts or omissions giving rise to the reason for the listing; (iii) the adverse consequences suffered, or likely to be suffered, by the tenant because of the listing; and (iv) any other relevant matter. <p><i>Examples for paragraph (b)—</i></p> <p><i>Y is listed on a tenancy database for a reason relating to damage caused to premises by Y's spouse in the course</i></p>

STATE OR TERRITORY	LEGISLATION	RELEVANT PROVISIONS
		<i>of an incident of domestic violence. Because of the listing, Y cannot obtain appropriate and affordable accommodation</i>
SA	<i>Residential Tenancies Act 1995, section 89A(4)(d)</i>	<p>(4) The Tribunal may, on application by a party to proceedings under this section, make 1 or more of the following additional orders:</p> <p style="padding-left: 40px;">(d) if the Tribunal is satisfied that—</p> <ul style="list-style-type: none"> i. the applicant did not cause or reasonably cause a breach of the residential tenancy agreement; or ii. the nature of any breach of the residential tenancy agreement resulted from an act of abuse or domestic abuse against the applicant, <p>an order that the landlord, landlord's agent or a database operator must not list the applicant's personal information in a residential tenancy database under section 99F(1).</p>

APPENDIX 5 - State and territory provisions on changing of locks and other security devices

STATE OR TERRITORY	LEGISLATION	RELEVANT PROVISIONS
ACT	<i>Residential Tenancies Act 1997</i> , Schedule 1 clause 54(4)	The lessor or the tenant may change locks (at his or her own cost) in an emergency without the agreement of the other party.
NSW	<i>Residential Tenancies Act 2010</i> , section 72	<p>(1) A copy of the key or any other opening device or information required to open a lock or other security device that is altered, added or removed by a landlord or tenant must be given to the other party not later than 7 days after it is altered, added or removed, unless:</p> <ul style="list-style-type: none"> (a) the other party agrees, or (b) the Tribunal authorises a copy not to be given. <p>(2) This section does not require a copy of a key or other opening device or information to be given to a person who is prohibited from having access to the residential premises by an apprehended violence order.</p> <p>(3) This section is a term of every residential tenancy agreement.</p>
QLD	<i>Residential Tenancies and Rooming Accommodation Act 2008</i> , section 211	<p>(1) If the lessor or tenant changes a lock, the party must give to the other party a key for the changed lock, unless—</p> <ul style="list-style-type: none"> (a) the other party agrees to not being given a key; or (b) a tribunal orders that a key not be given. <p>(2) However, the lessor or tenant may change a lock only if—</p> <ul style="list-style-type: none"> (a) the party has a reasonable excuse for making the change; or (b) the other party agrees to the change. <p>(3) Without limiting subsection (2)(a), it is a reasonable excuse for the lessor or tenant to change a lock if it is changed in an emergency or under an order of a tribunal.</p>
TAS	<i>Residential Tenancies Act 1997</i> section 57	A tenant may, without the authority of an order of the Court or the consent of the owner of the residential premises, add, alter or remove any lock or other security device –

STATE OR TERRITORY	LEGISLATION	RELEVANT PROVISIONS
		<p>(a) if –</p> <p style="padding-left: 40px;">(i) an FVO, within the meaning of the <i>Family Violence Act 2004</i>, is in force under that Act; or</p> <p style="padding-left: 40px;">(ii) a PFVO, within the meaning of the <i>Family Violence Act 2004</i>, is in force under that Act; and</p> <p>(b) the FVO or PFVO was made for the purpose of protecting the tenant.</p>
VIC	<i>Residential Tenancies Act 1997</i> , section 70A	<p>(1) This section applies if—</p> <p style="padding-left: 40px;">(a) a tenant is excluded from rented premises because of an exclusion condition included in a family violence intervention order or, family violence safety notice or a personal safety intervention order; and</p> <p style="padding-left: 40px;">(b) a protected person under the family violence intervention order or, family violence safety notice or a personal safety intervention order—</p> <p style="padding-left: 80px;">i. is also a party to the tenancy agreement for the rented premises; or</p> <p style="padding-left: 80px;">ii. has been residing in the rented premises as the protected person's principal place of residence but is not a party to the tenancy agreement.</p> <p>(2) The protected person may change any external door or window lock, including a lock in a master key system, of the rented premises, whether or not the protected person is a party to the tenancy agreement.</p> <p>(3) As soon as practicable after the protected person changes any external door or window lock, the protected person must—</p> <p style="padding-left: 40px;">(a) give the landlord or landlord's agent—</p> <p style="padding-left: 80px;">i. a key to the lock; and</p> <p style="padding-left: 80px;">ii. either a certified extract of the family violence intervention order or, family violence safety notice or a personal safety intervention order or a copy of the order or notice; and</p> <p style="padding-left: 40px;">(b) give a key to the lock to the parties to the tenancy agreement, other than the excluded tenant.</p> <p>(4) The protected person is not required to give the excluded tenant a key to the lock—</p> <p style="padding-left: 40px;">(a) in the case of a family violence intervention order or a personal safety intervention order, unless the exclusion condition in the family violence intervention order or a personal safety intervention order ends; or</p> <p style="padding-left: 40px;">(b) in the case of a family violence safety notice, until the family violence safety notice ends.</p> <p>(5) A landlord or landlord's agent must not give the excluded tenant any key provided under subsection (3)(a) if he or she knows that the tenant has been excluded from the rented premises under a family violence intervention order or, family violence safety notice or a personal safety intervention order.</p> <p>(6) If a certified extract or a copy of a notice or order has been given to a landlord or landlord's agent under subsection (3)(a)(ii), the landlord and landlord's agent are taken to know that the tenant has been excluded from the rented</p>

STATE OR TERRITORY	LEGISLATION	RELEVANT PROVISIONS
		<p>premises.</p> <p>(7) A landlord or landlord's agent may only disclose, or give a copy of, a certified extract or a copy of a notice or order received under subsection (3)(a)(ii) to—</p> <ul style="list-style-type: none"> (a) if given to the landlord, the landlord's agent; (b) if given to the landlord's agent, the landlord; (c) in either case, the legal representative of the landlord or landlord's agent; (d) any other person as prescribed. <p>(8) This section applies despite anything in section 70.</p>

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